

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report: **February 21, 2003**

SL GREEN REALTY CORP.

(Exact Name of Registrant as Specified in its Charter)

Maryland
(State of Incorporation)

1-13199
(Commission File Number)

13-3956775
(IRS Employer ID. Number)

420 Lexington Avenue
New York, New York 10170
(Address of Principal Executive Offices) (Zip Code)

(212) 594-2700
(Registrant's Telephone Number, Including Area Code)

ITEM 2. ACQUISITION OR DISPOSITION OF ASSETS

As previously announced on Form 8-K, filed December 12, 2002, SL Green Realty Corp. ("SL Green" or the "Company") announced that it had signed an agreement to acquire The News Building located at 220 East 42nd Street, New York, NY for \$265 million.

The purchase was consummated on February 13, 2003.

The landmark 1.1 million square foot News Building is 100% leased, with 18% of the leases expiring over the next 3 years. The building's high-quality tenancy includes Omnicom Group, which leases 40% of the building and other notable companies such as Tribune Company, WPIX-TV, Verizon, Value Line, Neuberger Berman, and United Nations Population Fund.

ITEM 7. FINANCIAL STATEMENTS, PRO FORMA FINANCIAL INFORMATION AND EXHIBITS

(a) and (b)	FINANCIAL STATEMENTS OF PROPERTY ACQUIRED AND PRO FORMA FINANCIAL INFORMATION	
	PRO FORMA CONDENSED CONSOLIDATED FINANCIAL STATEMENTS	
	Pro Forma Condensed Consolidated Balance Sheet (Unaudited) as of September 30, 2002	F-2
	Pro Forma Condensed Consolidated Income Statement (Unaudited) for the nine months ended September 30, 2002	F-3
	Pro Forma Condensed Consolidated Income Statement (Unaudited) for the year ended December 31, 2001	F-4
	Notes to Pro Forma Financial Information	F-5
	FINANCIAL STATEMENTS	
	Report of Independent Auditors	F-7
	Revenues and Certain Expenses of 220 News LLC for the nine months ended September 30, 2002 (unaudited) and the year ended December 31, 2001	F-8
	Notes to Financial Statements	F-9
(C)	EXHIBITS	
	10.1 Form of June 27, 2000 Revolving Credit and Guarantee Agreement incorporated by reference to the	

- 10.2 Amended and Restated Credit and Guaranty Agreement dated February 6, 2003.
- 10.3 Employment and Non-competition Agreement between Stephen L. Green and the Company, dated August 20, 2002
- 10.4 Form of Agreement of Sale and Purchase dated as of January 30, 1998 between Graybar Building Company, as Seller and SL Green Operating Partnership, L.P., as Purchaser incorporated by reference to the Company's Form 8-K, dated March 18, 1998, filed with the Commission on March 31, 1998.
- 99.1 Consent of Ernst and Young LLP

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

SL GREEN REALTY CORP.

By: /s/ THOMAS E. WIRTH

Thomas E. Wirth
Chief Financial Officer

Date: February 21, 2003

SL GREEN REALTY CORP.

PRO FORMA CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

(Unaudited)

On December 9, 2002, the Company announced that it had entered into an agreement to purchase The News Building located at 220 East 42nd Street, New York, NY. This transaction was consummated on February 13, 2003.

The unaudited pro forma condensed consolidated balance sheet of SL Green Realty Corp. (the "Company") as of September 30, 2002 has been prepared as if the Company's acquisition of the property located at 220 East 42nd Street had been consummated on September 30, 2002. The unaudited pro forma condensed consolidated income statements for the year ended December 31, 2001 and the nine months ended September 30, 2002 are presented as if the Company's acquisition of the property located at 220 East 42nd Street occurred on January 1, 2001 and the effect was carried forward through the year and the nine month period.

The pro forma condensed consolidated financial statements do not purport to represent what the Company's financial position or results of operations would have been assuming the completion of the this acquisition had occurred on January 1, 2001 and for the period indicated, nor do they purport to project the Company's financial position or results of operations at any future date or for any future period. These pro forma condensed consolidated financial statements should be read in conjunction with the Company's 2001 Annual Report on Form 10-K and the Company's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2002.

SL GREEN REALTY CORP.

PRO FORMA CONDENSED CONSOLIDATED BALANCE SHEET

AS OF SEPTEMBER 30, 2002

(Unaudited)

(In Thousands Except Per Share Amounts)

	SL Green Realty Corp. Historical	Pro Forma Adjustments	SL Green Realty Corp. Proforma
	(A)	(B)	
ASSETS:			
Commercial real estate properties at cost:			
Land and land interests	\$ 131,078	\$ 53,000	\$ 184,078

Buildings and improvements	675,499	212,000	887,499
Building leasehold	147,911	—	147,911
Property under capital lease	12,208	—	12,208
	<u>966,696</u>	<u>265,000</u>	<u>1,231,696</u>
Less accumulated depreciation	(119,056)	—	(119,056)
	<u>847,640</u>	<u>265,000</u>	<u>1,112,640</u>
Assets held for sale	41,185	—	41,185
Cash and cash equivalents	13,450	—	13,450
Restricted cash	32,538	—	32,538
Tenant and other receivables, net of allowance of \$5,882	8,066	—	8,066
Related party receivables	4,832	—	4,832
Deferred rents receivable, net of allowance for tenant credit loss of \$6,321	54,992	—	54,992
Investment in and advances to affiliates	3,146	—	3,146
Structured finance investments	194,709	(53,500)	141,209
Investments in unconsolidated joint ventures	217,108	—	217,108
Deferred costs, net	34,957	—	34,957
Other assets	14,569	—	14,569
	<u>1,467,192</u>	<u>211,500</u>	<u>1,678,692</u>
Total Assets	\$ 1,467,192	\$ 211,500	\$ 1,678,692
LIABILITIES AND STOCKHOLDERS' EQUITY:			
Mortgage notes payable	\$ 374,800	\$ 186,500	\$ 561,300
Revolving credit facilities	173,931	13,000	186,931
Derivative instruments at fair value	8,540	—	8,540
Accrued interest payable	1,945	—	1,945
Accounts payable and accrued expenses	33,935	—	33,935
Deferred compensation awards	671	—	671
Deferred revenue	3,777	—	3,777
Capitalized lease obligations	15,895	—	15,895
Deferred land lease payable	14,466	—	14,466
Dividend and distributions payable	16,693	—	16,693
Security deposits	19,420	—	19,420
Liabilities related to assets held for sale	21,414	—	21,414
	<u>685,487</u>	<u>199,500</u>	<u>884,987</u>
Total liabilities	685,487	199,500	884,987
Commitments and Contingencies	—	—	—
Minority interest in Operating Partnership	44,941	12,000	56,941
8% Preferred Income Equity Redeemable Shares SM \$0.01 par value \$25.00 mandatory liquidation preference, 25,000 authorized and 4,600 outstanding at September 30, 2002	111,599	—	111,599
STOCKHOLDERS' EQUITY			
Common stock, \$0.01 par value, 100,000 shares authorized, 30,376 issued and outstanding at September 30, 2002	303	—	303
Additional paid-in-capital	591,668	—	591,668
Deferred compensation plans	(5,987)	—	(5,987)
Accumulated other comprehensive loss	(8,279)	—	(8,279)
Retained earnings	47,460	—	47,460
	<u>625,165</u>	<u>—</u>	<u>625,165</u>
Total stockholders' equity	625,165	—	625,165
Total liabilities and stockholders' equity	\$ 1,467,192	\$ 211,500	\$ 1,678,692

The accompanying notes are an integral part of these pro forma financial statements.

F-2

SL GREEN REALTY CORP.

PRO FORMA CONDENSED CONSOLIDATED INCOME STATEMENT

FOR THE NINE MONTH PERIOD ENDED SEPTEMBER 30, 2002

(Unaudited)

(In Thousands Except Per Share Amounts)

	SL Green Realty Corp. Historical	220 East 42 nd Street Acquisition	SL Green Realty Corp. Pro Forma Adjustments	SL Green Realty Corp. Pro Forma
	(A)	(B)		
REVENUES:				
Rental revenue	\$ 140,023	\$ 22,433	\$ 552(C)	\$ 163,008
Escalation and reimbursement revenues	21,630	2,734	—	24,364
Signage rent	924	—	—	924
Investment income	11,420	—	—	11,420
Preferred equity income	5,805	—	(5,056)(D)	749
Other income	3,402	—	—	3,402
	<u>183,204</u>	<u>25,167</u>	<u>(4,504)</u>	<u>203,867</u>
Total revenues	183,204	25,167	(4,504)	203,867
EXPENSES:				
Operating expenses including \$5,068 to affiliates	43,174	6,494	—	49,668
Real estate taxes	21,798	3,921	—	25,719
Ground rent	9,478	—	—	9,478
Interest	27,235	—	4,988(E)	32,223
Depreciation and amortization	28,648	—	3,975(F)	32,623
Marketing, general and administrative	9,719	553	(553)(G)	9,719
	<u>140,052</u>	<u>10,968</u>	<u>8,410</u>	<u>159,430</u>
Total expenses	140,052	10,968	8,410	159,430

Income (loss) before equity in net income from affiliates, equity in net income of unconsolidated joint ventures, and minority interest	43,152	14,199	(12,914)	44,437
Equity in net income from affiliates	245	—	—	245
Equity in net income of unconsolidated joint ventures	13,113	—	—	13,113
Income(loss) before minority interest	56,510	14,199	(12,914)	57,795
Minority interest in operating partnership	(3,380)	(1,142)	296(H)	(4,226)
Income (loss) from continuing operations	53,130	13,057	(12,618)	53,569
Income from discontinued operations, net of minority interest	2,034	—	—	2,034
Net income (loss)	55,164	13,057	(12,618)	55,603
Preferred stock dividends	(6,900)	—	—	(6,900)
Preferred stock accretion	(368)	—	—	(368)
Net income (loss) available to common shareholders	\$ 47,896	\$ 13,057	\$ (12,618)	\$ 48,335
BASIC EARNINGS PER SHARE:(I)				
Net income (loss) before income from discontinued operations	\$ 1.52			\$ 1.53
Income from discontinued operations	0.07			0.07
Net income	\$ 1.59			\$ 1.60
DILUTED EARNINGS PER SHARE:(I)				
Net income (loss) before income from discontinued operations	\$ 1.49			\$ 1.52
Income from discontinued operations	0.06			0.05
Net income	\$ 1.55			\$ 1.57
Basic weighted average common shares outstanding	30,185			30,185
Diluted weighted average common shares and common share equivalents outstanding	33,074			38,188

The accompanying notes are an integral part of these pro forma financial statements.

F-3

SL GREEN REALTY CORP.
PRO FORMA CONDENSED CONSOLIDATED INCOME STATEMENT
FOR THE YEAR ENDED DECEMBER 31, 2001
(Unaudited)
(In Thousands Except Per Share Amounts)

	SL Green Realty Corp. Historical	220 East 42 nd Street Acquisition	SL Green Realty Corp. Pro Forma Adjustments	SL Green Realty Corp. Pro Forma
	(A)	(B)		
REVENUES:				
Rental revenue	\$ 197,665	\$ 28,452	\$ 4,494 (C)	\$ 230,611
Escalation and reimbursement revenues	30,361	3,031	—	33,392
Signage rent	1,522	—	—	1,522
Investment income	14,808	—	—	14,808
Preferred equity income	2,561	—	(2,247)(D)	314
Other income	2,770	—	—	2,770
Total revenues	249,687	31,483	2,247	283,417
EXPENSES:				
Operating expenses including \$5,805 to affiliates	56,718	11,335	—	68,053
Real estate taxes	29,828	5,754	—	35,582
Ground rent	12,579	—	—	12,579
Interest	45,107	—	11,253 (E)	56,360
Depreciation and amortization	37,117	—	5,300 (F)	42,417
Marketing, general and administrative	15,374	689	(689)(G)	15,374
Total expenses	196,723	17,778	15,864	230,365
Income (loss) before equity in net loss from affiliates, equity in net income of unconsolidated joint ventures, gain on sale, minority interest, and discontinued operations	52,964	13,705	(13,617)	53,052
Equity in net loss from affiliates	(1,054)	—	—	(1,054)
Equity in net income of unconsolidated joint ventures	8,607	—	—	8,607
Gain on sale of rental property/preferred Investment	4,956	—	—	4,956
Income (loss) before minority interest	65,473	13,705	(13,617)	65,561
Minority interest in operating partnership	(4,419)	(1,138)	757 (H)	(4,800)
Cumulative effect of change in accounting principle	(532)	—	—	(532)
Income (loss) from continuing operations	60,522	12,567	(12,860)	60,229
Income from discontinued operations, net of minority interest	2,479	—	—	2,479

Net (loss) income	63,001	12,567	(12,860)	62,708
Preferred stock dividends	(9,200)	—	—	(9,200)
Preferred stock accretion	(458)	—	—	(458)
Net income (loss) available to common shareholders	\$ 53,343	\$ 12,567	\$ (12,860)	\$ 53,050
BASIC EARNINGS PER SHARE:(I)				
Net income (loss) before gain on sale, income from discontinued operations and cumulative effect adjustment	\$ 1.73			\$ 1.55
Income from discontinued operations	0.09			0.08
Gain on sales	0.18			0.17
Cumulative effect of change in accounting principle	(0.02)			(0.02)
Net income	\$ 1.98			\$ 1.78
DILUTED EARNINGS PER SHARE:(I)				
Net income (loss) before gain on sale, income from discontinued operations and cumulative effect adjustment	\$ 1.72			\$ 1.54
Income from discontinued operations	0.08			0.08
Gain on sales	0.16			0.15
Cumulative effect of change in accounting principle	(0.02)			(0.02)
Net income	\$ 1.94			\$ 1.75
Basic weighted average common shares outstanding	26,993			29,815
Diluted weighted average common shares and common share equivalents outstanding	29,808			33,045

The accompanying notes are an integral part of these pro forma financial statements.

F-4

SL GREEN REALTY CORP.

NOTES TO PRO FORMA CONDENSED CONSOLIDATED BALANCE SHEET

SEPTEMBER 30, 2002
(Unaudited and in Thousands)

- (A) To reflect the unaudited condensed consolidated balance sheet of SL Green Realty Corp. at September 30, 2002 as reported on the Company's Quarterly Report on Form 10-Q.
- (B) To reflect the purchase price allocation of the Company's acquisition of the property located at 220 East 42nd Street as of September 30, 2002 for \$265,000. There was no independent valuation performed on this property. The Company intends to account for the acquisition in accordance with SFAS 141 and 142. We are currently in the process of analyzing the fair value of our in-place leases; and, consequently, no value has yet been assigned to the leases. Therefore, the purchase price allocation is preliminary and subject to change. The purchase was financed through the assumption of \$186,500 of debt, the issuance of approximately 415 operating partnership units of SL Green Operating Partnership, L.P. valued at \$12,000 and the balance was funded through the Company's revolving line of credit. In addition, the Company's preferred equity investment of \$53,500 was repaid.

NOTES TO PRO FORMA CONDENSED CONSOLIDATED INCOME STATEMENT NINE MONTHS ENDED SEPTEMBER 30, 2002 (Unaudited and in Thousands)

- (A) To reflect the condensed consolidated statement of income of SL Green Realty Corp. for the nine month period ended September 30, 2002 as reported on the Company's Quarterly Report on Form 10-Q.
- (B) To reflect the historical operations of 220 East 42nd Street for the nine month period ended September 30, 2002.
- (C) Rental income for 220 East 42nd Street adjusted to reflect straight-line amounts as of January 1, 2001.
- (D) To reduce preferred equity income due to the repayment of the \$53,500 investment. This investment had a weighted average yield for the period of 12.6 percent.
- (E) To record interest expense for borrowings under the mortgage loans assumed (\$158,000 at the weighted average interest rate of 3.61% and \$28,500 at the weighted average interest rate of 8.09%) and the borrowing under the revolving line of credit (\$13,000 at a weighted average interest rate of 3.34%). Interest expense was reduced for the debt repaid from the proceeds from the repaid preferred equity investment (\$53,500 at the weighted average interest rate of 3.34%).
- (F) To reflect straight-line depreciation for 220 East 42nd Street based on an estimated useful life of 40 years.
- (G) This reflects the elimination of the asset management fees and management fees that the property incurred. It also reflects a reduction in professional fees.
- (H) To reflect the minority shareholders interest of 8.04% in the operating partnership.
- (I)

Basic income per common share is calculated based on 30,185 weighted average common shares outstanding and diluted income per common share is calculated based on 38,188 weighted average common shares and common share equivalents outstanding. The preferred shares outstanding were dilutive during this period.

F-5

YEAR ENDED DECEMBER 31, 2001

**NOTES TO PRO FORMA CONDENSED CONSOLIDATED INCOME STATEMENT
(Unaudited and in Thousands)**

- (A) To reflect the condensed consolidated statement of income of SL Green Realty Corp. for the year ended December 31, 2001 as reported on the Company's Annual Report on Form 10-K.
- (B) To reflect the historical operations of 220 East 42nd Street for the year ended December 31, 2001.
- (C) Rental income for 220 East 42nd Street adjusted to reflect straight-line amounts as of January 1, 2001.
- (D) To reduce preferred equity income due to the repayment of the \$53,500 investment. This investment had a weighted average yield for the period of 12.6 percent.
- (E) To record interest expense for borrowings under the mortgage loans assumed (\$158,000 at the year end interest rate of 3.6246% and \$28,500 at the year end interest rate of 8.11%) and the borrowing under the revolving line of credit (\$13,000 at a weighted average interest rate of 5.22%). Interest expense was reduced for the debt repaid from the proceeds from the repaid preferred equity investment (\$53,500 at the weighted average interest rate of 5.22%).
- (F) To reflect straight-line depreciation for 220 East 42nd Street based on an estimated useful life of 40 years.
- (G) This reflects the elimination of the asset management fees and management fees that the property incurred. It also reflects a reduction in professional fees.
- (H) To reflect the minority shareholders interest of 8.3% in the operating partnership.
- (I) Basic income per common share is calculated based on 29,815 weighted average common shares outstanding and diluted income per common share is calculated based on 33,045 weighted average common shares and common share equivalents outstanding. The preferred shares outstanding were anti-dilutive during this period.

F-6

Report of Independent Auditors

Board of Directors and Stockholders
SL Green Realty Corp.

We have audited the statement of revenues and certain expenses of 220 News Building (the "Company") for the year ended December 31, 2001. The financial statement is the responsibility of the Company's management. Our responsibility is to express an opinion on this financial statement based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statement is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statement. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

The accompanying statement of revenues and certain expenses was prepared for the purpose of complying with Rule 3-14 of Regulation S-X of the Securities and Exchange Commission for inclusion in Form 8-K of SL Green Realty Corp. and is not intended to be a complete presentation of the Company's revenues and expenses.

In our opinion, the financial statement referred to above presents fairly, in all material respects, the revenues and certain expenses of the Company as described in Note 1 for the year ended December 31, 2001, in conformity with accounting principles generally accepted in the United States.

/s/ Ernst & Young

New York, New York
November 20, 2002

F-7

220 News Building

Statements of Revenues and Certain Expenses

Nine Months ended

Year ended

	September 30, 2002 (Unaudited)	December 31, 2001
Revenues		
Base rents	\$ 22,432,713	\$ 28,451,933
Tenant reimbursements	2,734,486	3,030,676
Total rental revenue	25,167,199	31,482,609
Certain expenses:		
Real estate taxes	3,920,841	5,754,187
Management fees	478,491	501,121
Property operating expenses	6,569,009	11,522,910
Total certain expenses	10,968,341	17,778,218
Revenues in excess of certain expenses	\$ 14,198,858	\$ 13,704,391

See accompanying notes.

F-8

220 News Building

Notes to Statement of Revenues and Certain Expenses

December 31, 2001

1. Basis of Presentation

Presented herein is the statements of revenues and certain expenses related to the operation of an office building located at 220 East 42nd Street ("220 News" or the "Property") in Manhattan, New York. On November 20, 2002, SL Green Realty Corp., entered into an agreement to acquire 220 News, closing is expected to occur in early 2003.

The accompanying financial statements have been prepared in accordance with the applicable rules and regulations of the Securities and Exchange Commission for the acquisition of real estate properties. Accordingly, the financial statements exclude certain expenses that may not be comparable to those expected to be incurred by the Company in the proposed future operations of the aforementioned property. Items excluded consist of interest, depreciation and general and administrative expenses not directly related to the future operations.

2. Use of Estimates

The preparation of the statement of revenues and certain expenses in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the amounts reported in the statement of revenues and certain expenses and accompanying notes. Actual results could differ from those estimates.

3. Revenue Recognition

220 News is being leased to tenants under operating leases. Minimum rental income is generally recognized on a straight-line basis over the term of the lease. The excess of amounts so recognized over amounts due pursuant to the underlying leases amounted to approximately \$869,000 (unaudited) for the nine months ended September 30, 2002 and \$1,633,000, for the year ended December 31, 2001.

Included in tenant reimbursements for the nine months ended September 30, 2002 is a true up of prior year tenant reimbursements in the amount of approximately \$310,000, which had been estimated in prior years.

4. Management Agreements

The Property is managed by The Witkoff Group, LLC (the "Property Manager"), an affiliate of one of the members of the Company, pursuant to a management agreement which provides for management fees at the rate of 1.5% of monthly rental income receipts, as defined. Management fees of approximately \$453,000 for the year ended December 31, 2001 and \$359,000 (unaudited) for the nine months ended September 30, 2002 were incurred. Additionally, the Property Manager shall, at the request of the Company, supervise certain capital improvement projects to the Property, and shall receive a fee equal to 5% of construction costs. As of September 30, 2002 and December 31, 2001, no construction management fees were incurred.

On September 7, 2001 the Company, entered into an Asset Management Agreement with SL Green Realty Corp. Pursuant to the agreement the asset management fee is equal to 0.5% of monthly rental income receipts, as defined. Asset management fees of approximately \$48,000 and \$120,000 (unaudited) were incurred during the year ended December 31, 2001 and nine months period ended September 30, 2002, respectively.

F-9

5. Property Operating Expenses

Property operating expenses for the year ended December 31, 2001, respectively include \$119,024 for insurance, \$4,773,972 for utilities, \$2,332,240 for cleaning costs, \$1,676,581 in repair and maintenance costs, \$329,311 in administrative costs, \$2,104,126 in payroll costs and \$187,656 for professional services.

Property operating expenses for the nine months ended September 30, 2002 (unaudited) include \$111,321 for insurance, \$2,409,545 for utilities, \$1,440,351 for cleaning services, \$907,591 for repairs and maintenance costs, \$230,517 for administrative costs, \$1,395,087 for payroll costs and \$74,597 for professional services.

6. Significant Tenants

Two tenants constitute approximately 56% of rental revenue in 2001 and for the nine months ended September 30, 2002.

7. Future Minimum Rents Schedule

Future minimum lease payments to be received by 220 News as of December 31, 2001, under noncancelable operating leases are as follows:

	Related Party	Other	Total
2002	\$ 1,678,000	\$ 30,222,000	\$ 31,900,000
2003	1,678,000	30,384,000	32,062,000
2004	1,678,000	30,354,000	31,932,000
2005	1,687,000	29,776,000	31,463,000
2006	1,715,000	27,573,000	29,288,000
Thereafter	15,974,000	169,585,000	185,559,000
Total	\$ 24,410,000	\$ 317,894,000	\$ 342,204,000

The lease agreements generally contain provisions for reimbursement of real estate taxes and operating expenses over base year amounts, as well as fixed increases in rent.

8. Interim Unaudited Financial Information

The financial statement for the nine months ended September 30, 2002 is unaudited, however, in the opinion of management all adjustments (consisting solely of normal recurring adjustments), necessary for a fair presentation of the financial statement for the interim period have been included. The results of the interim period are not necessarily indicative of the results to be obtained for a full fiscal year.

QuickLinks

[SIGNATURES](#)

[SL GREEN REALTY CORP. PRO FORMA CONDENSED CONSOLIDATED FINANCIAL STATEMENTS \(Unaudited\)](#)

[SL GREEN REALTY CORP. PRO FORMA CONDENSED CONSOLIDATED BALANCE SHEET AS OF SEPTEMBER 30, 2002 \(Unaudited\) \(In Thousands Except Per Share Amounts\)](#)

[SL GREEN REALTY CORP. PRO FORMA CONDENSED CONSOLIDATED INCOME STATEMENT FOR THE NINE MONTH PERIOD ENDED SEPTEMBER 30, 2002 \(Unaudited\) \(In Thousands Except Per Share Amounts\)](#)

[SL GREEN REALTY CORP. PRO FORMA CONDENSED CONSOLIDATED INCOME STATEMENT FOR THE YEAR ENDED DECEMBER 31, 2001 \(Unaudited\) \(In Thousands Except Per Share Amounts\)](#)

[SL GREEN REALTY CORP. NOTES TO PRO FORMA CONDENSED CONSOLIDATED BALANCE SHEET SEPTEMBER 30, 2002 \(Unaudited and in Thousands\)](#)

[NOTES TO PRO FORMA CONDENSED CONSOLIDATED INCOME STATEMENT NINE MONTHS ENDED SEPTEMBER 30, 2002 \(Unaudited and in Thousands\)](#)

[YEAR ENDED DECEMBER 31, 2001 NOTES TO PRO FORMA CONDENSED CONSOLIDATED INCOME STATEMENT \(Unaudited and in Thousands\) Report of Independent Auditors](#)

[220 News Building Statements of Revenues and Certain Expenses](#)

[220 News Building Notes to Statement of Revenues and Certain Expenses](#)

AMENDED AND RESTATED
CREDIT AND GUARANTY AGREEMENT

among

SL GREEN OPERATING PARTNERSHIP, L.P.,

As Borrower,

SL GREEN REALTY CORP.
AND ITS SUBSIDIARIES PARTY HERETO,

As Guarantors,

THE LENDERS PARTY HERETO,
As Lenders,

WELLS FARGO BANK, NATIONAL ASSOCIATION,
As Administrative Agent for the Lenders

COMMERZBANK AG NEW YORK BRANCH,
As Syndication Agent for the Lenders

EUROHYPO AG, NEW YORK BRANCH,
As Documentation Agent for the Lenders

WELLS FARGO BANK, NATIONAL ASSOCIATION,
As Arranger

Effective Date: February 6, 2003

TABLE OF CONTENTS

	<u>Page</u>	
SECTION 1.	DEFINITIONS OF RULES OF INTERPRETATION.	1
§ 1.1.	Definitions	1
§ 1.2.	Rules of Interpretation.	17
SECTION 2.	TERM LOAN FACILITY.	17
§ 2.1.	Commitment to Lend; Limitation on Total Commitment	17
§ 2.2.	Changes in Total Commitment.	17
§ 2.3.	The Notes	19
§ 2.4.	Interest on Loans.	19
§ 2.5.	Requests for Loans.	20
§ 2.6.	Conversion Options.	20
§ 2.7.	Funds for Loans.	21
SECTION 3.	REPAYMENT OF THE LOANS.	22
§ 3.1.	Maturity	22
§ 3.2.	Mandatory Repayments of Loan	22
§ 3.3.	Optional Repayments of Loans.	22
SECTION 4.	CERTAIN GENERAL PROVISIONS.	24
§ 4.1.	Fees	24
§ 4.2.	Commitment Fee	24
§ 4.3.	Funds for Payments.	24
§ 4.4.	Computations	25
§ 4.5.	Additional Costs, Etc	25
§ 4.6.	Capital Adequacy	26
§ 4.7.	Certificate	26
§ 4.8.	Indemnity	26
§ 4.9.	Interest on Overdue Amounts	26
§ 4.10.	Inability to Determine LIBOR Rate	27
§ 4.11.	Illegality	27
§ 4.12.	Replacement of Lenders	27

SECTION 5.	UNENCUMBERED ASSETS; NO LIMITATION ON RECOURSE.	28
§ 5.1.	Unencumbered Assets.	28
§ 5.2.	Waivers by Requisite Lenders.	28
§ 5.3.	Rejection of Unencumbered Assets	29
§ 5.4.	Change in Circumstances	29
§ 5.5.	No Limitation on Recourse	29
§ 5.6.	Additional Guarantor Subsidiaries.	29

SECTION 6.	REPRESENTATIONS AND WARRANTIES	29
§ 6.1.	Authority; Etc.	29
§ 6.2.	Governmental Approvals	30
§ 6.3.	Title to Properties.	31
§ 6.4.	Financial Statements	31
§ 6.5.	No Material Changes, Etc	31
§ 6.6.	Franchises, Patents, Copyrights, Etc	31
§ 6.7.	Litigation	32
§ 6.8.	No Materially Adverse Contracts, Etc	32
§ 6.9.	Compliance With Other Instruments, Laws, Etc	32
§ 6.10.	Tax Status	32
§ 6.11.	Event of Default	32
§ 6.12.	Investment Company Act	32
§ 6.13.	Absence of Financing Statements, Etc	32
§ 6.14.	Status of the Company	32
§ 6.15.	Certain Transactions	33
§ 6.16.	Benefit Plans; Multiemployer Plans; Guaranteed Pension Plans	33
§ 6.17.	Regulations U and X	33
§ 6.18.	Environmental Compliance	33
§ 6.19.	Subsidiaries and Affiliates	34
§ 6.20.	Loan Documents	34
§ 6.21.	Buildings on the Unencumbered Assets	34
§ 6.22.	Indebtedness	34

SECTION 7.	AFFIRMATIVE COVENANTS OF BORROWER	34
§ 7.1.	Punctual Payment	34
§ 7.2.	Maintenance of Office	34
§ 7.3.	Records and Accounts	35
§ 7.4.	Financial Statements, Certificates and Information	35
§ 7.5.	Notices.	36
§ 7.6.	Existence; Maintenance of REIT Status; Maintenance of Properties	37
§ 7.7.	Insurance	37
§ 7.8.	Taxes	37
§ 7.9.	Inspection of Properties and Books	38
§ 7.10.	Compliance with Laws, Contracts, Licenses, and Permits	38
§ 7.11.	Use of Proceeds	38
§ 7.12.	Intentionally Omitted.	38
§ 7.13.	Notices of Significant Transactions	38
§ 7.14.	Further Assurance	38
§ 7.15.	Environmental Indemnification	39
§ 7.16.	Response Actions	39

§ 7.17.	Employee Benefit Plans.	39
§ 7.18.	Required Interest Rate Contracts	40
§ 7.19.	Forward Equity Contracts	40

SECTION 8.	CERTAIN NEGATIVE COVENANTS OF BORROWER	40
§ 8.1.	Intentionally Omitted.	40
§ 8.2.	Restrictions on Investments	40
§ 8.3.	Merger, Consolidation and Other Fundamental Changes	41
§ 8.4.	Intentionally Omitted.	41
§ 8.5.	Compliance with Environmental Laws	41
§ 8.6.	Distributions	42
§ 8.7.	Preferred Distributions	42
§ 8.8.	Preferred Redemptions	42

SECTION 9.	FINANCIAL COVENANTS OF BORROWER	42
§ 9.1.	Value of All Unencumbered Assets.	42
§ 9.2.	Minimum Debt Service Coverage	42
§ 9.3.	Total Debt to Total Assets	42
§ 9.4.	Maximum Secured Indebtedness; Secured Recourse Indebtedness.	42
§ 9.5.	Minimum Tangible Net Worth	43
§ 9.6.	Unencumbered Asset Adjusted Net Operating Income to Assumed Debt Service	43
§ 9.7.	Adjusted EBITDA to Fixed Charges	43
§ 9.8.	Aggregate Occupancy Rate	43
§ 9.9.	Amendments and Modifications to § 9.	43
SECTION 10.	CONDITIONS TO EFFECTIVENESS	43
§ 10.1.	Loan Documents	43
§ 10.2.	Certified Copies of Organization Documents; Good Standing Certificates	43
§ 10.3.	By-laws; Resolutions	44
§ 10.4.	Incumbency Certificate; Authorized Signers	44
§ 10.5.	Title Insurance; Lien Searches	44
§ 10.6.	Opinions of Counsel Concerning Organization and Loan Documents	44
§ 10.7.	Payment of Fees	44
§ 10.8.	No Default under Original Agreement	44
SECTION 11.	CONDITIONS TO ALL CREDIT ADVANCES	44
§ 11.1.	Representations True; No Event of Default; Compliance Certificate	44
§ 11.2.	No Legal Impediment	45
§ 11.3.	Proceedings and Documents	45
SECTION 12.	EVENTS OF DEFAULT; ACCELERATION; ETC.	45
§ 12.1.	Events of Default and Acceleration	45
iii		
§ 12.2.	Termination of Commitments	47
§ 12.3.	Remedies	47
§ 12.4.	Distribution of Enforcement Proceeds	48
SECTION 13.	SETOFF	49
SECTION 14.	AGENT.	49
§ 14.1.	Authorization	49
§ 14.2.	Employees and Agents	49
§ 14.3.	No Liability to Lenders	49
§ 14.4.	No Representations	49
§ 14.5.	Payments.	50
§ 14.6.	Holder of Notes	51
§ 14.7.	Indemnity	51
§ 14.8.	Agent as Lender	51
§ 14.9.	Resignation	51
§ 14.10.	Notification of Defaults and Events of Default and other Notices	52
§ 14.11.	Duties in the Case of Enforcement	52
§ 14.12.	Mandatory Resignation of Agent	52
§ 14.13.	Matters as to Borrower.	52
SECTION 15.	EXPENSES	52
SECTION 16.	INDEMNIFICATION	53
SECTION 17.	SURVIVAL OF COVENANTS, ETC	54
SECTION 18.	GUARANTY.	54
§ 18.1.	Guaranty	54
§ 18.2.	Obligations Unconditional	54
§ 18.3.	Modifications	55
§ 18.4.	Waiver of Rights	55
§ 18.5.	Reinstatement	55
§ 18.6.	Remedies	55
§ 18.7.	Limitation of Guaranty	56
§ 18.8.	Release of Guaranty	56
SECTION 19.	ASSIGNMENT; PARTICIPATIONS; ETC.	56

§ 19.1.	Conditions to Assignment by Lenders	56
§ 19.2.	Certain Representations and Warranties; Limitations; Covenants	57
§ 19.3.	Register	57
§ 19.4.	New Notes	57
§ 19.5.	Participations	58
§ 19.6.	Pledge by Lender	58

§ 19.7.	No Assignment by Borrower	58
§ 19.8.	Disclosure	58
SECTION 20.	NOTICES, ETC	58
SECTION 21.	GOVERNING LAW; CONSENT TO JURISDICTION AND SERVICE	59
SECTION 22.	HEADINGS	59
SECTION 23.	COUNTERPARTS	59
SECTION 24.	ENTIRE AGREEMENT	60
SECTION 25.	WAIVER OF JURY TRIAL AND CERTAIN DAMAGE CLAIMS	60
SECTION 26.	CONSENTS, AMENDMENTS, WAIVERS, ETC	60
SECTION 27.	SEVERABILITY	61
SECTION 28.	ACKNOWLEDGMENTS	61
SECTION 29.	TRANSITIONAL ARRANGEMENTS.	61
§ 29.1.	Original Agreement Superseded	61
§ 29.2.	Return and Cancellation of Notes	61
§ 29.3.	Interest and Fees under the Original Agreement	61
Exhibit A	Form of Note	
Exhibit B	Form of Loan Request	
Exhibit C	Form of Compliance Certificate	
Exhibit D	Form of Assignment and Acceptance	
Schedule 1	Lenders; Domestic and LIBOR Lending Offices	
Schedule 1.1	Unencumbered Assets	
Schedule 1.2	Commitments and Commitment Percentages	
Schedule 1.3	Related Companies, Guarantor Subsidiaries and Unconsolidated Entities	
Schedule 6.3	Title to Properties	
Schedule 6.7	Litigation	
Schedule 6.15	Insider Transactions	
Schedule 6.16	Employee Benefit Plans	
Schedule 6.18	Environmental Matters	
Schedule 6.19	Company Assets	
Schedule 6.21	Building Structural Defects, etc.	
Schedule 6.22	Indebtedness	
Schedule 8.2(d)	Investments	

**AMENDED AND RESTATED
CREDIT AND GUARANTY AGREEMENT**

This AMENDED AND RESTATED CREDIT AND GUARANTY AGREEMENT is made as of the 6th day of February, 2003, by and among (i) SL GREEN OPERATING PARTNERSHIP, L.P., a Delaware limited partnership ("Borrower"), (ii) SL GREEN REALTY CORP., a Maryland corporation (the "Company", and a "Guarantor", as such term is defined herein), (iii) each of the direct and indirect Subsidiaries of Borrower or the Company that is a signatory hereto under the caption "Guarantors" on the signature pages hereto or from time to time hereafter as a "Guarantor", (iv) each of the financial institutions that is a signatory hereto under the caption "Lenders" on the signature pages hereto or that, pursuant to § 19 hereof, shall become a "Lender" (individually, a "Lender" and, collectively, the "Lenders"), (v) WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, as administrative agent for the Lenders hereunder (in such capacity, "Agent") and as arranger (in such capacity, "Arranger"), (vi) COMMERZBANK AG NEW YORK BRANCH, as syndication agent for the Lenders and (vii) EUROHYPO AG, NEW YORK BRANCH, as documentation agent for the Lenders.

WHEREAS, Borrower, certain of the Lenders and Agent are parties to a Credit and Guaranty Agreement dated as of December 5, 2002 (the "Original Agreement") which provides an unsecured term loan facility in the maximum amount of \$150,000,000 (the "Facility") to Borrower; and

WHEREAS, in connection with the revision of the composition of the lender group providing the Facility and the amendment of various provisions of the Original Agreement, Borrower, the Lenders and Agent have agreed to amend and restate the Original Agreement in its entirety as set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual agreements contained herein, Agent, Borrower, the Guarantors and the Lenders hereby agree as follows:

SECTION 1. DEFINITIONS OF RULES OF INTERPRETATION.

§ 1.1. *Definitions.* The following terms shall have the meanings set forth in this § 1 or elsewhere in the provisions of this Agreement referred to below:

Additional Commitment. The portion (if any) of any Lender's Commitment which will become effective on the Commitment Increase Date if the Total Commitment is increased pursuant to § 2.2.

Additional Commitment Lenders. Those Lenders which provide an Additional Commitment.

Adjusted EBITDA. For any Person for any period, EBITDA minus (i) the aggregate Minimum Capital Expenditure Reserves for all Real Estate Assets and (ii) straight line rent adjustments for the applicable period.

Adjusted Net Operating Income. For any Real Estate Asset, as of any date of determination, Net Operating Income for the three (3) month period immediately preceding the date of determination, minus the aggregate Minimum Capital Expenditures Reserves for such Real Estate Asset for such period, and minus the aggregate Minimum Management Fees for such Real Estate Asset for such period.

Affiliated Lenders. Any commercial bank or financial institution which is (i) the parent corporation of any of the Lenders, (ii) a wholly-owned subsidiary of any of the Lenders or (iii) a wholly-owned subsidiary of the parent corporation of any of the Lenders.

Agent. Wells Fargo Bank, National Association acting in its capacity as sole administrative agent for the Lenders, or any sole successor administrative agent appointed pursuant to § 14 hereof.

Agent's Head Office. Agent's head office located at 2120 East Park Place, Suite 100, El Segundo, California 90245, or at such other location in the United States as Agent may designate from time to time.

Aggregate Occupancy Rate. With respect to the Unencumbered Assets at any time, the ratio, as of such date, expressed as a percentage, of

- (i) the summation of the amounts arrived at by multiplying (a) the Occupancy Rate of each Unencumbered Asset by (b) the net rentable area of such Unencumbered Asset,

divided by

- (ii) the aggregate net rentable area of all such Unencumbered Assets.

Agreement. This Amended and Restated Credit and Guaranty Agreement, including the Schedules and Exhibits hereto.

Applicable Base Rate Margin. Zero (0) basis points.

Applicable LIBOR Margin. The applicable margin over the LIBOR Rate which is used in calculating the interest rate applicable to LIBOR Rate Loans and which shall vary from time to time in accordance with the Company's then applicable (if any) Moody's Rating, S&P's Rating and Fitch Rating, as set forth below in this definition. In order to qualify for an Applicable LIBOR Margin based upon a debt rating, the Company shall maintain senior long-term unsecured debt ratings from at least two (2) of Moody's, S&P and Fitch, *provided* that if the Company fails to maintain at least two such debt ratings, the Applicable LIBOR Margin shall be based upon the provisions of the immediately succeeding paragraph. If at any time of determination of the Applicable LIBOR Margin, the Company has then current debt ratings from at least two (2) of Moody's, S&P or Fitch, then the Applicable LIBOR Margin shall be based on the lower of such ratings.

The applicable debt ratings and the Applicable LIBOR Margins are set forth in the following table:

S&P Rating	Moody's Rating	Fitch Rating	Applicable Margin for LIBOR Rate Loans
BBB-	Baa3	BBB-/Baa3 equivalent	1.20%
BBB	Baa2	BBB/Baa2 equivalent	1.10%
BBB+	Baa1	BBB+/Baa1 equivalent	1.00%
A- or higher	A3 or higher	A-/A3 equivalent or higher	.95%

If either (x) the Company does not maintain senior long-term unsecured debt ratings from at least two (2) of Moody's, S&P or Fitch or (y) the Company does maintain such debt ratings but such debt ratings or the lower of such debt ratings is less than BBB-/Baa3 (or the equivalent), the Applicable LIBOR Margin shall be the percentage opposite the Leverage Ratio (calculated as of the end of the immediately preceding fiscal quarter) set forth in the grid below under the caption "Applicable LIBOR Margin":

Leverage Ratio	Applicable LIBOR Margin
≤.35	1.35%
>.35 but ≤.45	1.50%
>.45	1.70%

The Applicable LIBOR Margin shall be adjusted effective on the first day following the effective date of a change in the Moody's Rating, the S&P Rating or the Fitch Rating or the date the Leverage Ratio is determined pursuant to the Compliance Certificate, as the case may be.

Appraisal. A written appraisal of property requested by Agent on behalf of the Lenders pursuant to § 5.1(b) hereof (i) in form, content and methodology satisfactory to Agent and in compliance with

all applicable legal and regulatory requirements, and (ii) prepared by an independent appraiser selected by Agent who meets all regulatory requirements applicable to Agent and the Lenders.

Arranger. Wells Fargo Bank, National Association or any successor.

Assignment and Acceptance. See § 19.

Assumed Debt Service. With respect to all unsecured Indebtedness of any Person for any period, the greater of (i) debt service on the actual principal amount outstanding on such unsecured Indebtedness on the last day of such fiscal quarter at the rates of interest then in effect, or (ii) the aggregate payment of principal and interest that would be due on such actual outstanding amount of unsecured Indebtedness for such quarter assuming a ten-year Treasury Rate plus 175 basis points and a twenty-five year amortization schedule.

Balance Sheet Date. December 31, 2001.

Bankruptcy Code. Title 11 of the United States Code, 11 U.S.C. §§ 1101 et seq., as the same may be amended from time to time.

Base Rate. The greater of (a) the base rate of interest established from time to time by Wells Fargo Bank, National Association at its principal office in San Francisco, California, and designated as its prime rate, and (b) one half of one percent ($1/2\%$) above the overnight federal funds effective rate as published by the Board of Governors of the Federal Reserve System, as in effect from time to time. Any change in the Base Rate as a result of a change in the prime rate or the federal funds effective rate shall be effective on the effective date of any such change in the prime rate or the federal funds effective rate, as the case may be. Each determination of the Base Rate shall be made by Agent and shall be conclusive and binding on Borrower absent manifest error.

Base Rate Loans. Those Loans bearing interest calculated by reference to the Base Rate.

Borrower. As defined in the preamble hereto.

Borrowing Date. The date on which any Loan is made or is to be made, and the date on which any Loan is converted or continued in accordance with § 2.6.

Buildings. The buildings, structures and other improvements now or hereafter located on the Unencumbered Assets.

Business Day. Any day, excluding (x) Saturday and Sunday, (y) any day which is a legal holiday under the laws of the States of California and New York and (z) any day on which banking institutions in California or New York are required or authorized by law or other governmental action to close and, in the case of LIBOR Rate Loans, any day which is a Eurodollar Business Day.

Capitalized Leases. Leases under which the discounted future rental payment obligations are required to be capitalized on the balance sheet of Borrower in accordance with Generally Accepted Accounting Principles.

CERCLA. See § 6.18.

Code. The Internal Revenue Code of 1986, as amended and in effect from time to time.

Commitment. With respect to each Lender, the amount set forth from time to time on *Schedule 1.2* hereto as the amount of such Lender's commitment to make Loans to Borrower.

Commitment Increase. An increase in the Total Commitment to not more than \$200,000,000 pursuant to § 2.2(a).

Commitment Increase Date. See § 2.2(a).

Commitment Increase Notice. See § 2.2(a).

Commitment Percentage. With respect to each Lender, the percentage set forth from time to time on *Schedule 1.2* hereto as such Lender's percentage of the Total Commitment. If Borrower exercises its option to increase the Total Commitment pursuant to § 2.2(a), the Commitment Percentages of the Lenders may change effective upon the Commitment Increase Date.

Company. As defined in the preamble hereto.

Compliance Certificate. See § 2.5(a).

Conversion Request. A notice given by Borrower to Agent of its election to convert or continue a Loan in accordance with § 2.6.

Default. See § 12.1.

Delinquent Lender. See § 14.5(c).

Distribution. The declaration or payment of any dividend or distribution of cash or cash equivalents to the holders of common shares of beneficial interest in the Company or the holders of common units of limited partnership interest in Borrower, or any distribution to any officer, employee or director of Borrower or the Company, other than employee compensation.

Dollars or \$. Dollars in lawful currency of the United States of America.

Domestic Lending Office. Initially, the office of each Lender designated as such in *Schedule 1* hereto; thereafter, such other office of such Lender, if any, located within the United States that will be making or maintaining Base Rate Loans.

EBITDA. With respect to any Person for any period, earnings (or losses) before interest and taxes of such Person and its Subsidiaries for such period plus, to the extent deducted in computing such earnings (or losses) before interest (including, without limitation, the interest portion of payments made under Capitalized Leases) and taxes, depreciation and amortization expense and other non-cash charges, all as determined on a consolidated basis with respect to such Person and its Subsidiaries in accordance with Generally Accepted Accounting Principles; provided, however, EBITDA shall exclude earnings or losses resulting from (i) cumulative changes in accounting practices, (ii) discontinued operations (except as noted below), (iii) extraordinary items, (iv) net income or net losses of any entity acquired in a pooling of interest transaction for the period prior to the acquisition, (v) net income or net losses, before depreciation and amortization, of a Subsidiary that is unavailable to such Person, (vi) net income or net losses not readily convertible into Dollars or remittable to the United States, (vii) gains and losses from the sale of assets, and (viii) net income or net losses, before depreciation and amortization, from corporations, partnerships, associations, joint ventures or other entities in which such Person or any Subsidiary or consolidated entity thereof has a minority interest and in which none of such Person or any Subsidiary or consolidated entity has control, except to the extent actually received, provided, further, however, that EBITDA shall include earnings and losses from (x) Real Estate Assets acquired or initially leased by such Person within the fiscal quarter in question and (y) from any Real Estate Asset which has been identified for sale and would otherwise qualify as a discontinued operation under Generally Accepted Accounting Principles, until sold or otherwise disposed of.

Effective Date. The date upon which this Agreement shall become effective pursuant to § 10. Unless Agent notifies Borrower and the Lenders on the date hereof that some other date is the Effective Date, the Effective Date shall be the date set forth on the first page of this Agreement.

Eligible Assignee. Any of (a) a commercial bank organized under the laws of the United States, or any State thereof or the District of Columbia, and having total assets in excess of \$10,000,000,000; (b) a savings and loan association or savings bank organized under the laws of the United States, or any State thereof or the District of Columbia, and having a net worth of at least \$100,000,000, calculated in

4

accordance with Generally Accepted Accounting Principles; (c) a commercial bank organized under the laws of any other country which is a member of the Organization for Economic Cooperation and Development (the "OECD"), and having total assets in excess of \$10,000,000,000, provided that such bank is acting through a branch or agency located in the country in which it is organized or another country which is also a member of the OECD; (d) the central bank of any country which is a member of the OECD; and (e) a finance company, insurance company or other financial institution (whether a corporation, partnership, trust or other entity) that is engaged in making, purchasing or otherwise investing in commercial loans in the ordinary course of its business and having total assets in excess of \$10,000,000,000. Notwithstanding anything to the contrary, the term Eligible Assignee shall exclude any Person controlling, controlled by or under common control with, Borrower or the Company.

Employee Benefit Plan. Any employee benefit plan within the meaning of § 3(3) of ERISA currently maintained or contributed to by Borrower or any Guarantor or any ERISA Affiliate, other than a Multiemployer Plan.

Environmental Laws. See § 6.18(a).

ERISA. The Employee Retirement Income Security Act of 1974, as amended and in effect from time to time.

ERISA Affiliate. Any Person which is treated as a single employer with Borrower or any Guarantor under § 414(b) or (c) of the Code.

ERISA Event. Any of the following:

- (i) a "reportable event" within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Guaranteed Pension Plan (excluding those for which the provision for 30-day notice to the PBGC has been waived by regulation),
- (ii) the failure to meet the minimum funding standard of Section 412 of the Code with respect to any Guaranteed Pension Plan (whether or not waived in accordance with Section 412(d) of the Code) or the failure to make by its due date a required installment under Section 412 (m) of the Code with respect to any Guaranteed Pension Plan or the failure to make by its due date any required contribution to a Multiemployer Plan,
- (iii) the provision by the administrator of any Guaranteed Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA,
- (iv) the withdrawal by Borrower, any Guarantor or any of their ERISA Affiliates from any Guaranteed Pension Plan with two or more contributing sponsors or the termination of any such Guaranteed Pension Plan resulting in liability pursuant to Section 4063 or 4064 of ERISA in excess of \$5,000,000.00,
- (v) the institution by the PBGC of proceedings to terminate any Guaranteed Pension Plan, or the occurrence of any event or condition which might reasonably be expected to constitute grounds under ERISA for the involuntary termination of, or the appointment of a trustee to administer, any Guaranteed Pension Plan,
- (vi) the imposition of liability on Borrower or any Guarantor or any of their ERISA Affiliates in excess of \$5,000,000.00 pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA,
- (vii) the withdrawal by Borrower or any Guarantor or any of their ERISA Affiliates in a complete or partial withdrawal (within the meaning of Section 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor in excess of \$5,000,000.00, or the

Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA, if such event could reasonably be expected to result in liability being imposed on Borrower or any Guarantor or any of their ERISA Affiliates in excess of \$5,000,000.00,

- (viii) the occurrence of an act or omission which could give rise to the imposition on Borrower or any Guarantor or any of its ERISA Affiliates of fines, penalties, taxes or related charges under Chapter 43 of the Code or under Section 409 or 502(c), (i) or (1) or 4071 of ERISA in excess of \$5,000,000 in respect of any Employee Benefit Plan,
- (ix) the assertion of a material claim (other than routine claims for benefits) against any Employee Benefit Plan other than a Multiemployer Plan or the assets thereof, or against Borrower or any Guarantor or any of their ERISA Affiliates in connection with any such Employee Benefit Plan,
- (x) receipt from the Internal Revenue Service of notice of the failure of any Pension Plan (or any other Benefit Plan intended to be qualified under Section 401(a) of the Code) to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any Guaranteed Pension Plan to qualify for exemption from taxation under Section 501(a) of the Code, or
- (xi) the imposition of a Lien pursuant to Section 401(a)(29) or 412(n) of the Code or pursuant to ERISA with respect to any Guaranteed Pension Plan.

Eurocurrency Reserve Rate. For any day with respect to a LIBOR Rate Loan, the maximum rate (expressed as a decimal) at which any of the Lenders would be required to maintain reserves (including all basic, supplemental, marginal and other reserves and taking into account any transitional adjustments or other scheduled changes in reserve requirements during the period in question) under Regulations D and K against "Eurocurrency Liabilities" (as that term is used in Regulation D), if such liabilities were outstanding. The Eurocurrency Reserve Rate shall be adjusted automatically on and as of the effective date of any change in the Eurocurrency Reserve Rate.

Eurodollar Business Day. Any day, other than a Saturday or Sunday, on which Agent is open for business in New York, New York and San Francisco, California and on which dealings in Dollar deposits are carried on in the London interbank market.

Event of Default. See § 12.1.

Exit Fee. An amount equal to the product of (x) the Exit Fee Percentage set forth opposite the Prepayment Period during which the prepayment occurs pursuant to the provisions of § 3.2, § 3.3(a) or § 3.3(b) multiplied by (y) the principal amount to be prepaid:

Prepayment Period	Exit Fee Percentage
On and after the first anniversary of the Effective Date to, but not including, the second anniversary of the Effective Date	1.0%
On and after the second anniversary of the Effective Date to, but not including, the third anniversary of the Effective Date	0.50%
At any time on and after the third anniversary of the Effective Date	0.00%

Facility. The unsecured term loan facility provided to Borrower pursuant to this Agreement.

Fitch. Fitch Ratings, a division of Fitch, Inc. or its successors.

Fitch Rating. The rating for the Company's senior long-term unsecured debt assigned by Fitch.

Fixed Charges. With respect to any fiscal period of any Person, an amount equal to the sum of (i) Interest Expense, (ii) regularly scheduled installments of principal payable with respect to all

Indebtedness of such Person, other than balloon payments of principal at maturity, (iii) scheduled cash lease payments or obligations with respect to Capitalized Leases of such Person plus (iv) in the cases of the Company and Borrower, all dividend payments due to the holders of any preferred shares of beneficial interest of the Company and all distributions due to the holders of any preferred limited partnership interests in Borrower.

Fixed Rate Prepayment Fee. See § 3.3(a).

Forward Purchase Contract. With respect to any Person, a purchase agreement entered into by such Person for the fee or leasehold purchase of an office property to be constructed.

Funding Expiry Date. The date one hundred eighty (180) days after the Effective Date.

Funds From Operations. Consolidated net income (loss) of the Company and its Subsidiaries before extraordinary items, computed in accordance with Generally Accepted Accounting Principles, plus, to the extent deducted in determining net income (loss) and without duplication, (i) gains (or losses) from debt restructuring and sales of property (or adjustments to basis of properties or other assets), (ii) non-recurring charges, (iii) provisions for losses, (iv) real estate

related depreciation, amortization and other non-cash charges (excluding amortization of financing costs), and (v) amortization of organizational expenses minus, to the extent included in net income (loss) and without duplication, (a) non-recurring income (loss) and (b) equity income (loss) from unconsolidated partnerships and joint ventures less the proportionate share of Funds From Operations of such partnerships and joint ventures, which adjustments shall be calculated on a consistent basis.

Generally Accepted Accounting Principles. Principles that are (a) consistent with the principles promulgated or adopted by the Financial Accounting Standards Board and its predecessors, as in effect from time to time and (b) consistently applied with past financial statements of the Person in question adopting the same principles; provided that a certified public accountant would, insofar as the use of such accounting principles is pertinent, be in a position to deliver an unqualified opinion (other than a qualification regarding changes in Generally Accepted Accounting Principles) as to financial statements in which such principles have been properly applied.

Ground Lease. A ground lease granting a leasehold interest in land and/or the improvements thereon.

Guaranteed Pension Plan. Any employee pension benefit plan within the meaning of § 3(2) of ERISA maintained or contributed to by Borrower, any Guarantor or any ERISA Affiliate the benefits of which are guaranteed on termination in full or in part by the PBGC pursuant to Title IV of ERISA, other than a Multiemployer Plan.

Guaranteed Obligations. Collectively,

- (xii) the payment, as and when due, or by stated maturity, acceleration, or otherwise, of the Notes and all other amounts due and payable under the other Loan Documents to Agent and the Lenders at such times and in the manner provided for in the Loan Documents, including interest accruing from and after the date of the commencement of a bankruptcy case against Borrower or a Guarantor, and
- (xiii) the payment of all other obligations of Borrower under the Loan Documents that can be performed by the payment of monies, either to Agent and the Lenders directly or by reimbursement of advances by them, including, without limitation, the payment of income and other taxes by Borrower.

Guarantor. Each of the Company and the Guarantor Subsidiaries.

Guarantor Subsidiaries. The partnerships, limited liability companies and corporations designated as Guarantor Subsidiaries on *Schedule 1.3* hereto and any other Subsidiaries of Borrower or the Company which execute and deliver this Agreement as a Guarantor pursuant to and in accordance with the provisions of § 5.6, and which shall include each wholly-owned Subsidiary of Borrower and each

Subsidiary of Borrower which, in either case, directly or indirectly owns an Unencumbered Asset as of the Effective Date or at any time thereafter; provided, however, that if a Subsidiary acquired by Borrower or the Company after the Effective Date, or if an entity that becomes a Subsidiary of Borrower or the Company after the Effective Date, directly or indirectly owns Real Estate which has been mortgaged, or the beneficial or legal ownership interests of such Subsidiary have been pledged, to secure Indebtedness, such Subsidiary shall not be a Guarantor Subsidiary unless and until the Real Estate owned by such Subsidiary becomes an Unencumbered Asset.

Guaranty. See § 18.1.

Hazardous Materials. See § 6.18(a).

Indebtedness. For any Person, without duplication, (i)(a) all indebtedness of such Person for borrowed money and (b) all obligations of such Person to pay a deferred purchase price for property or services, including, but not limited to, obligations under Forward Purchase Contracts, having met all conditions of repayment thereof but for the passage of time, (ii) all indebtedness of such Person evidenced by a note, bond, debenture or similar instrument, (iii) the outstanding undrawn amount of all letters of credit issued for the account of such Person and, without duplication, all unreimbursed amounts drawn thereunder, (iv) all indebtedness of any other person or entity secured by any Lien on any property owned by such Person, whether or not such indebtedness has been assumed, (v) indebtedness of others guaranteed by such Person (including, without limitation, indebtedness of a partnership for which such Person, if a general partner, would be liable as a matter of law or contractually), but only to the extent of the specific amount guaranteed as a matter of contract or law, provided that for purposes of this definition the term "guarantee" shall not include the guarantee of customary non-recourse carve-outs (including, but not limited to, claims for fraud, misrepresentation, or environmental law violations), (vi) all payment obligations of such Person under any Interest Rate Contracts and currency swaps and similar agreements, to the extent such liabilities are material and are reported or are required under Generally Accepted Accounting Principles to be reported by such Person in its financial statements, (vii) all indebtedness and liabilities of such Person secured by any Lien or mortgage on any property of such Person, whether or not the same would be classified as a liability on a balance sheet, (viii) the liability of such Person in respect of banker's acceptances and the estimated liability under any participating mortgage, convertible mortgage or similar arrangement, (ix) the aggregate principal amount of rentals or other consideration payable by such Person in accordance with Generally Accepted Accounting Principles over the remaining unexpired term of all Capitalized Leases of such Person, (x) all outstanding monetary judgments or decrees by a court or courts of competent jurisdiction entered against such Person, (xi) all convertible debt and subordinated debt owed by such Person, (xii) all preferred partnership interests and preferred stock issued by such Person that, in either case, are redeemable prior to the Maturity Date for cash on a mandatory basis, a cash equivalent, a note receivable or similar instrument or are convertible prior to the Maturity Date on a mandatory basis to Indebtedness as defined herein, (xiii) all customary trade payables and accrued expenses more than sixty (60) days past due, (xiv) expected amortization of tenant costs and leasing commissions over such Person's next twelve succeeding fiscal months, and (xv) all obligations, liabilities, reserves and any other items which are listed as a liability on a balance sheet of such Person determined on a consolidated basis in accordance with Generally Accepted Accounting Principles, but excluding all general contingency reserves and reserves for deferred income taxes and investment credit, and excluding debt covered by escrows and security deposits fully funded by cash or cash equivalents.

Interest Expense. For any Person for any Period, with respect to all Indebtedness of such Person, an amount equal to the sum of the following with respect to all Indebtedness of such Person: (i) total interest expense, accrued in accordance with Generally Accepted Accounting Principles, plus (ii) all capitalized

interest determined in accordance with Generally Accepted Accounting Principles, but only to the extent that such capitalized interest is not covered by an interest reserve established under a loan facility (such as capitalized construction interest provided for in a construction loan).

Interest Payment Date. As to any Base Rate Loan or LIBOR Rate Loan, the first day of each calendar month.

Interest Period. With respect to each Loan, (a) initially, the period commencing on the Borrowing Date of such Loan and ending on the last day of one of the periods set forth below, as selected by Borrower in a Loan Request (i) for any Base Rate Loan, the day on which such Base Rate Loan is paid in full or converted to a LIBOR Rate Loan; and (ii) for any LIBOR Rate Loan, one (1), two (2), three (3) or six (6) months; and (b) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such Loan and ending on the last day of one of the periods set forth above, as selected by Borrower in a Conversion Request; provided that all of the foregoing provisions relating to Interest Periods are subject to the following:

- (A) if any Interest Period with respect to a LIBOR Rate Loan would otherwise end on a day that is not a Eurodollar Business Day, that Interest Period shall be extended to the next succeeding Eurodollar Business Day unless the result of such extension would be to carry such Interest Period into another calendar month, in which event such Interest Period shall end on the immediately preceding Eurodollar Business Day;
- (B) if any Interest Period with respect to a Base Rate Loan would end on a day that is not a Business Day, that Interest Period shall end on the next succeeding Business Day;
- (C) if Borrower shall fail to give notice as provided in § 2.6, Borrower shall be deemed to have requested a conversion of the affected LIBOR Rate Loan to a Base Rate Loan on the last day of the then current Interest Period with respect thereto;
- (D) any Interest Period relating to any LIBOR Rate Loan that begins on the last Eurodollar Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Eurodollar Business Day of a calendar month;
- (E) no more than six (6) Interest Periods relating to LIBOR Rate Loans may be outstanding at any one time; and
- (F) Borrower may not select any Interest Period relating to any LIBOR Rate Loan that would extend beyond the Maturity Date.

Interest Rate Contracts. Interest rate swap, cap, collar or similar agreements providing for interest rate protection.

Investments. In any Person, any loan, advance, or extension of credit to or for the account of, any guaranty, endorsement (other than for collection in the ordinary course of business) or other direct or indirect contingent liability in connection with the obligations, capital interests or equity distributions of, any ownership, purchase or acquisition of any capital interests, business, assets, obligations or securities of, or any other interest in or capital contribution to, such Person.

Leases. Leases, licenses and agreements whether written or oral, relating to the use or occupation of space in the Buildings located on the Unencumbered Assets by persons other than the owner thereof.

Lenders. As defined in the preamble hereto.

Leverage Ratio. As of any date of determination, Total Debt divided by Total Assets.

LIBOR Lending Office. Initially, the office of each Lender designated as such in *Schedule 1* hereto; thereafter, such other office of such Lender, if any, that shall be making or maintaining LIBOR Rate Loans.

LIBOR Rate. For any Interest Period with respect to a LIBOR Rate Loan, the rate per annum equal to the quotient (rounded upwards to the nearest 1/1000 of one percent) of (a) the rate per annum for deposits in Dollars in the London interbank market for an amount approximately equal to the proposed Libor Rate Loan in question and for a period of time approximately equal to the Interest Period in question which appears on Telerate Page 3750 at approximately 9:00 A.M. California time two (2) Eurodollar Business Days prior to the date of commencement of the Interest Period, divided by (b) a number equal to 1.00 minus the Eurocurrency Reserve Rate. Each determination of the LIBOR Rate applicable to the particular Interest Period selected by Borrower shall be made by Agent and shall be conclusive and binding upon Borrower absent manifest error.

LIBOR Rate Loans. Loans bearing interest calculated by reference to the LIBOR Rate, the principal amount of each of which shall be equal to at least \$5,000,000.

Lien. Any lien, encumbrance, mortgage, deed of trust, pledge, restriction or other security interest. If title to any Real Estate Asset is held by a Subsidiary of Borrower or an Unconsolidated Entity then any pledge or assignment of Borrower's stock, partnership interest, limited liability company interest or other ownership interest in such Subsidiary or Unconsolidated Entity shall be deemed to be a Lien on the Real Estate Assets owned by such Subsidiary or Unconsolidated Entity.

Loan Documents. This Agreement, the Notes, and any and all other agreements, documents and instruments now or hereafter evidencing, securing or otherwise relating to the Loans.

Loan Request. See § 2.5.

Loans. Loans made or to be made by the Lenders to Borrower pursuant to § 2.1 and § 2.5.

Majority Lenders. As of any date, the Lenders whose aggregate Commitments constitute at least fifty-one percent (51%) of the Total Commitment provided that the Commitments of any Delinquent Lenders shall be disregarded when determining the Majority Lenders.

Material Adverse Effect. Any condition which has a material adverse effect on (i) the business, operations, properties, assets or condition (financial or otherwise) of Borrower, the Company or any other Guarantor, taken as a whole or (ii) the ability of Borrower, the Company or any other Guarantor to perform its obligations under the Loan Documents, or (iii) the validity or enforceability of any of the Loan Documents or the remedies or material rights of Agent or the Lenders thereunder.

Maturity Date. December 5, 2007, or such earlier date on which the Loans shall become due and payable pursuant to the terms hereof.

Maximum Credit Amount. Maximum Credit Amount shall mean the lesser of the following: (i) the maximum amount of Outstanding Obligations without causing a violation of § 9.1(a); and (ii) the Total Commitment.

Minimum Capital Expenditure Reserves. For any Real Estate Asset, \$0.40 per net rentable square foot of such Real Estate Asset per annum, or, for any shorter period, such amount multiplied by a fraction the numerator of which is the length of the applicable period in months (or portions thereof) and the denominator of which is 12.

Minimum Leasing Commission and Tenant Improvement Reserves. For any Real Estate Asset, \$1.75 per net rentable square foot of such Real Estate Asset per annum, or, for any shorter period, such amount multiplied by a fraction the numerator of which is the length of the applicable period in months (or portions thereof) and the denominator of which is 12.

Minimum Management Fees. Shall mean the greater of (i) three percent (3%) of Rents from the related Real Estate Asset for the three (3) month period immediately preceding the calculation, and

10

(ii) the actual management fees paid by Borrower and the Related Companies with respect to such Real Estate Asset during such three (3) month period.

Moody's. Moody's Investors Services, Inc. or its successors

Moody's Rating. The rating for the Company's senior long-term unsecured debt assigned by Moody's.

Mortgage. Any mortgage, deed of trust, or other security instrument that creates a Lien on a class B (or better) office property (including the development of same) located in the greater New York City area or assets related thereto to secure Indebtedness.

Mortgage Loan. Any Indebtedness the payment or performance of which is secured by a Mortgage.

Mortgage Note. Any instrument, document or agreement evidencing a Mortgage Loan.

Multiemployer Plan. Any multiemployer plan within the meaning of § 3(37) of ERISA contributed to by Borrower or any Guarantor or any of their ERISA Affiliates.

Net Offering Proceeds. All cash proceeds received after the Effective Date by Borrower or the Company as a result of the sale of common, preferred or other classes of stock of the Company or the issuance of limited partnership interests in Borrower less customary costs and discounts of issuance paid by Company or Borrower in connection therewith.

Net Operating Income. With respect to any Real Estate Asset, for the period of determination, the Rents derived from the customary operation of such Real Estate Asset, less operating expenses attributable to such Real Estate Asset, and shall include (without duplication) only the sum of (i) the Rents received or expected to be received, and earned in accordance with Generally Accepted Accounting Principles, pursuant to Leases in place, plus (ii) other income actually received and earned in accordance with Generally Accepted Accounting Principles with respect to such Real Estate Asset, plus (iii) rent loss or business interruption insurance proceeds received or expected to be received during or relating to such period due to a casualty that has occurred prior to the date of calculation plus (iv) parking or other income, less operating expenses actually paid or payable on an accrual basis in accordance with Generally Accepted Accounting Principles attributable to such Real Estate Asset during such period, as set forth on operating statements and schedules reasonably satisfactory to Agent. Net Operating Income shall be calculated in accordance with customary accounting principles applicable to real estate. Notwithstanding the foregoing, Net Operating Income shall not include (i) any condemnation or insurance proceeds (excluding rent loss or business interruption insurance proceeds as described above), (ii) any proceeds resulting from the sale, exchange, transfer, financing or refinancing of all or any portion of the Real Estate Asset for which it is to be determined, (iii) amounts received from tenants as security deposits unless actually applied toward the payment of rent or additional rent in accordance with the terms of such tenant's lease, (iv) interest income and (v) any type of income otherwise included in Net Operating Income but paid directly by any tenant to a Person other than Borrower or a Guarantor or other Related Company or their respective agents or representatives.

Notes. See § 2.3.

Obligations. All indebtedness, obligations and liabilities of Borrower or any Guarantor to any of the Lenders and Agent, individually or collectively, under this Agreement or any of the other Loan Documents or in respect of any of the Loans or the Notes or other instruments at any time evidencing any thereof, whether existing on the date of this Agreement or arising or incurred hereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law or otherwise.

Occupancy Rate. With respect to an Unencumbered Asset at any time, the ratio, as of such date, expressed as a percentage, of (i) the net rentable area of such Unencumbered Asset leased to tenants

11

paying rent pursuant to, and to the extent required under, Leases other than Leases which are in material default, to (ii) the net rentable area of such Unencumbered Asset.

Original Agreement. As defined in the recitals to this Agreement.

Outstanding Obligations. As of any date of determination, the sum of the outstanding principal amount of the Loans.

PBGC. The Pension Benefit Guaranty Corporation created by § 4002 of ERISA and any successor entity or entities having similar responsibilities.

Permitted Developments. The construction of any new buildings or the construction of additions expanding existing buildings or the rehabilitation of existing buildings (other than normal refurbishing of common areas and tenant fit up work when one tenant leases space previously occupied by another tenant) relating to any Real Estate Assets of Borrower, any Guarantor or any of the other Related Companies, including (but not limited to) Forward Purchase Contracts,

having met all conditions of payment thereof but for the passage of time, and each Permitted Development shall be counted for purposes of § 8.2 from the time of commencement of the applicable construction work until a final certificate of occupancy has been issued with respect to such project in the amount of the total projected cost of such project.

Permitted Investments Cap. See § 8.2.

Permitted Liens. The following Liens, security interests and other encumbrances:

- (xiv) liens to secure taxes, assessments and other governmental charges in respect of obligations not overdue, the Indebtedness with respect to which is permitted hereunder;
- (xv) deposits or pledges made in connection with, or to secure payment of, workmen's compensation, unemployment insurance, old age pensions or other social security obligations;
- (xvi) liens in respect of judgments or awards, the Indebtedness with respect to which is permitted hereunder;
- (xvii) liens of carriers, warehousemen, mechanics and materialmen, and other like liens which are either covered by a full indemnity from a creditworthy indemnitor or have been in existence less than 120 days from the date of creation thereof in respect of obligations not overdue, the Indebtedness with respect to which is permitted hereunder; and
- (xviii) encumbrances consisting of easements, rights of way, Leases, covenants, restrictions on the use of real property and defects and irregularities in the title thereto; and other minor liens or encumbrances none of which in the opinion of Borrower interferes materially with the use of the property affected in the ordinary conduct of the business of Borrower, and which matters (x) do not individually or in the aggregate have a materially adverse effect on the value of the Unencumbered Asset and (y) do not make title to such property unmarketable by the conveyancing standards in effect where such property is located.

Person. Any individual, corporation, partnership, limited liability company, trust, unincorporated association, business, or other legal entity, and any government or any governmental agency or political subdivision thereof.

Preferred Distribution. The declaration or payment of any dividend or distribution of cash or cash equivalents to the holders of preferred shares of beneficial interest in the Company or the holders of preferred units of limited partnership interest of Borrower.

Prepayment Date. See § 3.3.

Properties. All Real Estate Assets, Real Estate, and all other assets, including, without limitation, intangibles and personalty owned by Borrower or any Guarantor or any of the other Related Companies.

Real Estate. All real property at any time owned, leased (as lessee or sublessee) or operated by Borrower, any Guarantor, or any of the Related Companies or any Unconsolidated Entity.

Real Estate Assets. Those fixed and tangible properties consisting of land, buildings and/or other improvements owned by Borrower, by any Guarantor, by any of the Related Companies or by any Unconsolidated Entity at the relevant time of reference thereto, including without limitation, the Unencumbered Assets, but excluding all leaseholds other than leaseholds under Ground Leases which either have an unexpired term (including unexercised renewals options exercisable at the option of the lessee) of at least 20 years or contain a purchase option for nominal consideration.

Real Estate Effective Control Assets. Those Investments in mortgages and mortgage participations owned by Borrower or by any Guarantor as to which Borrower has demonstrated to Agent, in Agent's discretion, that Borrower or a Guarantor has control of the decision-making functions of management and leasing of such mortgaged properties, has control of the economic benefits of such mortgaged properties, and holds an option to purchase such mortgaged properties.

Record. The grid attached to any Note, or the continuation of such grid, or any other similar record, including computer records, maintained by any Lender with respect to any Loan referred to in such Note.

Recourse Indebtedness. All Indebtedness except Indebtedness with respect to which recourse for payment is contractually limited (except for customary exclusions) to specific assets encumbered by a lien securing such Indebtedness.

Register. See § 19.3.

Regulation D. Regulation D of the Board of Governors of the Federal Reserve System from time to time in effect and shall include any successor or other regulation of said Board of Governors relating to reserve requirements applicable to member banks of the Federal Reserve System.

Regulation K. Regulation K of the Board of Governors of the Federal Reserve System from time to time in effect and shall include any successor or other regulation of said Board of Governors relating to the international and foreign activities of United States banking organizations applicable to member banks of the Federal Reserve System.

Related Companies. The entities listed and described on Schedule 1.3 hereto and, after the date hereof, any entity whose financial statements are consolidated or combined with the Company's pursuant to Generally Accepted Accounting Principles, or any ERISA Affiliate.

Release. A release, spillage, leaking, pumping, pouring, emitting, emptying, discharge, injection, escape, disposal or dumping of Hazardous Material.

Rents. All rents, issues, profits, royalties, receipts, revenues, accounts receivable, and income, including fixed, additional and percentage rents, occupancy charges, operating expense reimbursements, reimbursements for increases in taxes, sums paid by tenants to Borrower or the Related Companies to reimburse

Borrower or the Related Companies for amounts originally paid or to be paid by Borrower or the Related Companies or their respective agents or affiliates for which such tenants were liable, as, for example, tenant improvements costs in excess of any work letter, lease takeover costs, moving expenses and tax and operating expense pass-throughs for which a tenant is solely liable, parking income, recoveries for common area maintenance expense, tax, insurance, utility and service charges and contributions, proceeds of sale of electricity, gas, heating, air-conditioning and other utilities and services, deficiency rents and liquidated damages, and other benefits.

Requisite Lenders. As of any date, collectively, the Lenders whose aggregate Commitments constitute at least sixty-six and seven-tenths percent (66.7%) of the Total Commitment, provided that the Commitments of any Delinquent Lenders shall be disregarded when determining the Requisite Lenders, provided, further, that, in the case of either (x) any amendment or modification of any of the provisions (including defined terms used therein) of any of §§ 8.2(h), 9.1, 9.3 and 9.6 the effect of which is that compliance by Borrower, the Company and the Related Companies, as the case may be, with the covenant being amended or modified is less restrictive than the covenant then in place or (y) any waiver of any such provision, the Lenders constituting the Requisite Lenders for purposes of the last paragraph of § 8.2(h) and § 9.9(a) must include, for so long as Wells Fargo Bank, National Association (or its successor) is Agent under this Agreement, Wells Fargo Bank, National Association (or its successor).

Responsible Officer. With respect to the Company, any one of its Chairman, President, Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, Treasurer, Executive Vice Presidents or Senior Vice Presidents.

S&P. Standard & Poor's Ratings Group, a division of The McGraw-Hill Companies, Inc., or its successors

S&P Rating. The rating for the Company's senior long-term unsecured debt assigned by S&P.

Secured Indebtedness. All Indebtedness of Borrower and any of the Related Companies which is secured by a Lien on any Properties.

Secured Recourse Indebtedness. All Secured Indebtedness except Indebtedness with respect to which recourse for payment is contractually limited (except for customary exclusions) to the specific assets encumbered by the Lien securing such Indebtedness, and other than Indebtedness fully collateralized by cash or cash equivalents.

Structured Finance Investments. Collectively, (i) Investments in (or in entities whose Investments are primarily in) Mortgages, Mortgage Loans, and Mortgage Notes, and (ii) preferred equity Investments (including preferred limited partnership interests) in entities owning (or leasing pursuant to a Ground Lease) class B (or better) office properties located in the greater New York City area.

Subsidiary. Any corporation, association, trust, or other business entity of which the designated parent or other controlling Person shall at any time own directly or indirectly through a Subsidiary or Subsidiaries at least a majority (by number of votes) of the outstanding Voting Interests.

Tangible Net Worth. The book value of all of the assets of Borrower and the Related Companies minus the book value of all of the liabilities of Borrower and the Related Companies minus all intangibles determined in accordance with Generally Accepted Accounting Principles.

Telerate Page 3750. The display designated as "Page 3750" on the Telerate Service, or such other page as may replace Page 3750 on that service or such other service as may be nominated by the British Bankers' Association as the information vender for the purpose of displaying British Bankers' Association interest settlement rates for U.S. Dollar deposits.

Total Assets. As of any date of determination, the sum of the following, without duplication: (i) the Value of All Unencumbered Assets, plus (ii) the aggregate Adjusted Net Operating Income for the fiscal quarter immediately preceding such date, annualized, for all Real Estate Assets (other than Unencumbered Assets) and Real Estate Effective Control Assets owned or leased by Borrower or the Guarantors other than Real Estate Assets referred to in clause (iii) of this definition, divided by nine percent (9.0%), plus (iii) the aggregate purchase price of all Real Estate Assets (other than Unencumbered Assets but including Forward Purchase Contracts having met all conditions of payment of the purchase price thereunder but for the passage of time) and Real Estate Effective Control Assets acquired or initially leased by Borrower or the Guarantors within the fiscal quarter immediately preceding such date, multiplied by ninety-five percent (95.0%), plus (iv) the book value of unrestricted

cash and cash equivalents of Borrowers and the Guarantors, plus (v) the aggregate book value of all Investments of Borrower and the Guarantors (other than Real Estate Effective Control Assets) permitted under § 8.2 hereof.

Total Commitment. The sum of the Commitments of the Lenders, as in effect from time to time.

Total Debt. The sum of (without duplication) all Indebtedness of Borrower and the Company included in the liabilities portion of Borrower's balance sheet prepared in accordance with Generally Accepted Accounting Principles as of the end of the most recent fiscal quarter for which financial statements have been provided pursuant to § 7.4.

Treasury Rate. The semi-annual yield (without compounding), as reported in *The Wall Street Journal* (or if such rate is not published therein, in the Federal Reserve Statistical Release H.15—Selected Interest Rates under the heading "U.S. Government Securities/Treasury constant maturities") on the date of calculation (provided, however, if such date is not a Business Day, then on the next succeeding Business Day) for the current U.S. Treasury security with a maturity which most closely approximates the date which is ten (10) years from the date of calculation. In the event such rate is not published in either *The Wall Street Journal* or H.15, Agent shall select a comparable publication to determine the Treasury Rate.

Type. As to any Loan its nature as a Base Rate Loan or a LIBOR Rate Loan.

Unconsolidated Entity. As of any date, any Person in whom Borrower, the Company or any Related Company holds an Investment, and whose financial results would not be consolidated under Generally Accepted Accounting Principles with the financial statements of Borrower, if such statements were prepared as of such date. Unconsolidated Entities existing on the date hereof are set forth in *Schedule 1.3*.

Unconsolidated Entity Percentage. For any Person, with respect to such Person's Unconsolidated Entities, the percentage economic ownership interest of such Person in such Unconsolidated Entity; provided, however, that in the event that such Person is the general partner of such Unconsolidated Entity, such Person's Unconsolidated Entity Percentage with respect to such Unconsolidated Entity's liabilities shall be the percentage of the general partner interests owned by such Person in such Unconsolidated Entity with respect to any Indebtedness for which recourse may be made against any general partner of such Unconsolidated Entity.

Unencumbered Asset. Any Real Estate Asset set forth on *Schedule 1.1*, as such Schedule may be amended or supplemented from time to time which at the date of determination, (i) is 100% owned in fee, or pursuant to a Ground Lease as approved by the Requisite Lenders (it being understood that all Unencumbered Assets owned pursuant to a Ground Lease as of the Effective Date are so approved), by Borrower or one of the Guarantor Subsidiaries, (ii) is improved with one or more Class B (or better) office buildings; (iii) is not directly or indirectly subject to any Lien (other than Permitted Liens) or to any negative pledge agreement or other agreement that prohibits the creation of any Lien thereon; (iv) is a Real Estate Asset with respect to which each of the representations contained in § 6.18 and § 6.21 hereof is true and accurate as of such date of determination; (v) may be legally conveyed separately from any other Real Estate without the need to obtain any subdivision approval, zoning variance or other consent or approval from an unrelated Person, other than, in the case of a Real Estate Asset which is a condominium unit, any required approval of the condominium board so long as pursuant to the terms and provisions of the condominium documentation governing the applicable condominium such approval may not be unreasonably withheld, delayed or conditioned; (vi) is reasonably free of all material structural and material title defects and other material adverse matters; (vii) is in compliance, in all material respects, with all applicable Environmental Laws, and as to which the representations set forth in § 6.18(b) hereof are true and correct, (viii) has an Occupancy Rate of 70% or better; (ix) is managed by Borrower or a wholly owned Affiliate or Subsidiary of Borrower and (x) to the extent requested by Agent and in Borrower's possession or control, Borrower

15

has delivered to Agent historical operating and leasing information relating to such Unencumbered Asset, in form and substance satisfactory to Agent. Each Real Estate Asset which satisfies the conditions set forth in this definition or with respect to which the Requisite Lenders have granted the necessary waivers pursuant to § 5.2 shall be deemed to be an Unencumbered Asset only during such periods of time as Borrower has included the same on the list of Unencumbered Assets attached to the most recent Compliance Certificate delivered hereunder.

Unencumbered Asset Adjusted Net Operating Income. For any period, the aggregate Adjusted Net Operating Income for all Unencumbered Assets for such Period, plus (or minus) straight line rent adjustments for the applicable period, minus the aggregate of all Minimum Leasing Commission and Tenant Improvement Reserves for all Unencumbered Assets for such period.

Unencumbered Asset Value. With respect to any Unencumbered Asset at any time, an amount computed as follows: (i) for any Unencumbered Asset owned or leased by Borrower or the Guarantors other than Unencumbered Assets referred to in clause (ii) of this definition, the Adjusted Net Operating Income for such Unencumbered Asset for the fiscal quarter immediately preceding such date, annualized, divided by nine percent (9.0%), or (ii) for any Unencumbered Asset acquired or initially leased by Borrower or the Guarantors within the fiscal quarter immediately preceding such date, the purchase price of such Unencumbered Asset multiplied by ninety-five percent (95.0%).

Unsecured Indebtedness. All Indebtedness of Borrower, of any Guarantor or of any of the other Related Companies to the extent not secured by a Lien on any Properties including, without limitation, the Outstanding Obligations and any Indebtedness evidenced by any bonds, debentures, notes or other debt securities presently outstanding or which may be hereafter issued by Borrower or by the Company. Unsecured Indebtedness shall not include accrued ordinary operating expenses payable on a current basis.

Unused Amount. See § 4.2

Value of All Unencumbered Assets. When determined as of the end of a fiscal quarter, an amount computed as follows: the sum of (i) the aggregate Adjusted Net Operating Income for the fiscal quarter immediately preceding such date, annualized, for all Unencumbered Assets owned or leased by Borrower or the Guarantors other than Unencumbered Assets referred to in clause (ii) of this definition, divided by nine percent (9.0%), plus (ii) the aggregate purchase price of all Unencumbered Assets acquired or initially leased by Borrower or the Guarantors within the fiscal quarter immediately preceding such date, multiplied by ninety-five percent (95.0%); provided, however, that after making such computation, the Value of All Unencumbered Assets shall be reduced by the amount by which the Unencumbered Asset Value of any single Unencumbered Asset exceeds thirty-five percent (35%) of the Value of All Unencumbered Assets as so computed.

Variable Rate Indebtedness. The Loans and all other Indebtedness of Borrower which bears interest at a rate which is not fixed either through maturity or for a term of at least thirty-six (36) months from the date that such fixed rate became effective.

Voting Interests. Stock or similar ownership interests, of any class or classes (however designated), the holders of which are at the time entitled, as such holders, (a) to vote for the election of a majority of the directors (or persons performing similar functions) of the corporation, association, partnership, trust or other business entity involved, or (b) to control, manage or conduct the business of the corporation, partnership, association, trust or other business entity involved.

16

§ 1.2. *Rules of Interpretation.*

- (a) A reference to any document or agreement shall include such document or agreement as amended, modified or supplemented from time to time in accordance with its terms and the terms of this Agreement.
- (b) The singular includes the plural and the plural includes the singular.
- (c) A reference to any law includes any amendment or modification to such law.
- (d) A reference to any Person includes its permitted successors and permitted assigns.
- (e) Accounting terms not otherwise defined herein have the meanings assigned to them by Generally Accepted Accounting Principles applied on a consistent basis by the accounting entity to which they refer and, except as otherwise expressly stated, all use of accounting terms with respect to

Borrower shall reflect the consolidation of the financial statements of Borrower and the Related Companies.

- (f) The words "include", "includes" and "including" are not limiting.
- (g) All terms not specifically defined herein or by Generally Accepted Accounting Principles, which terms are defined in the Uniform Commercial Code as in effect in New York, have the meanings assigned to them therein.
- (h) Reference to a particular "§" refers to that section of this Agreement unless otherwise indicated.
- (i) The words "herein", "hereof", "hereunder" and words of like import shall refer to this Agreement as a whole and not to any particular section or subdivision of this Agreement.
- (j) The words "so long as any Loan or Note is outstanding" shall mean so long as such Loan or Note is not indefeasibly paid in full in cash.

SECTION 2. TERM LOAN FACILITY.

§ 2.1. *Commitment to Lend; Limitation on Total Commitment.* Subject to the provisions of § 2.5 and the other terms and conditions set forth in this Agreement, each of the Lenders severally agrees to lend to Borrower and Borrower may borrow from time to time from and including the Effective Date to and including the Funding Expiry Date upon notice by Borrower to Agent given in accordance with § 2.5, such sums as are requested by Borrower up to a maximum aggregate principal amount of the Outstanding Obligations (after giving effect to all amounts requested) at any one time equal to such Lender's Commitment, provided that the sum of the Outstanding Obligations (after giving effect to all amounts requested) shall not at any time exceed the Maximum Credit Amount. The Loans shall be made pro rata in accordance with each Lender's Commitment Percentage and the Lenders shall at all times immediately adjust *inter se* any inconsistency between each Lender's outstanding principal amount and each Lender's Commitment. Each request for a Loan hereunder shall constitute a representation and warranty by Borrower that the conditions set forth in § 10 or § 11 (whichever is applicable) have been satisfied on the date of such request and will be satisfied on the proposed Borrowing Date of the requested Loan, provided that the making of such representation and warranty by Borrower shall not limit the right of any Lender not to lend upon a determination by the Requisite Lenders that such conditions have not been satisfied.

§ 2.2. *Changes in Total Commitment.*

- (a) Provided that no Default or Event of Default has occurred and is continuing, Borrower shall have the option at any time and on one occasion only prior to the third anniversary of the Effective Date to request an increase in the Total Commitment by an amount not to exceed \$50,000,000 by written notice to Agent (the "Commitment Increase Notice"). It shall be a term of the Additional Commitment, if approved, that the full amount thereof, together with

17

any Lender's Commitment which remains undrawn upon at the time in question, shall be drawn pursuant to a Loan Request within sixty (60) days of the Commitment Increase Date. Upon receipt of the Commitment Increase Notice, Agent shall consult with Arranger and shall notify Borrower of the amount of facility fees to be paid to any Lenders who provide an Additional Commitment in connection with such increase in the Total Commitment. If Borrower agrees to pay the facility fees so determined, then Agent shall send a notice to all Lenders (the "Additional Commitment Request Notice") informing them of Borrower's request to increase the Total Commitment and of the facility fees to be paid with respect thereto. Each Lender who desires in its sole discretion to provide an Additional Commitment upon such terms shall provide Agent with a written commitment letter specifying the amount of the Additional Commitment which it is willing to provide prior to such deadline as may be specified in the Additional Commitment Request Notice. If the requested increase is oversubscribed then Agent and the Arranger shall allocate the Commitment Increase among the Lenders who provide such commitment letters on such basis as Agent and the Arranger shall determine in their sole discretion. If the Additional Commitments so provided are not sufficient to provide the full amount of the Commitment Increase requested by Borrower, then Agent may, but shall not be obligated to, invite one or more Eligible Assignees to become a Lender and provide an Additional Commitment. If Agent does invite one or more Eligible Assignees to become a Lender and if following any such invitation, the amounts committed are still not sufficient to provide the full amount of the Commitment Increase requested by Borrower, the Commitment Increase shall be reduced to the aggregate of the amounts committed. Agent shall provide all Lenders with a notice setting forth the amount, if any, of the Additional Commitment to be provided by each Lender and the revised Commitment Percentages which shall be applicable after the effective date of the Commitment Increase specified therein (the "Commitment Increase Date").

- (b) On the Commitment Increase Date the outstanding principal balance of the Loans shall be reallocated among the Lenders such that after the Commitment Increase Date the outstanding principal amount of Loans owed to each Lender shall be equal to such Lender's Commitment Percentage (as in effect after the Commitment Increase Date) of the outstanding principal amount of all Loans. On the Commitment Increase Date those Lenders whose Commitment Percentage is increasing shall advance the funds to Agent and the funds so advanced shall be distributed among the Lenders whose Commitment Percentage is decreasing as necessary to accomplish the required reallocation of the outstanding Loans. The funds so advanced shall be Base Rate Loans until converted to LIBOR Rate Loans which are allocated among all Lenders based on their Commitment Percentages. To the extent such reallocation results in certain Lenders receiving funds which are applied to LIBOR Rate Loans prior to the last day of the applicable Interest Period, then Borrower shall pay to Agent for the account of the affected Lenders the Fixed Rate Prepayment Fee which shall be determined separately for each such Lender in the manner set forth in § 3.3.
- (c) If on the Funding Expiry Date the Outstanding Obligations are less than the Total Commitments, the Total Commitments shall automatically reduce to an amount equal to the Outstanding Obligations as of the Funding Expiry Date. The foregoing reduction shall not affect Borrower's rights under § 2.2(a) to submit a Commitment Increase Notice, to the extent not theretofore submitted.
- (d) At any time prior to the earlier to occur of (x) Agent's receipt of the Commitment Increase Notice and (y) the Funding Expiry Date, Borrower shall have the right on no more than two (2) occasions upon at least ten (10) Business Days' prior written notice to Agent (which shall promptly notify each Lender), to reduce by \$5,000,000 or an integral multiple of \$1,000,000 in excess thereof the unborrowed portion of the then Total Commitment, whereupon the

18

Commitments of the Lenders shall be reduced pro rata in accordance with their respective Commitment Percentages by the amount specified in such notice. Upon the effective date of any such reduction, Borrower shall pay to Agent for the respective accounts of the Lenders the full amount of any commitment fee required under § 4.2 hereof then accrued and unpaid on the amount of the reduction. No reduction of the Commitments may be reinstated.

- (e) Upon the effective date of each increase or reduction in the Total Commitment pursuant to this § 2.2 the parties, in the case of § 2.2(a), shall, and in the case of § 2.2(c), upon request of Agent shall enter into an amendment of this Agreement revising *Schedule 1.2* and Borrower shall execute and deliver to Agent new Notes for each Lender whose Commitment has changed so that the maximum principal amount of such Lender's Note shall equal its Commitment. Agent shall promptly deliver such replacement Notes to the respective Lenders in exchange for the Notes replaced thereby which shall be surrendered by such Lenders. Such new Notes shall provide that they are replacements for the surrendered Notes and that they do not constitute a novation, shall be dated as of the Commitment Increase Date or the effective date of such reduction in the Total Commitment, as applicable, and shall otherwise be in substantially the form of the replaced Notes. On the date of issuance of any new Notes pursuant to this § 2.2(e), Borrower shall deliver an opinion of counsel, addressed to the Lenders and Agent, relating to the due authorization, execution and delivery of such new Notes and the enforceability thereof, substantially in the form of the relevant portions of the opinion delivered pursuant to § 10.6 hereof. The surrendered Notes shall be canceled and returned to Borrower.

§ 2.3. *The Notes.* The Loans shall be evidenced by separate promissory notes of Borrower in substantially the form of *Exhibit A* hereto (each a "Note"), and completed with appropriate insertions. Return and cancellation of the "Notes" under the Original Agreement and issuance of initial Notes under this Agreement shall be governed by § 29 hereof. One Note shall be payable to the order of each Lender in an aggregate principal amount equal to such Lender's Commitment. Borrower irrevocably authorizes each Lender to make or cause to be made, at or about the time of the Borrowing Date of any Loan or at the time of receipt of any payment of principal on such Lender's Note, an appropriate notation on such Lender's Record reflecting the making of such Loan or (as the case may be) the receipt of such payment. The outstanding amount of the Loans set forth on such Lender's Record shall (absent manifest error) be prima facie evidence of the principal amount thereof owing and unpaid to such Lender, but the failure to record, or any error in so recording, any such amount on the Record shall not limit or otherwise affect the obligations of Borrower hereunder or under any Note to make payments of principal of or interest on any Note when due.

§ 2.4. *Interest on Loans.*

- (a) Each Base Rate Loan shall bear interest commencing with the Borrowing Date thereof at the rate equal to the Base Rate.
- (b) Each LIBOR Rate Loan shall bear interest for the period commencing with the Borrowing Date thereof and ending on the last day of the Interest Period with respect thereto at the rate equal to the Applicable LIBOR Margin per annum above the LIBOR Rate determined for such Interest Period. Agent shall determine the rate equal to the Applicable LIBOR Margin per annum above the LIBOR Rate which will be in effect during such Interest Period and inform Borrower of such determination (which determination shall be conclusive and binding upon Borrower absent manifest error).
- (c) Borrower unconditionally promises, in accordance with and subject to the provisions of the Loan Documents, to pay interest on each Loan in arrears on each Interest Payment Date with respect thereto.

§ 2.5. *Requests for Loans.*

- (a) Borrower shall give to Agent written notice in the form of *Exhibit B* hereto of each Loan requested hereunder (a "Loan Request") no less than (a) one (1) Business Days prior to the proposed Borrowing Date of any Base Rate Loan and (b) three (3) Eurodollar Business Days prior to the proposed Borrowing Date of any LIBOR Rate Loan. Each such notice shall specify (i) the principal amount of the Loan requested, (ii) the proposed Borrowing Date of such Loan, (iii) the Interest Period for such Loan, and (iv) the Type of such Loan, and shall be accompanied by a statement in the form of *Exhibit C* hereto signed by a Responsible Officer setting forth in reasonable detail computations evidencing compliance with the covenants contained in § 9.1 through § 9.7 hereof after giving effect to such requested Loan (a "Compliance Certificate"). On the same day as the receipt of a Loan Request for a Base Rate Loan, and within one (1) Business Day after receipt of a Loan Request for a LIBOR Rate Loan, Agent shall provide to each of the Lenders by facsimile a copy of such Loan Request and accompanying Compliance Certificate and each Lender shall, within 24 hours thereafter (if such following day is a Business Day, and if not, before 10:30 A.M. California time on the next succeeding Business Day), notify Agent if it believes that any of the conditions contained in § 11 of this Agreement has not been met or waived. If such a notice is given, Agent shall poll the Lenders, and the Requisite Lenders shall promptly determine whether all of the conditions contained in § 11 of this Agreement have been met or waived. If no such notice is given by any Lender or if following such notice the Requisite Lenders determine that the conditions contained in § 11 have been met or waived, or, in any event, if all conditions in § 11 have in fact been met or waived, Agent shall notify the Lenders that each of the Lenders shall be obligated to fund its Commitment Percentage of the requested Loans. Each such Loan Request shall be irrevocable and binding on Borrower and Borrower shall be obligated to accept the Loan requested from the Lenders on the proposed Borrowing Date. Each Loan Request shall be in a minimum aggregate amount of \$10,000,000 or an integral multiple of \$1,000,000 in excess thereof. Borrower's initial Loan Request shall be in an amount of not less than \$75,000,000.
- (b) Notwithstanding anything contained in § 2.5(a) to the contrary, in the event that the making of a requested Loan would cause non-compliance with any of the covenants contained in § 9.1 through § 9.7 hereof, Agent may, in its sole discretion, reduce the amount of the Loan Request to an amount which would enable Borrower to maintain compliance with such otherwise defaulted covenant or covenants and Borrower shall accept the Loan made pursuant to such reduced Loan Request.

§ 2.6. *Conversion Options.*

- (a) Borrower may elect from time to time to convert any outstanding Loan to a Loan of another Type, provided that (i) with respect to any such conversion of a LIBOR Rate Loan to a Base Rate Loan, Borrower shall give Agent at least three (3) Business Days prior written notice of such election; (ii) with respect to any such conversion of a LIBOR Rate Loan into a Base Rate Loan, such conversion shall only be made on the last day of the Interest Period with respect thereto; (iii) subject to the further proviso at the end of this section and subject to § 2.6(b) and § 2.6(d) hereof with respect to any such conversion of a Base Rate Loan to a LIBOR Rate Loan, Borrower shall give Agent at least three (3) Eurodollar Business Days prior written notice of such election and (iv) no Loan may be converted into a LIBOR Rate Loan when any Default or Event of Default has occurred and is continuing. Agent shall promptly notify the Lenders of any such request received. On the date on which such conversion is being

converted as provided herein, provided further that each Conversion Request relating to the conversion of a Base Rate Loan to a LIBOR Rate Loan shall be for an amount equal to \$1,000,000 (unless the aggregate outstanding principal amount of Loans is less than \$1,000,000) or an integral multiple of \$500,000 in excess thereof and shall be irrevocable by Borrower.

- (b) Any Loans of any Type may be continued as such upon the expiration of an Interest Period with respect thereto by compliance by Borrower with the notice provisions contained in § 2.6 (a); provided that no LIBOR Rate Loan may be continued as such when any Default or Event of Default has occurred and is continuing but shall be automatically converted to a Base Rate Loan on the last day of the first Interest Period relating thereto ending during the continuance of any Default or Event of Default of which the officers of Agent active upon Borrower's account have actual knowledge.
- (c) In the event that Borrower does not notify Agent of its election hereunder with respect to any Loan, such Loan shall be automatically converted to a Base Rate Loan at the end of the applicable Interest Period and the Base Rate shall remain in effect with respect thereto until such time as Borrower upon not less than three (3) Business Days' prior written notice to Agent shall elect to convert the interest rate on all or a portion of the outstanding principal balance of such Loan from the Base Rate to one or more LIBOR Rate Loan in accordance with this § 2.6.
- (d) Borrower may not request a LIBOR Rate Loan pursuant to § 2.5, elect to convert a Base Rate Loan to a LIBOR Rate Loan pursuant to § 2.6(a) or elect to continue a LIBOR Rate Loan pursuant to § 2.6(b) if, after giving effect thereto, there would be greater than five (5) LIBOR Rate Loans outstanding. Any Loan Request for a LIBOR Rate Loan that would create greater than five (5) LIBOR Rate Loans outstanding shall be deemed to be a Loan Request for a Base Rate Loan.

§ 2.7. *Funds for Loans.*

- (a) Subject to § 2.5 and other provisions of this Agreement, not later than 10:00 a.m. (California time) on the proposed Borrowing Date of any Loans, each of the Lenders will make available to Agent, at Agent's Head Office, in immediately available funds, the amount of such Lender's Commitment Percentage of the amount of the requested Loans. Upon receipt from each Lender of such amount, and upon receipt of the documents required by §§ 10 or 11 (whichever is applicable) and the satisfaction of the other conditions set forth therein, to the extent applicable, Agent will make available to Borrower the aggregate amount of such Loans made available to Agent by the Lenders. The failure or refusal of any Lender to make available to Agent at the aforesaid time and place on any Borrowing Date the amount of its Commitment Percentage of the requested Loans shall not relieve any other Lender from its several obligation hereunder to make available to Agent the amount of such other Lender's Commitment Percentage of any requested Loans but shall not obligate any other Lender or Agent to fund more than its Commitment Percentage of the requested Loans or to increase its Commitment Percentage.
- (b) Agent may, unless notified to the contrary by any Lender prior to a Borrowing Date, assume that such Lender has made available to Agent on such Borrowing Date the amount of such Lender's Commitment Percentage of the Loans to be made on such Borrowing Date, and Agent may (but it shall not be required to), in reliance upon such assumption, make available to Borrower a corresponding amount. If any Lender makes available to Agent such amount on a date after such Borrowing Date, such Lender shall pay to Agent on demand an amount equal to the product of (i) the average computed for the period referred to in clause (iii) below, of the weighted average interest rate paid by Agent for federal funds acquired by

Agent during each day included in such period, times (ii) the amount of such Lender's Commitment Percentage of such Loans, times (iii) a fraction, the numerator of which is the number of days or portion thereof that elapsed from and including such Borrowing Date to the date on which the amount of such Lender's Commitment Percentage of such Loans shall become immediately available to Agent, and the denominator of which is 365. A statement of Agent submitted to such Lender with respect to any amounts owing under this paragraph shall be prima facie evidence of the amount due and owing to Agent by such Lender.

SECTION 3. *REPAYMENT OF THE LOANS.*

§ 3.1. *Maturity.* Borrower unconditionally promises, in accordance with, and subject to, the provisions of the Loan Documents, to pay on the Maturity Date, and there shall become absolutely due and payable on the Maturity Date, all of the Loans outstanding on such date, together with any and all accrued and unpaid interest and charges thereon.

§ 3.2. *Mandatory Repayments of Loan.* If at any time the sum of the Outstanding Obligations exceeds the Maximum Credit Amount, then Borrower shall immediately pay the amount of such excess to Agent for the respective accounts of the Lenders for application to the Loans and, together therewith, any applicable Exit Fee, which shall be calculated by Agent promptly and which calculation shall, absent manifest error, be conclusive.

§ 3.3. *Optional Repayments of Loans.*

- (a) On and after (but not prior to) the first anniversary of the Effective Date, Borrower shall have the right, at its election, to repay the outstanding amount of the Loans, as a whole or in part, on any Business Day, provided that, together with any such prepayment, Borrower pays any applicable Exit Fee, which shall be calculated by Agent not less than five (5) Business Days prior to the contemplated date of prepayment and which calculation shall, absent manifest error, be conclusive, provided, further, that the full or partial prepayment of the outstanding amount of any LIBOR Rate Loans made pursuant to this § 3.3 may be made only on the last day of the Interest Period relating thereto, except as set forth below in this § 3.3. Borrower shall give Agent not less than ten (10) days' irrevocable prior written notice of any prepayment pursuant to this § 3.3 of any Loans, specifying the proposed date of payment of Loans, which shall not be more than forty-five (45) days after the date of such notice, and the principal amount to be paid. Agent shall promptly notify each Lender of the principal amount of such payment to be received by such Lender. Each such partial prepayment of the Loans shall be in an integral multiple of \$5,000,000 (or, if the aggregate outstanding principal amount of Loans is less than \$1,000,000, the full amount thereof) and shall be accompanied by the payment of all charges outstanding on all Loans and of

accrued interest on the principal repaid to the date of payment. Unless otherwise requested by Borrower, the principal payments so received shall be applied first to the principal of Base Rate Loans and then to the principal of LIBOR Rate Loans. If the amount specified in such notice is not paid on, or within five (5) Business Days after, the date specified in any such notice of prepayment, Borrower shall pay to each Lender any actual costs, expenses or liabilities suffered or incurred by such Lender in reliance on such notice of prepayment, as evidenced by a certificate of such Lender setting forth the amount of any such actual costs, expenses or liabilities and a brief explanation of the amounts so due. Any such certificate shall be delivered to Borrower and Agent and shall be prima facie evidence that such amounts are due and owing. If the amount specified in such notice of prepayment is not paid on, or within five (5) Business Days after, the date specified in such notice, Borrower must comply with the notice requirements of the second sentence of this clause (a) in order to exercise its prepayment rights hereunder. Notwithstanding anything contained herein to the contrary, Borrower may make a full or partial prepayment of a LIBOR Rate Loan on a date other than the last day of the Interest

22

Period relating thereto, if all such optional prepayments (in whole or in part) on such Loans shall be accompanied by, and Borrower hereby promises to pay, a prepayment fee in an amount determined by Agent in the following manner:

- (i) Borrower acknowledges that prepayment or acceleration (under any circumstances whatsoever, whether voluntary or involuntary) of a LIBOR Rate Loan during an Interest Period shall result in the Lenders incurring additional costs, expenses and/or liabilities and that it is extremely difficult and impractical to ascertain the extent of such costs, expenses and/or liabilities. (For all purposes of this Section, any Loan not being made as a LIBOR Rate Loan in accordance with the Loan Request therefor, as a result of Borrower's cancellation thereof, shall be treated as if such LIBOR Rate Loan had been prepaid.) Therefore, on the date a LIBOR Rate Loan is prepaid or the date all sums payable hereunder become due and payable, by acceleration or otherwise ("Prepayment Date"), Borrower will pay to Agent, for the account of each Lender, (in addition to all other sums then owing), an amount ("Fixed Rate Prepayment Fee") determined by Agent as follows: The amount of the LIBOR Rate Loan being prepaid, *multiplied by* a per annum interest rate equal to the difference between the LIBOR Rate applicable to the portion of the LIBOR Rate Loan being prepaid and the 360-day equivalent interest yield, as adjusted to reflect interest payments on a monthly basis (hereinafter called the "Reinvestment Rate"), on any U.S. Government Treasury securities (bills on a discounted basis shall be converted to a bond equivalent) selected by Agent, in its sole discretion, in an aggregate amount comparable to the LIBOR Rate Loan being prepaid, and with maturities comparable to the end of the Interest Period as to which prepayment is being made, *calculated over* a period of time from and including the date of prepayment to, but not including, the date the Interest Period as to which prepayment is being made ends. If the LIBOR Rate applicable to the LIBOR Rate Loan being prepaid is equal to or less than the Reinvestment Rate, no prepayment premium shall be due. No prepayment premium payable under this Section shall in any event or under any circumstance be deemed or construed to be a penalty. The resulting amount shall be the Fixed Rate Prepayment Fee. Agent shall not be obligated to accept any prepayment of a LIBOR Rate Loan unless it is accompanied by a Fixed Rate Repayment Fee due in connection therewith as calculated pursuant to the provisions of this § 3.3.
 - (ii) Upon the written notice to Borrower from Agent, Borrower shall immediately pay to Agent, for the account of the Lenders, the Fixed Rate Prepayment Fee. Such written notice (which shall include calculations in reasonable detail) shall, in the absence of manifest error, be conclusive and binding on the parties hereto.
 - (iii) Borrower understands, agrees and acknowledges the following: (i) no Lender has any obligation to purchase, sell and/or match funds in connection with the use of the LIBOR Rate as a basis for calculating the rate of interest on a LIBOR Rate Loan; (ii) the LIBOR Rate is used merely as a reference in determining such rate; and (iii) Borrower has accepted the LIBOR Rate as a reasonable and fair basis for calculating such rate and a Fixed Rate Prepayment Fee. Borrower further agrees to pay the Fixed Rate Prepayment Fee, if any, whether or not a Lender elects to purchase, sell and/or match funds.
- (b) Notwithstanding anything to the contrary contained in this Section, Agent shall not be obligated to accept a partial prepayment of the Outstanding Obligations in accordance with the provisions of this Section if any Default or Event of Default shall have occurred and shall be continuing under this Agreement, the Notes or other Loan Documents unless the Lenders shall otherwise agree to the contrary in their sole and absolute discretion and, if the Lenders so agree, any applicable Exit Fee shall be paid as contemplated in § 3.3(a).

23

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- (c) Amounts prepaid may not be reborrowed.
 - (d) If either (x) Borrower is required to pay any portion of the Outstanding Obligations pursuant to the provisions of § 3.2 or (y) the amounts owing with respect to this Agreement, the Notes and the other Loan Documents are accelerated by Agent because of the occurrence of an Event of Default, the resulting acceleration shall be deemed to be an election on the part of Borrower to prepay the Loans.

SECTION 4. CERTAIN GENERAL PROVISIONS.

§ 4.1. *Fees.* On the Effective Date, Borrower shall pay to Wells Fargo Bank, National Association ("Wells"), as Agent for the Lenders hereunder, the fees in the amounts specified in the fee agreement among Wells and Borrower dated November 1, 2002. Wells shall be responsible for the facility fees which it has agreed to pay to the other Lenders.

§ 4.2. *Commitment Fee.* If, sixty (60) days after the Effective Date, the Outstanding Obligations are less than the Total Commitments, Borrower shall pay to Agent for the accounts of the Lenders in accordance with their respective Commitment Percentages a commitment fee equal to 20 basis points per annum on the average daily amount by which the Total Commitment (as it may have been reduced pursuant to § 2.2) exceeds the Outstanding Obligations (such excess, the "Unused Amount") during the period for which payment is made. Such commitment fee shall accrue from and including the sixty-first (61st) day after the Effective Date. The commitment fee shall be payable on the basis of the annual rate set forth above quarterly in arrears on or before the third Business Day of each calendar quarter for the immediately preceding calendar quarter commencing on the first such date following the date sixty (60) days after the Effective

Date, with a final payment on the Funding Expiry Date or any earlier date on which the Commitments shall terminate. Such commitment fee shall be computed on the basis of the actual number of days elapsed in a year of 360 days. If Borrower exercises its option to increase the Total Commitment pursuant to § 2.2(a), the commitment fee shall be computed separately for the portions of the quarter prior to and after the Commitment Increase Date and allocated among the Lenders based on the Commitment Percentages applicable during each portion of said quarter.

§ 4.3. *Funds for Payments.*

- (a) All payments of principal, interest, closing fees, commitment fees and any other amounts due hereunder (other than as provided in § 4.1, § 4.5 and § 4.6) or under any of the other Loan Documents, and all prepayments, shall be made to Agent, for the respective accounts of the Lenders, at Agent's Head Office, in each case in Dollars in immediately available funds.
- (b) All payments by Borrower hereunder and under any of the other Loan Documents shall be made without setoff or counterclaim and free and clear of and without deduction for any taxes, levies, imposts, duties, charges, fees, deductions, withholdings, compulsory liens, restrictions or conditions of any nature now or hereafter imposed or levied by any jurisdiction or any political subdivision thereof or taxing or other authority therein unless Borrower is compelled by law to make such deduction or withholding. If any such obligation is imposed upon Borrower with respect to any amount payable by it hereunder or under any of the other Loan Documents, Borrower shall pay to Agent, for the account of the Lenders or (as the case may be) Agent, on the date on which such amount is due and payable hereunder or under such other Loan Document, such additional amount in Dollars as shall be necessary to enable the Lenders or Agent to receive the same net amount which the Lenders or Agent would have received on such due date had no such obligation been imposed upon Borrower. Borrower will deliver promptly to Agent certificates or other valid vouchers for all taxes or other charges deducted from or paid with respect to payments made by Borrower hereunder or under such other Loan Document.

24

- (c) In the event that Borrower is obligated to pay any additional amounts described in clause (b) above in respect of any Lender's Loan, such Lender shall make commercially reasonable efforts to change the jurisdiction of its lending office if, in the reasonable judgment of such Lender, doing so would eliminate or reduce Borrower's obligation to pay such additional amounts and would not be disadvantageous to such Lender.

§ 4.4. *Computations.* All computations of interest on the Loans and of other fees to the extent applicable shall be based on a 360-day year and paid for the actual number of days elapsed. Except as otherwise provided in the definition of the term "Interest Period" with respect to LIBOR Rate Loans, whenever a payment hereunder or under any of the other Loan Documents becomes due on a day that is not a Business Day, the due date for such payment shall be extended to the next succeeding Business Day, and interest shall accrue during such extension. The outstanding amount of the Loans as reflected on the Records from time to time shall (absent manifest error) be considered correct and binding on Borrower unless within thirty (30) Business Days after receipt by Agent or any of the Lenders from Borrower of any notice by Borrower of such outstanding amount, Agent or such Lender shall notify Borrower to the contrary.

§ 4.5. *Additional Costs, Etc.* Borrower agrees to pay any Lender within ten (10) days after demand by any Lender or Agent an additional amount or amounts as such Lender or Agent shall reasonably determine will compensate such Lender, as the case may be, for actual costs incurred in maintaining the Loans based on the LIBOR Rate as a result of:

- (a) the imposition after the date hereof of, or changes after the date hereof in, the reserve requirements now or hereafter promulgated by the Board of Governors of the Federal Reserve System of the United States, including, but not limited to, any reserve on Eurocurrency Liabilities as defined in Regulation D at the ratios provided in such Regulation from time to time, it being agreed that the portion of the Outstanding Obligations bearing interest at the LIBOR Rate from time to time in accordance with the provisions of this Agreement shall be deemed to constitute Eurocurrency Liabilities, as defined by such Regulation; or
- (b) any change, after the date hereof, in applicable law, rule or regulation or in the interpretation or administration thereof by any domestic or foreign governmental authority charged with the interpretation or administration thereof (whether or not having the force of law) or by any domestic or foreign court changing the basis of taxation of payments to Lenders, as the case may be, of the Outstanding Obligations or interest thereon or any portion thereof at a LIBOR Rate or any other fees or amounts payable under this Agreement, the Notes or the other Loan Documents (other than taxes imposed on all or any portion of the overall income of Lenders by any State or the Federal government or on all or any portion of the overall income of any such Lender by the State or country of incorporation or domicile of any such Lender or by any political subdivision or taxing authority of any State or the Federal government or any such State or country), or imposing, modifying or applying any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, credit extended by, or any other acquisition of funds for loans by Lenders, as the case may be, or imposing on Lenders, as the case may be, or on the London Interbank Market any other condition affecting the Notes or the other Loan Documents or the portion of the Outstanding Obligations bearing interest at the LIBOR Rate so as to increase the cost to Lenders, as the case may be, of making or maintaining LIBOR Rates with respect to the Outstanding Obligations or any portion thereof or to reduce the amount of any sum received or receivable by Lenders, as the case may be, under this Agreement, the Notes or the other Loan Documents (whether of principal, interest or otherwise), by an amount deemed by any Lender in good faith to be material, but without duplication for payments required under subsection (a) above.

25

Failure on the part of Agent or any Lender to demand compensation for any increased costs in any Interest Period shall not constitute a waiver of Lenders' rights to demand compensation for any increased costs incurred during any such Interest Period or in any other subsequent or prior Interest Period.

§ 4.6. *Capital Adequacy.* If after the date hereof, the applicability of any law, rule, regulation, policy, guideline or directive (whether or not having the force of law), or the adoption after the date hereof of any other law, rule, regulation, policy, guideline or directive regarding capital adequacy, or any change therein, or any change in any of the foregoing or in the interpretation or administration of any of the foregoing by any domestic or foreign governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender (or any lending office of any Lender), as the case may be, or by a Lender's holding company, as the case may be, with any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, has the effect of reducing the rate of return on a Co-Lender's capital or on the capital of such Lender's holding company, as the case may be, as a consequence of such Lender's obligations with respect to the Loans or under this Agreement, the Notes or the other Loan Documents to a level below that which such Lender could have achieved but for such adoption, change or compliance (taking into consideration a Lender's or Lenders' holding company's policies, as the case may be, with respect to capital adequacy) by an amount reasonably deemed by such Lender to be

material, then from time to time, Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company, as the case maybe, for such actual, direct reduction, but not any consequential or remote losses. Any amount or amounts payable by Borrower to a Lender in accordance with the provisions of this Section shall be paid by Borrower to such Lender within ten (10) days of receipt by Borrower from such Lender of the notice described in § 4.7.

§ 4.7. *Certificate.* Each Lender shall notify Borrower and Agent of any event occurring after the Effective Date entitling such Lender to compensation under § 4.5 or § 4.6 as promptly as practicable. A certificate setting forth any additional amounts payable pursuant to §§ 4.5 or 4.6 and a brief explanation of such amounts which are due, submitted by any Lender or Agent to Borrower, shall be prima facie evidence that such amounts are due and owing.

§ 4.8. *Indemnity.* In addition to the other provisions of this Agreement regarding any such matters, Borrower agrees to indemnify each Lender and to hold each Lender harmless from and against any loss or reasonable cost or expense (including loss of anticipated profits) that such Lender may sustain or incur as a consequence of (a) a default by Borrower in payment of the principal amount of or any interest on any LIBOR Rate Loans as and when due and payable, including any such loss or expense caused by Borrower's breach or other default and arising from interest or fees payable by such Lender to lenders of funds obtained by it in order to maintain its LIBOR Rate Loans, (b) a default by Borrower in making a borrowing or conversion after Borrower has given (or is deemed to have given) a Loan Request or a Conversion Request, and (c) the making of any payment of a LIBOR Rate Loan or the making of any conversion of a LIBOR Rate Loan to a Base Rate Loan on a day that is not the last day of the applicable Interest Period with respect thereto, including interest or fees payable by such Lender to lenders of funds obtained by it in order to maintain any such LIBOR Rate Loan (including, but not limited to, any fees payable under § 3.3(a) hereof).

§ 4.9. *Interest on Overdue Amounts.* Overdue principal and (to the extent permitted by applicable law) interest on the Loans and all other overdue amounts payable hereunder or under any of the other Loan Documents, including amounts owed from and after the occurrence of an Event of Default, shall bear interest compounded monthly and payable on demand at a rate per annum equal to four percent (4%) above the Base Rate until such amount shall be paid in full (after as well as before judgment).

26

§ 4.10. *Inability to Determine LIBOR Rate.* In the event, prior to the commencement of any Interest Period relating to any LIBOR Rate Loan, Agent shall in good faith determine that adequate and reasonable methods do not exist for ascertaining the LIBOR Rate that would otherwise determine the rate of interest to be applicable to any LIBOR Rate Loan during any Interest Period, Agent shall forthwith give notice of such determination (which shall be conclusive and binding on Borrower) to Borrower. In such event (a) any Loan Request with respect to LIBOR Rate Loans shall be automatically withdrawn and shall be deemed a request for Base Rate Loans, (b) each then outstanding LIBOR Rate Loan will automatically, on the last day of the then current Interest Period thereof, become a Base Rate Loan, and (c) the obligations of the Lenders to make LIBOR Rate Loans shall be suspended until Agent determines in good faith (which determination shall be conclusive and binding upon Borrower) that the circumstances giving rise to such suspension no longer exist, whereupon Agent shall so notify Borrower and Borrower may submit a Conversion Request in accordance with the provisions of § 2.6 hereof.

§ 4.11. *Illegality.* Notwithstanding any other provisions herein, if any present or future law, regulation, treaty or directive or in the interpretation or application thereof by any governmental authority charged with administration or interpretation thereof shall make it unlawful for any Lender to make or maintain LIBOR Rate Loans or to give effect to its obligations as contemplated by this Agreement, such Lender shall forthwith give notice of such circumstances to Borrower and Agent and thereupon (a) the Commitment of such Lender to make LIBOR Rate Loans or convert Loans of another Type to LIBOR Rate Loans shall forthwith be suspended and (b) the LIBOR Rate Loans then outstanding shall be converted automatically to Base Rate Loans on the last day of each Interest Period applicable to such LIBOR Rate Loans or within such earlier period as may be required by law. Borrower hereby agrees promptly to pay to Agent for the account of such Lender, upon demand, any additional amounts necessary to compensate such Lender for any costs incurred by such Lender in making any conversion in accordance with this § 4.11, including any interest or fees payable by such Lender to lenders of funds obtained by it in order to make or maintain its LIBOR Rate Loans hereunder. The Base Rate shall remain in effect thereafter unless and until such Lender shall have determined in good faith (which determination shall be conclusive and binding upon Borrower) that the aforesaid circumstances no longer exist, whereupon such Lender shall notify Borrower and Agent and Borrower may submit a Conversion Request in accordance with the provisions of § 2.6 hereof.

§ 4.12. *Replacement of Lenders.* If Agent or any of the Lenders shall make a notice or demand upon Borrower pursuant to § 4.3, § 4.5, § 4.6, or § 4.11 based on circumstances or laws which are not generally applicable to the Lenders organized under the laws of the United States or any State thereof, Borrower shall have the right to replace such Lender with an Eligible Assignee selected by Borrower and approved by Agent (which consent shall not be unreasonably withheld or delayed). In such event the assignment shall take place as promptly as reasonably practicable on a date set by Agent at which time the assigning Lender and the Eligible Assignee shall enter into an Assignment and Acceptance as contemplated by § 19.1 (and clause (d) thereof shall not be applicable) and the assigning Lender shall receive from the Eligible Assignee or Borrower a sum equal to the outstanding principal amount of the Loans owed to the assigning Lender together with accrued interest thereon plus the accrued commitment fee under § 4.2 allocated to the assigning Lender and all other amounts due to such Lender, including any amounts due pursuant to this Section 4, and the replaced Lender shall be released from all of the obligations of a Lender hereunder from and after the effective date of its replacement.

27

SECTION 5. UNENCUMBERED ASSETS; NO LIMITATION ON RECOURSE.

§ 5.1. Unencumbered Assets.

- (a) Borrower represents and warrants that each of the Real Estate Assets listed on *Schedule 1.1* will on the Effective Date satisfy all of the conditions set forth in the definition of Unencumbered Asset. The Lenders confirm that each of the Real Estate Assets listed on *Schedule 1.1* is, on the Effective Date, accepted as an Unencumbered Asset. From time to time during the term of this Agreement, upon the written consent of the Majority Lenders (which consent shall not be unreasonably withheld or delayed), and subject to the owner of such Real Estate Asset becoming a Guarantor pursuant to § 5.6, additional Real Estate Assets may become Unencumbered Assets and certain Real Estate Assets which previously satisfied the conditions set forth in the definition of Unencumbered Asset may cease to be Unencumbered Assets by virtue of property dispositions, creation of Liens or other reasons. There shall be attached to each Compliance Certificate delivered pursuant to § 7.4(d) or § 7.13 an updated listing of the Unencumbered Assets relied upon by Borrower in computing the Value of All Unencumbered Assets and the Unencumbered Asset Adjusted Net Operating Income stated in such Compliance Certificate. Compliance Certificates delivered pursuant to § 2.5(a) may, at Borrower's option, include an updated listing of the Unencumbered Assets and shall include such updated listing whenever a redetermination of

the Value of All Unencumbered Assets based on such an updated listing would result in a material decrease (from that shown on the most recently delivered Compliance Certificate) in the Value of All Unencumbered Assets by virtue of property dispositions, creation of Liens or other reasons.

- (b) Agent, at the written direction of the Requisite Lenders and subject to the provisions of § 15 hereof, may from time to time obtain Appraisals of any Unencumbered Assets, and Borrower and the Guarantors shall cooperate fully with the appraiser selected by Agent to conduct such Appraisals. In the event that Borrower obtains an appraisal of one or more of the Unencumbered Assets other than pursuant to this subsection, Borrower shall at its expense deliver a copy of such appraisal to Agent promptly upon the completion thereof, and Agent may elect, in its sole discretion and subject to applicable laws, to treat such appraisal as an "Appraisal."

§ 5.2. *Waivers by Requisite Lenders.*

- (a) If any Real Estate Asset fails to satisfy any of the requirements contained in the definition of Unencumbered Asset then the applicable Real Estate Asset may nevertheless be deemed to be an Unencumbered Asset hereunder if the Requisite Lenders vote to accept such Real Estate Asset as an Unencumbered Asset.
- (b) Notwithstanding the foregoing, Borrower, upon prior written request to Agent, shall be permitted a six month waiver without the consent of the Requisite Lenders of the Occupancy Rate requirements of the definition of "Unencumbered Asset" for a particular Unencumbered Asset under the following conditions:
- (i) there shall be a termination or expiration of any Lease(s) in a particular Real Estate Asset resulting in occupancy below 70% but greater than 50%,
 - (ii) during six (6) months from the date of such expiration(s) or termination(s) Borrower is diligently attempting to re-establish an Occupancy Rate of at least 70%,
 - (iii) the Value of All Unencumbered Assets is at least \$650 Million at the time of the waiver request, and
 - (iv) to the extent waiver(s) are then in effect for Unencumbered Assets pursuant to the provisions of this § 5.2, the Unencumbered Asset Value for all Unencumbered Assets for

28

which such a waiver exists plus the Unencumbered Asset Value of the Unencumbered Asset for which Borrower seeks the waiver shall not exceed 10% of the Value of All Unencumbered Assets.

§ 5.3. *Rejection of Unencumbered Assets.* If at any time Agent determines that any Real Estate Asset listed as an Unencumbered Asset by Borrower does not satisfy all of the requirements of the definition of Unencumbered Asset (to the extent not waived by the Requisite Lenders pursuant to § 5.2(a) or by Agent pursuant to § 5.2(b)) it shall reject an Unencumbered Asset by notice to Borrower and Borrower shall revise the applicable Compliance Certificate to reflect the resulting change in the Value of All Unencumbered Assets and the Unencumbered Asset Adjusted Net Operating Income.

§ 5.4. *Change in Circumstances.* If at any time during the term of this Agreement Borrower becomes aware that any of the representations contained in § 6 are no longer accurate with respect to any Unencumbered Asset, it will promptly so notify Agent and either request a waiver pursuant to § 5.2 or confirm that such Real Estate Asset is no longer an Unencumbered Asset. If any waiver so requested is not granted by the Requisite Lenders or Agent, as applicable, within ten (10) Business Days Agent shall reject the applicable Unencumbered Asset pursuant to § 5.3.

§ 5.5. *No Limitation on Recourse.* The Obligations are full recourse obligations of Borrower and of the Guarantors, and all of their respective Real Estate Assets and other properties shall be available for the indefeasible payment in full in cash and performance of the Obligations.

§ 5.6. *Additional Guarantor Subsidiaries.*

- (a) If Borrower desires that a Real Estate Asset owned by a Related Company which is not previously a Guarantor become an Unencumbered Asset, as a condition thereto the applicable Related Company (x) shall be a direct or indirect Subsidiary of Borrower or any Guarantor and (y) shall become a Guarantor by delivery to Agent of the following, all in form and substance reasonably satisfactory to Agent: (i) a supplement to this Agreement executed and delivered by such proposed Guarantor assenting to be bound by all the terms of the Loan Documents as a Guarantor, and (ii) good standing certificates, general partner certificates, secretary certificates, opinions of counsel and such other documents as may be reasonably requested by Agent. Agent shall promptly provide copies of said documents to the Lenders.
- (b) Borrower may transfer title to any Unencumbered Asset owned by Borrower to a single purpose limited liability company wholly-owned by Borrower provided that such limited liability company (x) delivers to Agent the items described in clauses (i) and (ii) of the preceding clause (a), all in form and substance reasonably satisfactory to Agent and (y) becomes a Guarantor hereunder.

SECTION 6. *REPRESENTATIONS AND WARRANTIES.* Borrower and the Guarantors jointly and severally represent and warrant to Agent and each of the Lenders as follows:

§ 6.1. *Authority; Etc.*

- (a) *Organization; Good Standing.* The Company (i) is a Maryland corporation duly organized, validly existing and in good standing under the laws of the State of Maryland, (ii) has all requisite power to own its properties and conduct its business as now conducted and as presently contemplated, and (iii) to the extent required by law is in good standing as a foreign entity and is duly authorized to do business in the States in which the Unencumbered Assets are located and in each other jurisdiction where such qualification is necessary except where a failure to be so qualified in such other jurisdiction would not have a Material Adverse Effect. Borrower is a Delaware limited partnership, and each of Borrower and each Guarantor is duly organized, validly existing and in good standing under the laws of the State of its formation, has all requisite power to own its properties and conduct its business as presently

contemplated and is duly authorized to do business in the States in which the Unencumbered Assets owned by it are located and in each other jurisdiction where such qualification is necessary except where a failure to be so qualified in such other jurisdiction would not have a Material Adverse Effect.

- (b) *Authorization.* The execution, delivery and performance of this Agreement and the other Loan Documents to which Borrower is or is to become a party and the transactions contemplated hereby and thereby (i) are within the authority of Borrower, (ii) have been duly authorized by all necessary proceedings on the part of Borrower and the Company as general partner of Borrower, (iii) do not conflict with or result in any breach or contravention of any provision of law, statute, rule or regulation to which Borrower or the Company is subject or any judgment, order, writ, injunction, license or permit applicable to Borrower or the Company and (iv) do not conflict with any provision of Borrower's partnership agreement or Company's charter documents or bylaws, or any agreement (except agreements as to which such a conflict would not result in a Material Adverse Effect) or other instrument binding upon, Borrower or the Company or to which any of their properties are subject. The execution, delivery and performance of the Loan Documents to which any Guarantor is or is to become a party and the transactions contemplated hereby and thereby (i) are within the authority of such Guarantor, (ii) have been duly authorized by all necessary proceedings on the part of such Guarantor, (iii) do not conflict with or result in any breach or contravention of any provision of law, statute, rule or regulation to which such Guarantor is subject or any judgment, order, writ, injunction, license or permit applicable to such Guarantor and (iv) do not conflict with any provision of such Guarantor's charter documents or bylaws, partnership agreement, declaration of trust, or any agreement (except agreements as to which such a conflict would not result in a Material Adverse Effect) or other instrument binding upon such Guarantor or to which any of such Guarantor's properties are subject.
- (c) *Enforceability.* The execution and delivery of this Agreement and the other Loan Documents to which Borrower is or is to become a party will result in valid and legally binding obligations of Borrower enforceable against it in accordance with the respective terms and provisions hereof and thereof, except as enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting generally the enforcement of creditors' rights and except to the extent that availability of the remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceeding therefor may be brought. The execution and delivery of the Loan Documents to which any Guarantor is or is to become a party will result in valid and legally binding obligations of such Guarantor enforceable against such Guarantor in accordance with the respective terms and provisions hereof and thereof, except as enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting generally the enforcement of creditors' rights and except to the extent that availability of the remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceeding therefor may be brought.

§ 6.2. *Governmental Approvals.* The execution, delivery and performance by Borrower and each Guarantor of this Agreement and the other Loan Documents to which Borrower or such Guarantor is or is to become a party and the transactions contemplated hereby and thereby do not require the approval or consent of, or filing with, any governmental agency or authority other than those already obtained.

§ 6.3. *Title to Properties.*

- (a) Either Borrower or a Guarantor holds good and marketable fee simple title to, or holds a marketable leasehold interest pursuant to a Ground Lease of, the Unencumbered Assets, subject to no Liens except for the Permitted Liens.
- (b) Except as indicated on *Schedule 6.3* hereto, Borrower or a Subsidiary holds good and marketable fee simple title to, or holds a marketable leasehold interest pursuant to a Ground Lease of, all of the properties reflected in the balance sheet of Borrower as at the Balance Sheet Date or acquired since that date (except properties sold or otherwise disposed of in the ordinary course of business since that date).

§ 6.4. *Financial Statements.* The following financial statements have been furnished to Agent.

- (a) A balance sheet of the Company as of the Balance Sheet Date, and a statement of operations and statement of cash flows of the Company for the fiscal year then ended, a balance sheet of Borrower as of the Balance Sheet Date, and a statement of operations and statement of cash flows of Borrower for the fiscal year then ended, all accompanied by an auditor's report prepared without qualification by Ernst & Young. Such balance sheets and statements of operations and of cash flows have been prepared in accordance with Generally Accepted Accounting Principles and fairly present the financial condition of Borrower and the Company, respectively as at the close of business on the date thereof and the results of operations and cash flows for the fiscal year then ended. There are no contingent liabilities of Borrower or the Company, respectively, as of such date involving material amounts, known to the officers of the Company not disclosed in said balance sheet and the related notes thereto.
- (b) A balance sheet and a statement of operations and statement of cash flows of the Company and a balance sheet and a statement of operations and statement of cash flows of Borrower for each of the fiscal quarters of the Company ended since the Balance Sheet Date but prior to the Effective Date for which the Company has filed form 10-Q with the SEC, which the Company's Responsible Officer certifies has been prepared in accordance with Generally Accepted Accounting Principles consistent with those used in the preparation of the annual audited statements delivered pursuant to paragraph (a) above and fairly represents the financial condition of the Company and Borrower, respectively, as at the close of business on the dates thereof and the results of operations and of cash flows for the fiscal quarters then ended (subject to year-end adjustments). There are no contingent liabilities of Borrower or the Company as of such dates involving material amounts, known to the officers of the Company, not disclosed in such balance sheets and the related notes thereto.
- (c) A statement prepared by Borrower which sets forth the total Net Operating Income of the Unencumbered Assets for the fiscal quarter of Borrower ended on the Balance Sheet Date.

§ 6.5. *No Material Changes, Etc.* Since the Balance Sheet Date, there has occurred no material adverse change in the financial condition or assets or business of Borrower as shown on or reflected in the balance sheet of Borrower as of the Balance Sheet Date, or the statement of income for the fiscal year then ended, other than changes in the ordinary course of business that have not had any Material Adverse Effect either individually or in the aggregate.

§ 6.6. *Franchises, Patents, Copyrights, Etc.* Borrower and each Guarantor possesses all franchises, patents, copyrights, trademarks, trade names, licenses and permits, and rights in respect of the foregoing, adequate for the conduct of its business substantially as now conducted without known conflict with any rights of others, except to the extent Borrower's or such Guarantor's failure to possess the same does not have a Material Adverse Effect.

§ 6.7. *Litigation.* Except as listed and described on *Schedule 6.7* hereto, there are no actions, suits, proceedings or investigations of any kind pending or, to Borrower's knowledge, threatened against Borrower, any Guarantor or any of the Related Companies before any court, tribunal or administrative agency or board that, if adversely determined, might, either in any case or in the aggregate, have a Material Adverse Effect or materially impair the right of Borrower, any Guarantor or any of the Related Companies to carry on business substantially as now conducted by it, or which question the validity of this Agreement or any of the other Loan Documents, any action taken or to be taken pursuant hereto or thereto, or which would result in a Lien (other than a Permitted Lien) on any Unencumbered Asset which might have a Material Adverse Effect, or which will materially adversely affect the ability of Borrower or any Guarantor to pay and perform the Obligations in the manner contemplated by this Agreement and the other Loan Documents.

§ 6.8. *No Materially Adverse Contracts, Etc.* Neither Borrower nor the Company nor any other Guarantor is subject to any charter, trust or other legal restriction, or any judgment, decree, order, rule or regulation that has or is expected in the future to have a Material Adverse Effect. Neither Borrower nor the Company is a party to any contract or agreement that has or is expected, in the judgment of the Company's officers, to have any Material Adverse Effect.

§ 6.9. *Compliance With Other Instruments, Laws, Etc.* Neither Borrower nor the Company nor any other Guarantor is in violation of any provision of Borrower's partnership agreement or of the Company's or other Guarantor's charter documents, by-laws, or any agreement or instrument to which it may be subject or by which it or any of its properties may be bound or any decree, order, judgment, statute, license, rule or regulation, in any of the foregoing cases in a manner that could result in the imposition of substantial penalties or have a Material Adverse Effect.

§ 6.10. *Tax Status.* Each of Borrower and the Company and each other Guarantor (a) has made or filed all federal and state income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject, and (b) has paid all taxes and other governmental assessments and charges shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and by appropriate proceedings. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company know of no basis for any such claim.

§ 6.11. *Event of Default.* No Default or Event of Default has occurred and is continuing.

§ 6.12. *Investment Company Act.* Neither Borrower nor the Company is an "investment company", or an "affiliated company" or a "principal underwriter" of an "investment company", as such terms are defined in the Investment Company Act of 1940.

§ 6.13. *Absence of Financing Statements, Etc.* There is no financing statement, security agreement, chattel mortgage, real estate mortgage, equipment lease, financing lease, option, encumbrance or other document existing, filed or recorded with any filing records, registry, or other public office, that purports to cover, affect or give notice of any present or possible future lien or encumbrance on, or security interest in, any Unencumbered Asset, except Permitted Liens.

§ 6.14. *Status of the Company.* The Company (i) is a real estate investment trust as defined in Section 856 of the Code (or any successor provision thereto), (ii) has not revoked its election to be a real estate investment trust, (iii) has not engaged in any "prohibited transactions" as defined in Section 856(b)(6) (iii) of the Code (or any successor provision thereto), and (iv) for its current "tax year" (as defined in the Code) is, and for all prior tax years subsequent to its election to be a real estate investment trust has been, entitled to a dividends paid deduction which meets the requirements of Section 857 of the Internal Revenue Code. The common stock of the Company is listed for trading on the New York Stock Exchange.

§ 6.15. *Certain Transactions.* Except as set forth on *Schedule 6.15* hereto, none of the officers or employees of Borrower or any Guarantor is presently a party to any transaction with Borrower or any Guarantor (other than for services as employees, officers and trustees), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any officer, trustee or such employee or, to the knowledge of Borrower and the Company, any corporation, partnership, trust or other entity in which any officer, trustee or any such employee or natural Person related to such officer, trustee or employee or other Person in which such officer, trustee or employee has a direct or indirect beneficial interest has a substantial interest or is an officer or trustee.

§ 6.16. *Benefit Plans; Multiemployer Plans; Guaranteed Pension Plans.* As of the date hereof, neither Borrower, any Guarantor nor any ERISA Affiliate maintains or contributes to any Employee Benefit Plan, Multiemployer Plan or Guaranteed Pension Plan, except as may be set forth on *Schedule 6.16*. To the extent that Borrower, any Guarantor or any ERISA Affiliate hereafter maintains or contributes to any Employee Benefit Plan or Guaranteed Pension Plan, it shall at all times do so in compliance with § 7.17 hereof. None of the assets of Borrower or any of the Guarantors is "plan assets" of any Employee Benefit Plan for purposes of Title I of ERISA.

§ 6.17. *Regulations U and X.* No portion of any Loan is to be used for the purpose of purchasing or carrying any "margin security" or "margin stock" as such terms are used in Regulations U and X of the Board of Governors of the Federal Reserve System, 12 C.F.R. Parts 221 and 224.

§ 6.18. *Environmental Compliance.* Except as disclosed in *Schedule 6.18* hereto, to the best knowledge of Borrower:

- (a) Borrower, the Guarantors and the Related Companies are in compliance with all Environmental Laws pertaining to any hazardous waste, as defined by 42 U.S.C. § 9601(5), any Hazardous Materials as defined by 42 U.S.C. § 9601(14), any pollutant or contaminant as defined by 42 U.S.C. § 9601(33) or any toxic substances, oil or hazardous materials or other chemicals or substances regulated by any Environmental Laws ("Hazardous Materials") the failure with which to comply would have a Material Adverse Effect. None of the Properties and no other property used by Borrower, the Guarantors or the Related Companies is included or proposed for inclusion on the National Priorities List issued pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended ("CERCLA"), or on the Comprehensive Environmental Response Compensation and Liability Information System maintained by the United States Environmental Protection Agency (the

"EPA") or on any analogous list maintained by any other Governmental Authority and has not otherwise been identified by the EPA as a potential CERCLA site.

- (b) Borrower, the Guarantors and the Related Companies have not, at any time, and, to the actual knowledge of Borrower, no other Person has at any time, used, handled, stored, buried, retained, refined, transported, processed, manufactured, generated, produced, spilled, released, allowed to seep, escape or leach, or pumped, poured, emitted, emptied, discharged, injected, dumped, transferred or otherwise disposed of, any Hazardous Materials at or about the Real Estate Assets or any other real property owned or occupied by Borrower, any Guarantor or any Related Company, except (i) for use and storage for use of reasonable amounts of ordinary supplies and other substances customarily used in the operation of commercial office buildings; provided, however, that such use and/or storage for use is in substantial compliance with applicable Environmental Law, or (ii) where such action is not reasonably expected to have a Material Adverse Effect.
- (c) No actions, suits, or proceedings have been commenced, are pending or, to the actual knowledge of Borrower, are threatened in writing with respect to any Environmental Law governing the use, manufacture, storage, treatment, Release, disposal, transportation, or

33

processing of Hazardous Materials with respect to any Real Estate Asset or any part thereof which could have a Material Adverse Effect. Borrower, the Guarantors and the Related Companies have received no written notice of and have no actual knowledge of any fact, condition, occurrence or circumstance which could reasonably be expected to give rise to a claim under or pursuant to any existing Environmental Law pertaining to Hazardous Materials on, in, under or originating from any Real Estate Asset or any part thereof or any other real property owned or occupied by Borrower or any Guarantor or arising out of the conduct of any Borrower or any Guarantor, including claims for the presence of Hazardous Materials at any other property, which in any case is reasonably expected to have a Material Adverse Effect.

- (d) Other than as set forth in reviews, reports and surveys copies of which have been delivered to Agent, there have occurred no uses, manufactures, storage, treatments, Releases, disposals, transportation, or processing of Hazardous Materials with respect to any Real Estate Asset except those which, taken as a whole, would not have a Material Adverse Effect.

§ 6.19. *Subsidiaries and Affiliates.* Borrower has no Subsidiaries except for the Related Companies listed on *Schedule 1.3* and does not have an ownership interest in any entity whose financial statements are not consolidated with Borrower's except for the Unconsolidated Entities listed on *Schedule 1.3*. Except as set forth on *Schedule 6.19*: (a) the Company is not a partner in any partnership other than Borrower and is not a member of any limited liability company and (b) the Company owns no material assets other than its partnership interest in Borrower.

§ 6.20. *Loan Documents.* All of the representations and warranties of Borrower or any Guarantor made in the other Loan Documents or any document or instrument delivered or to be delivered to Agent or the Lenders pursuant to or in connection with any of such Loan Documents are true and correct in all material respects.

§ 6.21. *Buildings on the Unencumbered Assets.* Except as set forth on *Schedule 6.21*, to the best of Borrower's knowledge there are no material defects in the roof, foundation, structural elements and masonry walls of the Buildings on the Unencumbered Assets or their heating, ventilating and air conditioning, electrical, sprinkler, plumbing or other mechanical systems which would materially decrease the value of such Unencumbered Asset.

§ 6.22. *Indebtedness.* Borrower and the Guarantors have no Indebtedness except (a) as set forth on *Schedule 6.22* hereto and (b) as otherwise permitted by this Agreement. *Schedule 6.22* hereto accurately sets forth the outstanding principal amounts and the maturity dates of all Indebtedness for borrowed money of Borrower and the Guarantors and certain of the Related Companies and identifies the holders of the obligations thereunder as of the Effective Date.

SECTION 7. *AFFIRMATIVE COVENANTS OF BORROWER.* Borrower covenants and agrees as follows, so long as any Loan or Note is outstanding or the Lenders have any obligations to make Loans:

§ 7.1. *Punctual Payment.* Borrower will unconditionally duly and punctually pay the principal and interest on the Loans and all other amounts provided for in the Notes, this Agreement, and the other Loan Documents all in accordance with the terms of the Notes, this Agreement and the other Loan Documents.

§ 7.2. *Maintenance of Office.* Borrower will maintain its chief executive office in New York, New York or at such other place in the United States Of America as Borrower shall designate upon written notice to Agent to be delivered within fifteen (15) days of such change, where notices, presentations and demands to or upon Borrower in respect of the Loan Documents may be given or made.

34

§ 7.3. *Records and Accounts.* Borrower will, and will cause its Subsidiaries to, keep true and accurate records and books of account in which full, true and correct entries will be made in accordance with Generally Accepted Accounting Principles.

§ 7.4. *Financial Statements, Certificates and Information.* Borrower will deliver to each of the Lenders:

- (a) as soon as practicable, but in any event not later than ninety (90) days after the end of each fiscal year of Borrower, the audited balance sheets of Borrower and of the Company at the end of such year, and the related audited statements of operations and statements of cash flows for such year, each setting forth in comparative form the figures for the previous fiscal year and all such statements to be in reasonable detail, prepared in accordance with Generally Accepted Accounting Principles on a consolidated basis including Borrower and the Related Companies, and accompanied by an auditor's report prepared without qualification by Ernst & Young or another "Big Four" accounting firm, or, subject to Agent's approval granted or denied in its sole and absolute discretion, another certified public accounting firm of recognized national standing;
- (b) as soon as practicable, but in any event not later than forty-five (45) days after the end of each of the first three (3) fiscal quarters of Borrower, copies of the unaudited balance sheets of Borrower and of the Company as at the end of such quarter, and the related unaudited statements of operations for the portion of Borrower's fiscal year then elapsed, all in reasonable detail and prepared in accordance with Generally Accepted Accounting Principles, together with a certification by the principal financial or accounting officer of the Company that the information contained

in such financial statements fairly presents the financial position of Borrower and of the Company on the date thereof (subject to year-end adjustments); provided, however, that for so long as Borrower and the Company are filing Form 10-Q with the SEC, the delivery of a copy thereof pursuant to paragraph (e) of this § 7.4 shall be deemed to satisfy this paragraph (b);

- (c) as soon as practicable, but in any event not later than forty-five (45) days after the end of each of the first three (3) fiscal quarters and not later than ninety (90) days after the end of the last fiscal quarter of each fiscal year of Borrower, copies of a statement of the Net Operating Income for such fiscal quarter for the Unencumbered Assets, prepared on a basis consistent with the statements furnished pursuant to § 6.4(c), and certified by a Responsible Officer of the Company and, at the time of the annual financial statements referred to in subsection (a) above, and at the time of quarterly financial statements referred to in subsection (b) above if requested by Agent, a consolidating statement setting forth the Net Operating Income for such fiscal quarter for each Unencumbered Asset listed by address;
- (d) simultaneously with the delivery of the financial statements referred to in subsections (a) and (b) above, a statement in the form of *Exhibit C* hereto signed by a Responsible Officer of the Company (on behalf of Borrower) and setting forth in reasonable detail computations evidencing compliance with the covenants contained herein and (if applicable) reconciliations to reflect changes in Generally Accepted Accounting Principles since the Balance Sheet Date;
- (e) as soon as practicable, but in any event not later than ninety (90) days after the end of each fiscal year of the Company, copies of the Form 10-K statement filed with the Securities and Exchange Commission ("SEC") for such fiscal year, and as soon as practicable, but in any event not later than forty-five (45) days after the end of each fiscal quarter, copies of the Form 10-Q statement filed with the SEC for such fiscal quarter, provided that in either case if the SEC has granted an extension for the filing of such statements, Borrower shall deliver such statements to Agent simultaneously with the filing thereof with the SEC;

35

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- (f) promptly following the filing or mailing thereof, copies of all other material of a financial nature filed with the SEC or sent to the shareholders of the Company or to the limited partners of Borrower and copies of all corporate press releases promptly upon the issuance thereof;
 - (g) from time to time such other financial data and information as Agent may reasonably request including, without limitation, financial statements of any Unconsolidated Entities;
 - (h) from time to time such environmental assessment reports as to the Unencumbered Assets as Agent may reasonably request.

§ 7.5. *Notices.*

- (a) *Defaults.* Borrower will promptly notify Agent in writing (and Agent shall immediately thereafter notify the Lenders) of the occurrence of any Default or Event of Default. If any Person shall give any notice or take any other action in respect of a claimed default (whether or not constituting a Default or an Event of Default under this Agreement) under any note, evidence of Indebtedness, indenture or other obligation to which or with respect to which Borrower, Guarantor or any of the Related Companies is a party or obligor, whether as principal or surety, and if the principal amount thereof exceeds \$5,000,000, and such default would permit the holder of such note or obligation or other evidence of Indebtedness to accelerate the maturity thereof, Borrower shall forthwith give written notice thereof to Agent and each of the Lenders, describing the notice or action and the nature of the claimed default.
- (b) *Environmental Events.* Borrower will promptly notify Agent in writing (and Agent shall promptly thereafter notify the Lenders) of any of the following events: (i) upon Borrower's obtaining knowledge of any violation of any Environmental Law regarding an Unencumbered Asset or any Real Estate or Borrower's operations which violation could have a Material Adverse Effect; (ii) upon Borrower's obtaining knowledge of any potential or known Release, or threat of Release, of any Hazardous Material at, from, or into an Unencumbered Asset or any Real Estate which it reports in writing or is reportable by it in writing to any governmental authority and which is material in amount or nature or which could materially affect the value of such Unencumbered Asset or which could have a Material Adverse Effect; (iii) upon Borrower's receipt of any notice of violation of any Environmental Laws or of any Release or threatened Release of Hazardous Materials, including a notice or claim of liability or potential responsibility from any third party (including without limitation any federal, state or local governmental officials) and including notice of any formal inquiry, proceeding, demand, investigation or other action with regard to (A) Borrower's or any Person's operation of an Unencumbered Asset or any Real Estate if the same would have a Material Adverse Effect, (B) contamination on, from or into an Unencumbered Asset or any Real Estate if the same would have a Material Adverse Effect, or (C) investigation or remediation of off-site locations at which Borrower or any of its predecessors are alleged to have directly or indirectly disposed of Hazardous Materials; or (iv) upon Borrower's obtaining knowledge that any expense or loss has been incurred by such governmental authority in connection with the assessment, containment, removal or remediation of any Hazardous Materials with respect to which Borrower, Guarantor or any of the Related Companies may be liable or for which a lien may be imposed on an Unencumbered Asset.
- (c) *Notification of Liens Against Unencumbered Assets or Other Material Claims.* Borrower will, promptly upon becoming aware thereof, notify Agent in writing (and Agent shall promptly thereafter notify the Lenders) of any Liens (except Permitted Liens) placed upon or attaching to any Unencumbered Assets or of any other setoff, claims (including environmental claims), withholdings or other defenses which in either case could have a Material Adverse Effect.

36

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- (d) *Notice of Litigation and Judgments.* Borrower will give notice to Agent in writing (and Agent shall promptly thereafter notify the Lenders) within fifteen (15) days of becoming aware of any litigation or proceedings threatened in writing or any pending litigation and proceedings affecting any of the Unencumbered Assets or affecting Borrower, any Guarantor or any of the Related Companies or to which Borrower, any Guarantor or any of the Related Companies is or is to become a party involving an uninsured claim (or as to which the insurer reserves rights) against Borrower, any Guarantor or any of the Related Companies that at the time of giving of notice could reasonably be expected to have a Material Adverse Effect, and stating the nature and status of such litigation or proceedings. Borrower will give notice to Agent, in writing, in form

and detail satisfactory to Agent, within ten (10) days of any judgment not covered by insurance, final or otherwise, against Borrower in an amount in excess of \$5,000,000.

- (e) *Notice of Rating Changes.* Borrower will promptly notify Agent in writing (and Agent shall promptly thereafter notify the Lenders) of the occurrence of any change in the Moody's Rating, in the S&P Rating or in the Fitch Rating.

§ 7.6. *Existence; Maintenance of REIT Status; Maintenance of Properties.* The Company will do or cause to be done all things necessary to preserve and keep in full force and effect its status as a "qualified real estate investment trust" under § 856 of the Code and the existence of Borrower as a Delaware limited partnership. The common shares of beneficial interest of the Company will at all times be listed for trading on either the New York Stock Exchange or one of the other major stock exchanges. Borrower will do or cause to be done all things necessary to preserve and keep in full force all of its rights and franchises which in the judgment of Borrower may be necessary to properly and advantageously conduct the businesses being conducted by it, the Company, any of the Guarantors or any of the Related Companies. Borrower (a) will cause all of the properties used or useful in the conduct of the business of Borrower, the Company, any of the Guarantors or any of the Related Companies to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment, (b) will cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in the judgment of Borrower may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times, and (c) will continue to engage primarily in the businesses now conducted by it and in related businesses.

§ 7.7. *Insurance.* With respect to the Real Estate Assets and other properties and businesses of Borrower, the Guarantors and the Related Companies, Borrower will maintain or cause to be maintained insurance with financially sound and reputable insurers against such casualties and contingencies as shall be in accordance with the general practices of businesses engaged in similar activities in similar geographic areas and in amounts, containing such terms, in such forms and for such periods as may be reasonable and prudent. With respect to the Unencumbered Assets, such insurance will include all risk casualty insurance for the replacement cost of all Buildings including loss of rents for twelve (12) months and, to the extent such Unencumbered Assets are located in a flood zone or plain, flood insurance and, to the extent the Company reasonably determines that the same is commercially reasonably available, terrorism insurance at levels comparable to those carried by prudent owners of similar real estate assets in similar geographical areas. Commercial general liability insurance shall include an excess liability policy with limits of at least \$50,000,000.

§ 7.8. *Taxes.* Borrower will pay or will cause to be paid real estate taxes, other taxes, assessments and other governmental charges against the Real Estate Assets before the same become delinquent, and will duly pay and discharge, or cause to be paid and discharged, before the same shall become overdue, all taxes, assessments and other governmental charges imposed upon it and its other properties, sales and activities, or any part thereof, or upon the income or profits therefrom, as well as all claims for labor, materials, or supplies that if unpaid might by law become a lien or charge upon

any of its properties; provided that any such tax, assessment, charge, levy or claim need not be paid if the validity or amount thereof shall currently be contested in good faith by appropriate proceedings and if Borrower shall have set aside on its books adequate reserves with respect thereto; and provided further that Borrower will pay all such taxes, assessments, charges, levies or claims forthwith upon the commencement of proceedings to foreclose any lien that may have attached as security therefor.

§ 7.9. *Inspection of Properties and Books.* Borrower shall permit the Lenders, through Agent or any of the Lenders' other designated representatives, to visit and inspect any of the Unencumbered Assets, to examine the books of account of Borrower, the Company, the other Guarantors and the Related Companies (and to make copies thereof and extracts therefrom) and to discuss the affairs, finances and accounts of Borrower with, and to be advised as to the same by, its officers, all at such reasonable times and intervals as Agent or any Lender may reasonably request.

§ 7.10. *Compliance with Laws, Contracts, Licenses, and Permits.* Borrower and the Company will comply, and will cause each Guarantor and all Related Companies to comply, with (a) all applicable laws and regulations now or hereafter in effect wherever its business is conducted, including all Environmental Laws, (b) the provisions of all applicable partnership agreements, charter documents and by-laws, (c) all agreements and instruments to which it is a party or by which it or any of its Real Estate Assets may be bound including Ground Leases, and (d) all applicable decrees, orders, and judgments, except (with respect to (a) through (d) above) to the extent such non-compliance would not have a Material Adverse Effect. If at any time any permit or authorization from any governmental Person shall become necessary or required in order that Borrower or any Guarantor may fulfill or be in compliance with any of its obligations hereunder or under any of the Loan Documents, Borrower will immediately take or cause to be taken all reasonable steps within the power of Borrower to obtain such authorization, consent, approval, permit or license and furnish Agent and the Lenders with evidence thereof.

§ 7.11. *Use of Proceeds.* Subject to the provisions of § 6.17 hereof, the proceeds of the Loans shall be used by Borrower for repayment of other Indebtedness, for acquisitions of class B (or better) office properties in the greater New York City area, for capital improvements, and for working capital and other general corporate purposes.

§ 7.12. *Intentionally Omitted.*

§ 7.13. *Notices of Significant Transactions.* Borrower will notify Agent in writing prior to the closing of any of the following transactions pursuant to a single transaction or a series of related transactions:

- (a) The sale or transfer of one or more Real Estate Assets for an aggregate sales price or other consideration of \$25,000,000 or more.
- (b) The sale or transfer of the ownership interest of Borrower or any of the Related Companies in any of the Related Companies or the Unconsolidated Entities if the aggregate consideration received by Borrower or the Related Companies in connection with such transaction exceeds \$15,000,000.

Each notice given pursuant to this § 7.13 shall be accompanied by a Compliance Certificate including an updated list of Unencumbered Assets and demonstrating in reasonable detail compliance, after giving effect to the proposed transaction, with the covenants contained in § 9.1 through § 9.8.

§ 7.14. *Further Assurance.* Borrower and the Guarantors will cooperate with Agent and the Lenders and execute such further instruments and documents and perform such further acts as Agent and the Lenders shall reasonably request to carry out the transactions contemplated by this Agreement and the other Loan Documents.

§ 7.15. *Environmental Indemnification.* Borrower and the Guarantors jointly and severally covenant and agree that they will indemnify and hold Agent and each Lender harmless from and against any and all claims, expense, damage, loss or liability incurred by Agent or any Lender (including all reasonable costs of legal representation incurred by Agent or any Lender, but excluding, as applicable, for Agent or a Lender any claim, expense, damage, loss or liability as a result of the gross negligence or willful misconduct of Agent or such Lender) relating to (a) any Release or threatened Release of Hazardous Materials on any Unencumbered Asset or any Real Estate; (b) any violation of any Environmental Laws with respect to conditions at any Unencumbered Asset or any Real Estate or the operations conducted thereon; or (c) the investigation or remediation of off-site locations at which Borrower or its predecessors are alleged to have directly or indirectly disposed of Hazardous Materials. It is expressly acknowledged by Borrower and the Guarantors that this covenant of indemnification shall survive the payment of the Loans and shall inure to the benefit of Agent and the Lenders, and their successors and assigns.

§ 7.16. *Response Actions.* Borrower and the Guarantors jointly and severally covenant and agree that if any Release or disposal of Hazardous Materials shall occur or shall have occurred on any Unencumbered Asset or any other Real Estate if the same would have a Material Adverse Effect, Borrower will cause the prompt containment and removal of such Hazardous Materials and remediation of such Unencumbered Asset or Real Estate as necessary to comply with all Environmental Laws or to preserve the value of such Unencumbered Asset or Real Estate to the extent necessary to avoid a Material Adverse Effect.

§ 7.17. *Employee Benefit Plans.*

- (a) *Representation.* Borrower, any Guarantor and their ERISA Affiliates do not currently maintain or contribute to any Employee Benefit Plan, Guaranteed Pension Plan or Multiemployer Plan, except as set forth on *Schedule 6.16*.
- (b) *Notice.* Borrower will obtain the consent of Agent prior to the establishment of any Employee Benefit Plan or Guaranteed Pension Plan not listed on *Schedule 6.16* by Borrower, any Guarantor or any ERISA Affiliate.
- (c) *In General.* Each Employee Benefit Plan maintained by Borrower, any Guarantor or any ERISA Affiliate will be operated in compliance in all material respects with the provisions of ERISA and, to the extent applicable, the Code, including but not limited to the provisions thereunder respecting prohibited transactions.
- (d) *Terminability of Welfare Plans.* With respect to each Employee Benefit Plan maintained by Borrower, any Guarantor or an ERISA Affiliate which is an employee welfare benefit plan within the meaning of § 3(1) or § 3(2)(B) of ERISA, each such plan provides that Borrower, any Guarantor, or the ERISA Affiliate, as the case may be, has the right to terminate each such plan at any time (or at any time subsequent to the expiration of any applicable bargaining agreement) without liability other than liability to pay claims incurred prior to the date of termination.
- (e) *Multiemployer Plans.* Without the consent of Agent, neither Borrower nor any Guarantor nor any ERISA Affiliate will enter into, maintain or contribute to, any Multiemployer Plan other than a Multiemployer Plan listed on *Schedule 6.16*.
- (f) *Unfunded or Underfunded Liabilities.* Neither Borrower nor any Guarantor nor any ERISA Affiliate will, at any time, have accruing unfunded or underfunded liabilities with respect to any Employee Benefit Plan, Guaranteed Pension Plan or Multiemployer Plan which, in the aggregate, would exceed \$5,000,000, and will take all reasonable steps to prevent the occurrence of any condition with respect to any Multiemployer Plan that would create a withdrawal liability in excess of \$5,000,000.

§ 7.18. *Required Interest Rate Contracts.* During all periods in which the LIBOR Rate (as determined in accordance with the terms of this Agreement) for Interest Periods of one month exceeds seven per cent (7.0%), Borrower shall maintain in effect Interest Rate Contracts with counterparties and in form reasonably satisfactory to Agent covering that portion of Borrower's Variable Rate Indebtedness equal to the amount by which Borrower's Variable Rate Indebtedness (other than any such Variable Rate Indebtedness hedged by Interest Rate Contracts with a term expiring no earlier than the earlier of the Maturity Date or the maturity of the Indebtedness so hedged) exceeds 30% of Total Debt.

§ 7.19. *Forward Equity Contracts.* If Borrower shall enter into any forward equity contracts, Borrower shall only settle same by the delivery of stock.

SECTION 8. *CERTAIN NEGATIVE COVENANTS OF BORROWER.* Borrower covenants and agrees as follows, so long as any Loan or Note is outstanding or the Lenders have any obligation to make any Loans:

§ 8.1. *Intentionally Omitted.*

§ 8.2. *Restrictions on Investments.* Borrower will not, and will not permit Guarantor or any of the Related Companies to make or permit to exist or to remain outstanding any Investment except Investments in:

- (a) marketable direct or guaranteed obligations of the United States of America, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association or any agency or instrumentality of the United States of America provided such obligations are backed by the full faith and credit of the United States of America, that mature within one (1) year from the date of purchase by Borrower;
- (b) demand deposits, certificates of deposit, money market accounts, bankers acceptances eurodollar time deposits and time deposits of United States banks having total assets in excess of \$1,000,000,000 or repurchase obligations with a term of not more than 7 days with such banks for underlying securities of the type described in clause (a) of this § 8.2;
- (c) securities commonly known as "commercial paper" issued by a corporation organized and existing under the laws of the United States of America or any state thereof that at the time of purchase have been rated and the ratings for which are not less than "P 1" if rated by Moody's Investors Services, Inc., and not less than "A 1" if rated by Standard and Poor's and participations in short term commercial loans made to such corporations by a commercial bank which provides cash management services to Borrower;

- (d) Investments existing or contemplated on the date hereof and listed on *Schedule 8.2(d)* hereto;
- (e) Investments made in the ordinary course of Borrower's business in Interest Rate Contracts;
- (f) [Intentionally Omitted];
- (g) direct Investments in class B (or better) office properties (including the development of same) located in the greater New York City area, including fee simple and leasehold interests, in Real Estate Effective Control Assets, and in consolidated joint ventures in which Borrower or its wholly-owned Subsidiary owns at least a 75% beneficial interest and has the right to control policy and management of the subject joint venture; and
- (h) Investments in the following categories so long as the aggregate amount, without duplication, of all Investments described in this paragraph (h) does not exceed, at any time, twenty-five percent (25%) of Total Assets (the "Permitted Investments Cap") and the aggregate amount

40

of each of the following categories of Investments does not exceed the specified percentage of Total Assets set forth in the following table:

Category of Investment	Maximum Percentage of Total Assets
Permitted Developments (calculated at total project cost)	10%
Unconsolidated Entities primarily engaged in the business of development or ownership of class B (or better) office real estate located in the greater New York City area (calculated at book value of such Investment)	20%
Investment in properties (including the development of same) acquired in accordance with the provisions of § 1031 of the Code (single tenant, triple net leased to tenant rated "A-" or better by Standard & Poor's Ratings Group or Moody's Investors Services, Inc., minimum remaining lease term of 15 years)	2%
Structured Finance Investments	15%
Other Investments in Real Estate Assets (including land) and in entities primarily engaged in the business of owning such assets	10%
Other Investments not otherwise specifically identified in this § 8.2	10%

Notwithstanding the foregoing to the contrary, if, but only for so long as either (x) all Indebtedness of the Unconsolidated Entities does not exceed seventy-two percent (72%) of the aggregate Adjusted Net Operating Income for the immediately preceding fiscal quarter, annualized, for all Real Estate Assets of such Unconsolidated Entities divided by nine percent (9.0%) or (y) Structured Finance Investments do not exceed twelve percent (12%) of Total Assets, then (i) the Permitted Investments Cap shall increase from twenty-five percent (25%) of Total Assets to thirty percent (30%) of Total Assets and (ii) the Maximum Percentage of Total Assets in respect of Unconsolidated Entities (as described above) shall increase from twenty percent (20%) to twenty-five percent (25%).

Notwithstanding anything in this Agreement to the contrary, none of the provisions of any of § 8.2(h), and no Default or Event of Default arising out of a breach of any of the provisions of said § 8.2(h), may be amended, modified or waived without the written consent of the Requisite Lenders.

§ 8.3. *Merger, Consolidation and Other Fundamental Changes.* Borrower will not, and will not permit the Company to, consolidate with or merge into any other Person or Persons, or sell, convey, assign, transfer, lease or otherwise dispose of all or substantially all of their respective business, property or fixed assets taken as a whole to any other Person, provided, however, that this § 8.3 shall not be applicable to any merger or consolidation with respect to which all of the following are satisfied: (1) the surviving entity is Borrower, the Company or any Guarantor Subsidiary and there is no substantial change in senior management of the Company, (2) the other entity or entities involved in such merger or consolidation are engaged in the same line of business as Borrower, and (3) following such transaction, Borrower and the Company will not be in breach of any of the covenants, representations or warranties of this Agreement. Except as set forth on *Schedule 6.19*, the Company will not own or acquire any material assets other than its partnership interests in Borrower.

§ 8.4. *Intentionally Omitted.*

§ 8.5. *Compliance with Environmental Laws.* Borrower will not do, and will not permit the Company, any Guarantor or any of the other Related Companies to do, any of the following: (a) use any of the Real Estate or any portion thereof as a facility for the handling, processing, storage or disposal of Hazardous Materials except for immaterial amounts of Hazardous Materials used in the routine maintenance and operation of the Real Estate and in compliance with applicable law, (b) cause or permit to be located on any of the Real Estate any underground tank or other underground storage receptacle for Hazardous Materials except in material compliance with Environmental Laws,

41

(c) generate any Hazardous Materials on any of the Real Estate except in material compliance with Environmental Laws, or (d) conduct any activity at any Real Estate or use any Real Estate in any manner so as to cause a Release.

§ 8.6. *Distributions.* Borrower shall not permit the total Distributions by it and the Company during any fiscal year to exceed 90% of Funds from Operations for such year, except that such limitation on Distributions may be exceeded to the extent necessary for the Company to maintain its REIT status. During any period when any Default or Event of Default has occurred and is continuing the total Distributions by Borrower and the Company will not exceed the minimum amount necessary for the Company to maintain its REIT status. The Guarantor Subsidiaries will not make any Distributions except Distributions to Borrower or to the Company or to any Guarantor.

§ 8.7. *Preferred Distributions.* During any period when any Event of Default has occurred and is continuing no Preferred Distributions will be made.

§ 8.8. *Preferred Redemptions.* No payments of cash or cash equivalents by Borrower or the Company as consideration for the mandatory redemption or retirement of any preferred shares of beneficial interest in the Company, or any preferred units of limited partnership interest in Borrower, shall be made out of the proceeds of Indebtedness of Borrower or any Guarantor.

SECTION 9. *FINANCIAL COVENANTS OF BORROWER.* Borrower and the Company covenant and agree as follows, so long as any Loan or Note is outstanding or any Lender has any obligation to make any Loan:

§ 9.1. *Value of All Unencumbered Assets.*

- (a) Borrower will not at any time permit the outstanding balance of Unsecured Indebtedness to be greater than fifty five percent (55%) of the Value of All Unencumbered Assets.
- (b) Borrower will not at any time permit the Value of All Unencumbered Assets to be less than or equal to \$275,000,000.
- (c) Borrower will not at any time permit the aggregate number of Real Estate Assets which are Unencumbered Assets and which are used to calculate the Value of All Unencumbered Assets to be less than five (5).

§ 9.2. *Minimum Debt Service Coverage.* Borrower will not at any time permit the ratio of Adjusted EBITDA for Borrower, the Company and the Related Companies (on a consolidated basis in accordance with GAAP), to Interest Expense for Borrower, the Company and the Related Companies (on a consolidated basis in accordance with GAAP), to be less than 2.0 to 1.0 for any fiscal quarter of Borrower.

§ 9.3. *Total Debt to Total Assets.* Borrower and the Company will not at any time permit Total Debt to exceed fifty-five percent (55%) of Total Assets.

§ 9.4. *Maximum Secured Indebtedness; Secured Recourse Indebtedness.*

- (a) Borrower and the Company will not at any time permit the outstanding balance of Secured Indebtedness to exceed forty percent (40%) of Total Assets.
- (b) Borrower and the Company will not at any time permit the outstanding balance of Secured Recourse Indebtedness to exceed ten percent (10%) of Total Assets.
- (c) Borrower and the Company will not at any time permit the outstanding balance of any Secured Recourse Indebtedness to exceed seventy-five percent (75%) of the value of the Real Estate Asset and other assets (determined on the basis of "as-completed" appraisals) encumbered thereby.

42

§ 9.5. *Minimum Tangible Net Worth.* Borrower and the Company will not at any time permit the Tangible Net Worth of Borrower and the Company to be less than \$611,000,000 plus seventy-five percent (75%) of Net Offering Proceeds.

§ 9.6. *Unencumbered Asset Adjusted Net Operating Income to Assumed Debt Service.* Borrower will not at any time permit the ratio of its Unencumbered Asset Adjusted Net Operating Income with respect to all Unencumbered Assets to Assumed Debt Service with respect to all unsecured Indebtedness of Borrower, the Company and the other Guarantors to be less than 2.0 to 1.0 for any fiscal quarter, provided, however, that, to the extent an Unencumbered Asset was acquired or leased during the fiscal quarter being tested, the Unencumbered Asset Adjusted Net Operating Income shall include for purposes of calculating such ratio the pro forma results of any such Unencumbered Asset for such full quarter, with such pro forma results being calculated by using the Borrower's pro forma projections used in connection with its purchase of such property, which projections shall be subject to Agent's reasonable approval.

§ 9.7. *Adjusted EBITDA to Fixed Charges.* Borrower and the Company will not at any time permit the ratio of its Adjusted EBITDA to Fixed Charges to be less than 1.75 to 1.0 for any fiscal quarter.

§ 9.8. *Aggregate Occupancy Rate.* Borrower will not at any time permit the Aggregate Occupancy Rate to be less than eighty-five percent (85%).

§ 9.9. *Amendments and Modifications to § 9.*

- (a) Notwithstanding anything in this Agreement to the contrary, except as specifically contemplated pursuant to the terms and provisions of §5.2(b), none of the provisions of any of the foregoing §§ 9.1 through 9.8 of this Agreement, and no Default or Event of Default arising out of a breach of any of the provisions of any of the foregoing §§ 9.1 through 9.8 of this Agreement, may be amended, modified or waived without the written consent of the Requisite Lenders.
- (b) For purposes of the foregoing §§ 9.1 through 9.8 of this Agreement, if any change in Generally Accepted Accounting Principles after the Effective Date results in a material change in the calculation to be performed in any such section solely as a result of such change in Generally Accepted Accounting Principles, the Lenders and Borrower shall negotiate in good faith a modification of any such covenants so that the economic effect of the calculation of such covenant(s) using Generally Accepted Accounting Principles as so changed is as close as feasible to what the economic effect of the calculation of such covenant(s) would have been using Generally Accepted Accounting Principles as in effect as of the Effective Date.

SECTION 10. *CONDITIONS TO EFFECTIVENESS.* This Agreement shall become effective when each of the following conditions precedent have been satisfied:

§ 10.1. *Loan Documents.* Each of the Loan Documents shall have been duly executed and delivered by the respective parties thereto.

§ 10.2. *Certified Copies of Organization Documents; Good Standing Certificates.* Agent shall have received (i) a Certificate of the Company to which there shall be attached complete copies of Borrower's Limited Partnership Agreement and its Certificate of Limited Partnership, certified as of a recent date by the Secretary of State of Delaware, (ii) Certificates of Good Standing for Borrower from the State of New York and each State in which an Unencumbered Asset is

located, (iii) a copy of the Company's articles of incorporation certified as of a recent date by the Maryland Secretary of State, (iv) Certificates of Good Standing for the Company from the State of Maryland and each State in which an Unencumbered Asset is located, and (v) certificates of good standing and certificates from Borrower certifying as to true and complete copies of articles of incorporation, limited liability

company agreements, partnership agreements or certificates of limited partnership, as the case may be, of each of the other Guarantors.

§ 10.3. *By-laws; Resolutions.* All action on the part of Borrower and each Guarantor necessary for the valid execution, delivery and performance by Borrower and each Guarantor of this Agreement and the other Loan Documents to which it is or is to become a party shall have been duly and effectively taken, and evidence thereof satisfactory to Agent shall have been provided to Agent. Agent shall have received from the Company true copies of its by-laws and the resolutions adopted by its Board of Directors authorizing the transactions described herein, each certified by its secretary to be true and complete and in effect on the Effective Date.

§ 10.4. *Incumbency Certificate; Authorized Signers.* Agent shall have received from the Company an incumbency certificate, dated as of the Effective Date, signed by a duly authorized officer of the Company and giving the name and bearing a specimen signature of each individual who shall be authorized: (a) to sign, in the name and on behalf of the Company (in its own capacity and as general partner on behalf of Borrower and on behalf of each Guarantor which is a partnership), each of the Loan Documents to which Borrower or any Guarantor is or is to become a party; (b) to make Loan Requests and Conversion Requests; and (c) to give notices and to take other action on behalf of Borrower under the Loan Documents.

§ 10.5. *Title Insurance; Lien Searches.* Agent shall have received (i) reasonably satisfactory evidence of title insurance respecting each of the Unencumbered Assets by way of copies of the most recent fully effective title insurance policies (or marked and signed title insurance binders to the extent such policies have not been issued or are not otherwise available) and (ii) reasonably satisfactory current Uniform Commercial Code lien searches on Borrower and each of the Guarantors in such jurisdictions as Agent may reasonably require.

§ 10.6. *Opinions of Counsel Concerning Organization and Loan Documents.* Each of the Lenders and Agent shall have received favorable opinions from Borrower's counsel addressed to the Lenders and Agent and dated as of the Effective Date, in form and substance satisfactory to Agent.

§ 10.7. *Payment of Fees.* Borrower shall have paid to Agent the fees pursuant to § 4.1 and shall have paid all other expenses as provided in § 15 hereof then outstanding.

§ 10.8. *No Default under Original Agreement.* There shall exist no Default or Event of Default under the Original Agreement.

SECTION 11. *CONDITIONS TO ALL CREDIT ADVANCES.* The obligations of the Lenders to make any Loan, whether on or after the Effective Date, shall also be subject to the satisfaction of the following conditions precedent:

§ 11.1. *Representations True; No Event of Default; Compliance Certificate.* Each of the representations and warranties of Borrower and each Guarantor contained in this Agreement, the other Loan Documents or in any document or instrument delivered pursuant to or in connection with this Agreement shall be true as of the date as of which they were made and shall also be true at and as of the time of the making of such Loan, with the same effect as if made at and as of that time (except (i) to the extent of changes resulting from transactions contemplated or permitted by this Agreement and the other Loan Documents, (ii) to the extent of changes occurring in the ordinary course of business that singly or in the aggregate are not materially adverse, and (iii) to the extent that such representations and warranties relate expressly to an earlier date); Borrower shall have performed and complied with all terms and conditions herein required to be performed by it or prior to the Borrowing Date of such Loan; and no Default or Event of Default shall have occurred and be continuing on the date of any Loan Request or on the Borrowing Date of such Loan. Each of the Lenders shall have received a Compliance Certificate of Borrower signed by a Responsible Officer to such effect, which

certificate will include, without limitation, computations evidencing compliance with the covenants contained in § 9.1 through § 9.7 hereof after giving effect to such requested Loan.

§ 11.2. *No Legal Impediment.* No change shall have occurred in any law or regulations thereunder or interpretations thereof that in the reasonable opinion of any Lender would make it illegal for such Lender to make such Loan.

§ 11.3. *Proceedings and Documents.* All proceedings in connection with the transactions contemplated by this Agreement, the other Loan Documents and all other documents incident thereto shall be reasonably satisfactory in substance and in form to Agent, and the Lenders shall have received all information and such counterpart originals or certified or other copies of such documents as Agent may reasonably request.

SECTION 12. *EVENTS OF DEFAULT; ACCELERATION; ETC.*

§ 12.1. *Events of Default and Acceleration.* If any of the following events ("Events of Default" or, if the giving of notice or the lapse of time or both is required, then, prior to such notice or lapse of time, "Defaults") shall occur:

- (a) Borrower shall fail to pay any principal of the Loans when the same shall become due and payable;
- (b) Borrower shall fail to pay any interest on the Loans or any other sums due hereunder or under any of the other Loan Documents (other than principal) within five (5) days after the same shall become due and payable;
- (c) Borrower or the Company shall fail to comply with any of its covenants contained in § 7.5, the first sentence of § 7.6, § 7.7, § 7.13, § 8 or § 9 hereof;

- (d) Borrower or any Guarantor shall fail to perform any other term, covenant or agreement contained herein or in any of the other Loan Documents (other than those specified elsewhere in this § 12) for thirty (30) days after written notice of such failure from Agent to Borrower;
- (e) any representation or warranty of Borrower in this Agreement or any of the other Loan Documents or in any other document or instrument delivered pursuant to or in connection with this Agreement, shall prove to have been false in any material respect upon the date when made or deemed to have been made or repeated;
- (f) Borrower, the Company, any Guarantor, any of the Related Companies or any Unconsolidated Entity shall fail to pay at maturity, or within any applicable period of grace, any Recourse Indebtedness, or shall fail to observe or perform any material term, covenant or agreement contained in any agreement by which it is bound, evidencing or securing Recourse Indebtedness for such period of time as would permit (assuming the giving of appropriate notice if required) the holder or holders thereof or of any obligations issued thereunder to accelerate the maturity thereof, and in any event, such failure shall continue for thirty (30) days, unless the aggregate amount of all such defaulted Recourse Indebtedness is less than \$10,000,000.00, provided, however, that defaulted Recourse Indebtedness of an Unconsolidated Entity in which Borrower and/or any Guarantor and/or any Related Company (x) owns less than fifty percent (50%) of the equity interest and (y) has no power to control the management and policies of such Unconsolidated Entity (any such defaulted Recourse Indebtedness, "Special Recourse Indebtedness") shall only be included for purposes of determining whether the aggregate amount of all such defaulted Recourse Indebtedness is less than \$10,000,000 to the extent, if any, that said Special Recourse Indebtedness is Recourse, directly or indirectly, to Borrower, any Guarantor or any Related Company or any of their respective assets (other than their respective interests in such Unconsolidated Entity),

45

provided, further, however, that Indebtedness of any Unconsolidated Entity in or to which Borrower, any Guarantor or any Related Company has made a Structured Finance Investment shall not be considered Indebtedness for purposes of this § 12.1(f) (For purposes of this § 12.1(f) "Recourse" shall mean any obligation or liability except an obligation or liability with respect to which recourse for payment is contractually limited (except for customary exclusions) to specifically identified assets only.);

- (g) Borrower, the Company, any Guarantor, any of the Related Companies or any Unconsolidated Entity shall fail to pay at maturity, or within any applicable period of grace, any Indebtedness other than Recourse Indebtedness, or shall fail to observe or perform any material term, covenant or agreement contained in any agreement by which it is bound, evidencing or securing Indebtedness other than Recourse Indebtedness for such period of time as would permit (assuming the giving of appropriate notice if required) the holder or holders thereof or of any obligations issued thereunder to accelerate the maturity thereof, and in any event, such failure shall continue for thirty (30) days, unless the aggregate amount of all such defaulted Indebtedness other than Recourse Indebtedness plus the amount of any unsatisfied judgments is less than \$25,000,000.00, provided, however, that defaulted Indebtedness other than Recourse Indebtedness of any Unconsolidated Entity in which Borrower and/or any Guarantor and/or any Related Company (x) owns less than fifty percent (50%) of the equity interest and (y) has no power to control the management and policies of such Unconsolidated Entity (any such defaulted Indebtedness, "Special Nonrecourse Indebtedness") shall not be included for purposes of determining whether the aggregate amount of defaulted Indebtedness other than Recourse Indebtedness plus the amount of any unsatisfied judgments is less than \$25,000,000.00 unless and until the aggregate amount of Borrower's and/or Guarantor's and/or any Related Company's pro-rata share of such Special Nonrecourse Indebtedness exceeds ten percent (10%) of the Total Assets of Borrower, provided, further, however, that Indebtedness of any Unconsolidated Entity in or to which Borrower, any Guarantor or any Related Company has made a Structured Finance Investment shall not be considered Indebtedness for purposes of this § 12.1(g);
- (h) (i) any of Borrower, the Company or any Guarantor shall make an assignment for the benefit of creditors, or admit in writing its inability to pay or generally fail to pay its debts as they mature or become due, or shall petition or apply for the appointment of a trustee or other custodian, liquidator or receiver of any substantial part of its properties or shall commence any case or other proceeding under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation or similar law of any jurisdiction, now or hereafter in effect, or shall take any action to authorize or in furtherance of any of the foregoing, or if any such petition or application shall be filed or any such case or other proceeding shall be commenced against any such Person and such Person shall indicate its approval thereof, consent thereto or acquiescence therein, or (ii) any of the events described in clause (i) of this paragraph shall occur with respect to any other Related Company or any Unconsolidated Entity and such event shall have a Material Adverse Effect;
- (i) (i) a decree or order is entered appointing any such trustee, custodian, liquidator or receiver or adjudicating Borrower, the Company, or any Guarantor bankrupt or insolvent, or approving a petition in any such case or other proceeding, or a decree or order for relief is entered in respect of Borrower, the Company, or any Guarantor in an involuntary case under federal bankruptcy laws as now or hereafter constituted or (ii) any of the events described in clause (i) of this paragraph shall occur with respect to any other Related Company or any Unconsolidated Entity and such event shall have a Material Adverse Effect;
- (j) there shall remain in force, undischarged, unsatisfied and unstayed, for more than thirty days, whether or not consecutive, any uninsured final judgment against Borrower that, with other

46

outstanding uninsured final judgments, undischarged, against Borrower, the Company or any of the Related Companies, exceeds in the aggregate \$5,000,000.00;

- (k) if any of the Loan Documents or any material provision of any Loan Documents shall be unenforceable, cancelled, terminated, revoked or rescinded otherwise than in accordance with the terms thereof or with the express prior written agreement, consent or approval of Agent, or any action at law, suit or in equity or other legal proceeding to make unenforceable, cancel, revoke or rescind any of the Loan Documents shall be commenced by or on behalf of Borrower or any Guarantor, or any court or any other governmental or regulatory authority or agency of competent jurisdiction shall make a determination that, or issue a judgment, order, decree or ruling to the effect that, any one or more of the Loan Documents is illegal, invalid or unenforceable in accordance with the terms thereof;
- (l)

one or more ERISA Events occurs which individually or in the aggregate results in or might reasonably be expected to result in liability of Borrower or any Guarantor or any of their ERISA Affiliates in excess of \$5,000,000 at any one time during the term of this Agreement; or if, at any one time, there exists an amount of unfunded pension liabilities (as defined in Section 4001(a)(18) of ERISA), individually or in the aggregate for all Guaranteed Pension Plans (excluding for purposes of such computation any Guaranteed Pension Plans with respect to which assets exceed benefit liabilities), which exceeds \$5,000,000;

- (m) Borrower or any Guarantor shall be indicted for a federal crime, a punishment for which could include the forfeiture of any assets of Borrower or Guarantor;
- (n) Borrower shall fail to pay, observe or perform any term, covenant, condition or agreement contained in any agreement, document or instrument evidencing, securing or otherwise relating to any Indebtedness of Borrower to any Lender (other than the Obligations) within any applicable period of grace provided for in such agreement, document or instrument;
- (o) any Material Adverse Effect shall occur;
- (p) any "Event of Default", as defined in any of the other Loan Documents shall occur;

then, and in any such event, so long as the same may be continuing, Agent may, and upon the request of the Requisite Lenders shall, by notice in writing to Borrower declare all amounts owing with respect to this Agreement, the Notes and the other Loan Documents to be, and they shall thereupon forthwith become, immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by Borrower and each Guarantor; provided that in the event of any Event of Default specified in §§ 12.1(h) or 12.1(i), all such amounts shall become immediately due and payable automatically and without any requirement of notice from Agent or action by the Requisite Lenders.

§ 12.2. *Termination of Commitments.* If any one or more Events of Default specified in § 12.1(h) or § 12.1(i) shall occur, any unused portion of the Commitments hereunder shall forthwith terminate and the Lenders shall be relieved of all obligations to make Loans to Borrower. If any other Event of Default shall have occurred and be continuing, Agent, at the direction of the Majority Lenders, may by notice to Borrower terminate the unused portion of the Commitments hereunder and upon such notice being given such unused portion of the Commitments hereunder shall terminate immediately and the Lenders shall be relieved of all further obligations to make Loans. No termination of the Commitments hereunder shall relieve Borrower of any of the Obligations or any of its existing obligations to any Lender arising under other agreements or instruments.

§ 12.3. *Remedies.* In case any one or more of the Events of Default shall have occurred, and whether or not the Requisite Lenders shall have accelerated the maturity of the Loans pursuant to § 12.1, each Lender, if owed any amount with respect to the Loans, may, with the consent of the

Requisite Lenders, direct Agent to proceed to protect and enforce the rights and remedies of Agent and the Lenders under this Agreement, the Notes or any of the other Loan Documents by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Agreement and the other Loan Documents or any instrument pursuant to which the Obligations are evidenced and, if any amount shall have become due, by declaration or otherwise, to proceed to enforce the payment thereof or any other legal or equitable right of such Lender. No remedy herein conferred upon any Lender or Agent or the holder of any Note is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or any other provision of law.

§ 12.4. *Distribution of Enforcement Proceeds.* In the event that, following the occurrence or during the continuance of any Default or Event of Default, Agent or any Lender as the case may be, receives any monies in connection with the enforcement of any of the Loan Documents, such monies shall be distributed for application as follows:

- (a) First, to the payment of, or (as the case may be) the reimbursement of Agent for or in respect of all reasonable costs, expenses, disbursements and losses which shall have been incurred or sustained by Agent in connection with the collection of such monies by Agent, for the exercise, protection or enforcement by Agent of all or any of the rights, remedies, powers and privileges of Agent or the Lenders under this Agreement or any of the other Loan Documents or in support of any provision of adequate indemnity to Agent against any taxes or liens which by law shall have, or may have, priority over the rights of Agent to such monies;
- (b) Second, to all other Obligations in such order or preference as the Requisite Lenders may determine; provided, however, that distribution in respect of such Obligations shall be made among the Lenders pro rata in accordance with each Lender's respective Commitment Percentage;
- (c) Third, upon payment and satisfaction in full or other provisions for payment in full satisfactory to all the Lenders and Agent of all of the Obligations, to the payment of any obligations required to be paid pursuant to § 9-615(a)(3) and (b) of the Uniform Commercial Code of the State of New York; and
- (d) Fourth, the excess, if any, shall be returned to Borrower or to such other Persons as are legally entitled thereto.

SECTION 13. *SETOFF.* During the continuance of any Event of Default, any deposits (general or specific, time or demand, provisional or final, regardless of currency, maturity, or the branch of where such deposits are held) or other sums credited by or due from any of the Lenders to Borrower, the Company or any of the other Guarantors and any securities or other property of Borrower, the Company or any of the other Guarantors in the possession of such Lender may be applied to or set off against the payment of Obligations and any and all other liabilities, direct, or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, of Borrower to such Lender. Each of the Lenders agrees with each other Lender that (a) if an amount to be set off is to be applied to Indebtedness of Borrower, the Company or any of the other Guarantors to such Lender, other than Indebtedness evidenced by the Notes held by such Lender, such amount shall be applied ratably to such other Indebtedness and to the Indebtedness evidenced by all such Notes held by such Lender, and (b) if such Lender shall receive from Borrower, the Company or any of the other Guarantors, whether by voluntary payment, exercise of the right of setoff, counterclaim, cross action, enforcement of the claim evidenced by the Notes held by such Lender by proceedings against Borrower, the Company or any of the

other Guarantors at law or in equity or by proof thereof in bankruptcy, reorganization, liquidation, receivership or similar proceedings, or otherwise, and shall retain and apply to the payment of the Note or Notes held by such Lender any amount in excess of its ratable portion of the payments received by all of the Lenders with respect to the Notes held by all of the Lenders, such Lender will make such disposition and arrangements with the other Lenders with respect to such excess, either by way of distribution, pro tanto assignment of claims, subrogation or otherwise as shall result in each Lender receiving in respect of the Notes held by it its proportionate payment as contemplated by this Agreement; provided that if all or any part of such excess payment is thereafter recovered from such Lender, such disposition and arrangements shall be rescinded and the amount restored to the extent of such recovery, but without interest.

SECTION 14. AGENT.

§ 14.1. *Authorization.* Agent is authorized to take such action on behalf of each of the Lenders and to exercise all such powers as are hereunder and under any of the other Loan Documents and any related documents delegated to Agent, together with such powers as are reasonably incident thereto, provided that no duties or responsibilities not expressly assumed herein or therein shall be implied to have been assumed by Agent. The relationship between Agent and the Lenders is and shall be that of agent and principal only, and nothing contained in this Agreement or any of the other Loan Documents shall be construed to constitute Agent as a trustee for any Lender.

§ 14.2. *Employees and Agents.* Agent may exercise its powers and execute its duties by or through employees or agents and shall be entitled to take, and to rely on, advice of counsel concerning all matters pertaining to its rights and duties under this Agreement and the other Loan Documents. Agent may utilize the services of such Persons as Agent in its sole discretion may reasonably determine, and all reasonable fees and expenses of such Persons shall be paid by Borrower.

§ 14.3. *No Liability to Lenders.* Neither Agent nor any of its shareholders, directors, officers or employees nor any other Person assisting them in their duties nor any agent or employee thereof, shall be liable to any Lender for any waiver, consent or approval given or any action taken, or omitted to be taken, in good faith by it or them hereunder or under any of the other Loan Documents, or in connection herewith or therewith, or be responsible for the consequences of any oversight or error of judgment whatsoever, except that Agent or such other Person, as the case may be, shall be liable for losses due to its willful misconduct or gross negligence.

§ 14.4. *No Representations.* Agent shall not be responsible for the execution or validity or enforceability of this Agreement, the Notes, any of the other Loan Documents or any instrument at any time constituting, or intended to constitute, collateral security for the Notes, or for the value of any such collateral security or for the validity, enforceability or collectibility of any such amounts owing with respect to the Notes, or for any recitals or statements, warranties or representations made herein or in

49

any of the other Loan Documents or in any certificate or instrument hereafter furnished to it by or on behalf of Borrower, or be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions, covenants or agreements herein or in any instrument at any time constituting, or intended to constitute, collateral security for the Notes. Agent shall not be bound to ascertain whether any notice, consent, waiver or request delivered to it by Borrower or any Guarantor or any holder of any of the Notes shall have been duly authorized or is true, accurate and complete. Agent has not made nor does it now make any representations or warranties, express or implied, nor does it assume any liability to the Lenders, with respect to the credit worthiness or financial condition of Borrower, the Company or any of the other Guarantors. Each Lender acknowledges that it has, independently and without reliance upon Agent or any other Lender, and based upon such information and documents as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender has either (x) been independently represented by separate counsel on all matters regarding this Agreement or (y) knowingly waived any such representation.

§ 14.5. *Payments.*

- (a) A payment by Borrower to Agent hereunder or any of the other Loan Documents for the account of any Lender shall constitute a payment to such Lender subject to the pro rata rights to repayment based upon the Commitment Percentage of each Lender. Neither Borrower nor any Guarantor shall have any obligation to see to the proper application by Agent of any amounts paid by any of them to Agent for the account of the Lenders. Agent agrees promptly to distribute to each Lender such Lender's pro rata share of payments received by Agent for the account of the Lenders except as otherwise expressly provided herein or in any of the other Loan Documents. Notwithstanding the foregoing, the amounts advanced by the Additional Commitment Lenders on the Commitment Increase Date and certain Fixed Rate Prepayment Fees shall be distributed on a non pro rata basis as provided in § 2.2(b) and the commitment fees for the quarter which included the Commitment Increase Date shall be paid as provided in § 4.2.
- (b) If in the opinion of Agent the distribution of any amount received by it in such capacity hereunder, under the Notes or under any of the other Loan Documents might involve it in liability, it may refrain from making distribution until its right to make distribution shall have been adjudicated by a court of competent jurisdiction. If a court of competent jurisdiction shall adjudge that any amount received and distributed by Agent is to be repaid, each Person to whom any such distribution shall have been made shall either repay to Agent its proportionate share of the amount so adjudged to be repaid or shall pay over the same in such manner and to such Persons as shall be determined by such court.
- (c) Notwithstanding anything to the contrary contained in this Agreement or any of the other Loan Documents, any Lender that fails (i) to make available to Agent its pro rata share of any Loan or (ii) to comply with the provisions of § 13 with respect to making dispositions and arrangements with the other Lenders, where such Lender's share of any payment received, whether by setoff or otherwise, is in excess of its pro rata share of such payments due and payable to all of the Lenders, in each case as, when and to the full extent required by the provisions of this Agreement, or to adjust promptly such Lender's outstanding principal and its pro rata Commitment Percentage as provided in § 2.1 hereof, shall be deemed delinquent (a "Delinquent Lender") and shall be deemed a Delinquent Lender until such time as such delinquency is satisfied. A Delinquent Lender shall be deemed to have assigned any and all payments due to it from Borrower under the Loan Documents, whether on account of outstanding Loans, interest, fees or otherwise, to the remaining nondelinquent Lenders for application to, and reduction of, their respective pro rata shares of all outstanding Loans. The Delinquent Lender hereby authorizes Agent to distribute such payments to the nondelinquent Lenders in proportion to their respective pro rata shares of all outstanding Loans. A

Delinquent Lender shall be deemed to have satisfied in full a delinquency when and if, as a result of application of the assigned payments to all outstanding Loans of the nondelinquent Lenders, the Lenders' respective pro rata shares of all outstanding Loans have returned to those in effect immediately prior to such delinquency and without giving effect to the nonpayment causing such delinquency.

- (d) If any amount which Agent is required to distribute to the Lenders pursuant to this § 14.5 is actually distributed to any Lender on a date which is later than the first Business Day following Agent's receipt of the corresponding payment from Borrower, Agent shall pay to such Lender on demand an amount equal to the product of (i) the average computed for the period referred to in clause (iii) below, of the weighted average interest rate paid by Agent for federal funds acquired by Agent during each day included in such period, times (ii) the amount of such late distribution to such Lender, times (iii) a fraction, the numerator of which is the number of days or portion thereof that elapsed from and including the second Business Day after Agent's receipt of such corresponding payment from Borrower to the date on which the amount so required to be distributed to such Lender actually is distributed, and the denominator of which is 365.

§ 14.6. *Holder of Notes.* Agent may deem and treat the payee of any Note as the absolute owner or purchaser thereof for all purposes hereof until it shall have been furnished in writing with a different name by such payee or by a subsequent holder assignee or transferee.

§ 14.7. *Indemnity.* The Lenders ratably agree hereby to indemnify and hold harmless Agent from and against any and all claims, actions and suits (whether groundless or otherwise), losses, damages, costs, expenses (including any expenses for which Agent has not been reimbursed by Borrower and the Guarantors as required by § 15), and liabilities of every nature and character arising out of or related to this Agreement, the Notes, or any of the other Loan Documents or the transactions contemplated or evidenced hereby or thereby, or Agent's actions taken hereunder or thereunder, except to the extent that any of the same shall be directly caused by Agent's willful misconduct or gross negligence.

§ 14.8. *Agent as Lender.* In its individual capacity, Wells Fargo Bank, National Association shall have the same obligations and the same rights, powers and privileges in respect to its Commitment and the Loans made by it, and as the holder of any of the Notes as it would have were it not also Agent.

§ 14.9. *Resignation.* Agent may resign at any time by giving thirty (30) days, prior written notice thereof to the Lenders and Borrower; provided, however, that unless a Default or Event of Default has occurred and is continuing, Wells Fargo Bank, National Association may not voluntarily resign as Agent under the provisions of this Agreement without Borrower's consent. Upon any such resignation, the Requisite Lenders shall have the right to appoint a successor Agent. Unless a Default or Event of Default shall have occurred and be continuing, appointment of such successor Agent shall be subject to the reasonable approval of Borrower. If no successor Agent shall have been so appointed by the Requisite Lenders and shall have accepted such appointment within thirty (30) days after the giving of notice of resignation or removal or if Borrower (to the extent it has approval rights with respect to the successor Agent) has disapproved or failed to approve a successor agent within such period, then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent, which shall be a financial institution having a rating of not less than A2/P2 or its equivalent by Standard & Poor's Corporation. Upon the acceptance of any appointment as Agent hereunder by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations as Agent hereunder. After any retiring Agent's resignation, the provisions of this Agreement and the other Loan Documents shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Agent.

51

§ 14.10. *Notification of Defaults and Events of Default and other Notices.* Each Lender hereby agrees that, upon learning of the existence of a Default or an Event of Default, it shall promptly notify Agent thereof. Agent hereby agrees that upon receipt of any notice under this § 14.10, or upon it otherwise learning of the existence of a Default or an Event of Default, it shall promptly notify the other Lenders of the existence of such Default or Event of Default. Agent shall also promptly provide each Lender with a copy of any notices which Agent receives from Borrower pursuant to § 7.5 or § 7.13.

§ 14.11. *Duties in the Case of Enforcement.* In case one or more Events of Default have occurred and shall be continuing, and whether or not acceleration of the Obligations shall have occurred, Agent may, with the consent of the Requisite Lenders (which consents may be obtained orally in emergency situations), and Agent shall, if (a) so requested by the Requisite Lenders and (b) the Lenders have provided to Agent such additional indemnities and assurances against expenses and liabilities as Agent may reasonably request, proceed to enforce the provisions of the Loan Documents and exercise all or any such other legal and equitable and other rights or remedies as it may have. The Requisite Lenders may direct Agent in writing as to the method and the extent of any such enforcement actions, the Lenders hereby agreeing to indemnify and hold Agent harmless from all liabilities incurred in respect of all actions taken or omitted in accordance with such directions, provided that Agent need not comply with any such direction to the extent that Agent reasonably believes Agent's compliance with such direction to be unlawful or commercially unreasonable in any applicable jurisdiction.

§ 14.12. *Mandatory Resignation of Agent.* Agent shall be obligated to resign in accordance with, and subject to, the provisions of § 14.9, without the consent of Borrower, upon the written request of all Lenders, excluding the Lender which is then Agent hereunder, provided such request is made as a result of Agent's gross negligence or willful misconduct, and provided further that the successor Agent actively administers credits of similar size and complexity to this Agreement and the Loans.

§ 14.13. *Matters as to Borrower.*

- (a) Except as expressly set forth in this Agreement, Borrower shall have no obligation to cause Agent or any of the Lenders to perform their respective obligations under this Agreement.
- (b) Notwithstanding that a matter in question requires the consent, approval or direction of any or all of the Lenders, Borrower may rely exclusively on the written notice of Agent that such consent, approval, or direction has been given or obtained to bind the Lenders.

SECTION 15. *EXPENSES.* Borrower and each of the Guarantors jointly and severally agree to pay (a) the reasonable costs of producing and reproducing this Agreement, the other Loan Documents and the other agreements and instruments mentioned herein, (b) any taxes (including any interest and penalties in respect thereto) payable by Agent or any of the Lenders (other than taxes based upon Agent's or any Lender's net income), including any recording, mortgage, documentary or intangibles taxes in connection with the Loan Documents, or other taxes payable on or with respect to the transactions contemplated by this Agreement, including any taxes payable by Agent or any of the Lenders after the Effective Date (Borrower hereby agreeing to indemnify the Lenders with respect thereto), (c) all title examination costs, appraisal fees, engineers', inspectors' and surveyors' fees, recording costs and the reasonable fees, expenses and disbursements of Agent's counsel or any local counsel to Agent incurred in connection with the preparation, administration or interpretation of the Loan

Documents and other instruments mentioned herein, and amendments, modifications, approvals, consents or waivers hereto or hereunder, it being understood and agreed that Agent shall not conduct engineering studies or Appraisals with respect to Unencumbered Asset unless specifically requested to do so by the Requisite Lenders, in which case Agent shall submit a budget to Borrower of all fees and expenses to be incurred by Agent prior to engaging any of such professionals for Borrower's approval, which shall not be unreasonably withheld, (d) the fees, costs, expenses and disbursements of Agent incurred in connection with the preparation, administration or interpretation of the Loan Documents

and other instruments mentioned herein including, without limitation, the costs incurred by Agent in connection with its inspection of the Unencumbered Assets, and the fees and disbursements of Agent's counsel and Borrower's legal counsel in preparing documentation, (e) all reasonable out-of-pocket expenses (including reasonable attorneys' fees and costs, which attorneys may be employees of any Lender or Agent and the fees and costs of appraisers, engineers, investment bankers, surveyors or other experts retained by Agent or any Lender in connection with any such enforcement proceedings) incurred by any Lender or Agent in connection with (i) the enforcement of or preservation of rights under any of the Loan Documents against Borrower or the Guarantors or the administration thereof after the occurrence of a Default or Event of Default (including, without limitation, expenses incurred in any restructuring and/or "workout" of the Loans), and (ii) any litigation, proceeding or dispute whether arising hereunder or otherwise, in any way related to Agent's or the Lender's relationship with Borrower, the Company, any Unconsolidated Entity or any of the Related Companies (but not including any dispute between Agent (or any Lender) and any other Lender), (f) all reasonable fees, expenses and disbursements of Agent incurred in connection with UCC searches, and (g) all costs incurred by Agent in the future in connection with its inspection of the Unencumbered Assets. The covenants of this § 15 shall survive payment or satisfaction of payment of amounts owing with respect to the Notes.

SECTION 16. INDEMNIFICATION. Borrower and each of the Guarantors hereby jointly and severally agree to indemnify and hold harmless Agent and the Lenders and the shareholders, directors, agents, officers, subsidiaries, and affiliates of Agent and the Lenders from and against any and all claims, actions or causes of action and suits whether groundless or otherwise, and from and against any and all liabilities, losses, settlement payments, obligations, damages and expenses of every nature and character arising out of this Agreement or any of the other Loan Documents or the transactions contemplated hereby or which otherwise arise in connection with the financing including, without limitation except to the extent directly caused by the gross negligence or willful misconduct of a Lender or Agent or any of the aforementioned indemnified parties (but such limitation on indemnification shall only apply to Agent or Lender or any of the aforementioned indemnified parties being grossly negligent or committing willful misconduct), (a) any actual or proposed use by Borrower of the proceeds of any of the Loans, (b) any actual or alleged infringement of any patent, copyright, trademark, service mark or similar right of Borrower or any of the Guarantors, (c) Borrower or any of the Guarantors entering into or performing this Agreement or any of the other Loan Documents or (d) with respect to Borrower or any of the Guarantors and their respective properties, the violation of any Environmental Law, the Release or threatened Release of any Hazardous Materials or any action, suit, proceeding or investigation brought or threatened with respect to any Hazardous Materials (including, but not limited to claims with respect to wrongful death, personal injury or damage to property), (e) any cost, claim liability, damage or expense in connection with any harm Borrower or any of the Guarantors may be found to have caused in the role of a broker, in each case including, without limitation, the reasonable fees and disbursements of counsel incurred in connection with any such investigation, litigation or other proceeding. In litigation, or the preparation therefor, the Lenders and Agent shall each be entitled to select their own separate counsel and, in addition to the foregoing indemnity, Borrower and each of the Guarantors jointly and severally agree to pay promptly the reasonable fees and expenses of such counsel. If, and to the extent that the obligations of Borrower or any of the Guarantors under this § 16 are unenforceable for any reason, Borrower and each of the Guarantors jointly and severally agree to make the maximum contribution to the payment in satisfaction of such obligations which is permissible under applicable law. The provisions of this § 16 shall survive the repayment of the Loans and the termination of the obligations of the Lenders hereunder and shall continue in full force and effect as to the Lenders so long as the possibility of any such claim, action, cause of action or suit exists.

SECTION 17. SURVIVAL OF COVENANTS, ETC. All covenants, agreements, representations and warranties made herein, in the Notes, in any of the other Loan Documents or in any documents or other papers delivered by or on behalf of Borrower or any Guarantor pursuant hereto shall be deemed to have been relied upon by the Lenders and Agent, notwithstanding any investigation heretofore or hereafter made by it, and shall survive the making by the Lenders of the Loans, as herein contemplated, and shall continue in full force and effect so long as any amount due under this Agreement or the Notes or any of the other Loan Documents remains outstanding or the Lenders have any obligation to make any Loans. The indemnification obligations of Borrower and the Guarantors provided herein and the other Loan Documents shall survive the full repayment of amounts due and the termination of the obligations of the Lenders hereunder and thereunder to the extent provided herein and therein. All statements contained in any certificate or other paper delivered to Agent or any Lender at any time by or on behalf of Borrower or any of the Guarantors pursuant hereto or in connection with the transactions contemplated hereby (other than third party reports, such as engineering reports and environmental studies) shall constitute representations and warranties by Borrower or any of the Guarantors hereunder.

SECTION 18. GUARANTY.

§ 18.1. *Guaranty.* Subject to § 18.7 below, each of the Guarantors hereby, jointly and severally, unconditionally guarantees to each Lender and Agent the prompt payment of the Guaranteed Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise) (the "Guaranty"). The Guarantors additionally, jointly and severally, unconditionally guarantee to each Lender and Agent the timely performance of all other obligations of Borrower under the Loan Documents. This Guaranty is a guaranty of payment and not of collection and is a continuing guaranty and shall apply to Guaranteed Obligations whenever arising.

§ 18.2. *Obligations Unconditional.* The obligations of the Guarantors hereunder are absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Guaranteed Obligations or any of the Loan Documents, or any other agreement or instrument referred to therein, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor. Each Guarantor agrees that this Guaranty may be enforced by Agent, on behalf of the Lenders, without necessity at any time of resorting to or exhausting any other security or collateral and without the necessity at any time of having recourse to the Notes, any other of the Loan Documents or any collateral, if any, hereafter securing the Guaranteed Obligations or otherwise, and each Guarantor hereby waives the right to require the Lenders to proceed against Borrower or any other Person (including a co-guarantor) or to require the Lenders to pursue any other remedy or enforce any other right. Each Guarantor further agrees that it shall have no right of subrogation, indemnity, reimbursement or contribution against Borrower or any other Guarantor of the Guaranteed Obligations for amounts paid under this Guaranty until such time as the Lenders have been paid in full, all Commitments under this Agreement have been terminated, and no Person or governmental authority shall have any right to request any return or reimbursement of funds from the Lenders in connection with monies received under the Loan Documents. Each Guarantor further agrees that nothing contained herein shall prevent Agent or the Lenders

from suing on the Notes or any of the other Loan Documents or foreclosing their security interest in or Lien on any collateral, if any, securing Guaranteed Obligations or from exercising any other rights available to them under this Agreement, the Notes, any other of the Loan Documents, or any other instrument of security, if any, and the exercise of any of the aforesaid rights and the completion of any foreclosure proceedings shall not constitute a discharge of any Guarantor's obligations hereunder; it being the purpose and intent of each Guarantor that its obligations hereunder shall be absolute, independent and unconditional under any and all circumstances. Neither any Guarantor's obligations under this Guaranty nor any remedy for the enforcement thereof shall be impaired, modified, changed or released in any manner whatsoever by

an impairment, modification, change, release or limitation of the liability of Borrower or by reason of the bankruptcy or insolvency of Borrower. Each Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Guaranteed Obligations and notice of or proof of reliance of by, Agent or any Lender upon this Guaranty or acceptance of this Guaranty. The Guaranteed Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon this Guaranty. All dealings between Borrowers and any of the Guarantors, on the one hand, and Agent and the Lenders, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon this Guaranty.

§ 18.3. *Modifications.* Each Guarantor agrees that (a) all or any part of the security now or hereafter held for the Guaranteed Obligations, if any, may be exchanged, compromised or surrendered from time to time; (b) the Lenders shall not have any obligation to protect, perfect, secure or insure any such security interests, Liens or encumbrances now or hereafter held, if any, for the Guaranteed Obligations or the properties subject thereto; (c) the time or place of payment of the Guaranteed Obligations may be changed or extended, in whole or in part, to a time certain or otherwise, and may be renewed or accelerated, in whole or in part; (d) Borrower and any other party liable for payment under the Loan Documents may be granted indulgences generally; (e) any of the provisions of the Notes or any of the other Loan Documents may be modified, amended or waived; (f) any party (including any co-guarantor) liable for the payment thereof may be granted indulgences or be released; and (g) any deposit balance for the credit of Borrower or any other party liable for the payment of the Guaranteed Obligations or liable upon any security therefor may be released, in whole or in part, at, before or after the stated, extended or accelerated maturity of the Guaranteed Obligations, all without notice to or further assent by such Guarantor, which shall remain bound thereon, notwithstanding any such exchange, compromise, surrender, extension, renewal, acceleration, modification, indulgence or release. Each Guarantor hereby appoints Borrower as its agent to execute and deliver any amendments to or modifications or waivers of the Loan Documents, and Agent and the Lenders may rely on such appointment until such time as a Guarantor advises Agent and the Lenders in writing that Borrower is no longer authorized to so act as its agent.

§ 18.4. *Waiver of Rights.* Each Guarantor expressly waives to the fullest extent permitted by applicable law: (a) notice of acceptance of this Guaranty by the Lenders and of all extensions of credit to Borrower by the Lenders; (b) presentment and demand for payment or performance of any of the Guaranteed Obligations; (c) protest and notice of dishonor or of default (except as specifically required in this Agreement) with respect to the Guaranteed Obligations or with respect to any security therefor; (d) notice of the Lenders obtaining, amending, substituting for, releasing, waiving or modifying any security interest, Lien or encumbrance, if any, hereafter securing the Guaranteed Obligations, or the Lenders' subordinating, compromising, discharging or releasing such security interests, Liens or encumbrances, if any; (e) all other notices to which such Guarantor might otherwise be entitled; and (f) demand for payment under this Guaranty.

§ 18.5. *Reinstatement.* The obligations of the Guarantors under this § 18 shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and each Guarantor agrees that it will indemnify Agent and each Lender on demand for all reasonable costs and expenses (including, without limitation, reasonable fees of counsel) incurred by Agent or such Lender in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

§ 18.6. *Remedies.* The Guarantors agree that, as between the Guarantors, on the one hand, and Agent and the Lenders, on the other hand, the Guaranteed Obligations may be declared to be

forthwith due and payable as provided in § 12 hereof (and shall be deemed to have become automatically due and payable in the circumstances provided in § 12 hereof) notwithstanding any stay, injunction or other prohibition preventing such declaration (or preventing such Guaranteed Obligations from becoming automatically due and payable) as against any other Person and that, in the event of such declaration (or such Guaranteed Obligations being deemed to have become automatically due and payable), such Guaranteed Obligations (whether or not due and payable by any other Person) shall forthwith become due and payable by the Guarantors.

§ 18.7. *Limitation of Guaranty.* Notwithstanding any provision to the contrary contained herein or in any of the other Loan Documents, to the extent the obligations of any Guarantor shall be adjudicated to be invalid or unenforceable for any reason (including, without limitation, because of any applicable state or federal law relating to fraudulent conveyances or transfers), then the obligations of such Guarantor hereunder shall be limited to the maximum amount that is permissible under applicable law (whether federal or state and including, without limitation, the Bankruptcy Code).

§ 18.8. *Release of Guaranty.* Upon consummation of the sale, conveyance, pledge or other transfer of all of the stock or other evidence of beneficial or legal ownership, or a sale, mortgage or pledge of all or substantially all of the assets, of any Guarantor other than the Company, so long as no Default or Event of Default shall have occurred and be continuing, the Guaranty of such Guarantor, and all of its obligations and liabilities under the Loan Documents, shall be, and shall be deemed to be, released and discharged, and upon the request of such released Guarantor, Agent shall acknowledge such release in writing.

SECTION 19. *ASSIGNMENT; PARTICIPATIONS; ETC.*

§ 19.1. *Conditions to Assignment by Lenders.* Except as provided herein, each Lender may assign to one or more Eligible Assignees all or a portion of its interests, rights and obligations under this Agreement (including all or a portion of its Commitment Percentage and Commitment and the same portion of the Loans at the time owing to it, and the Notes held by it); provided that (a) Agent shall have given its prior written consent to such assignment, which consent shall not be unreasonably withheld or delayed, except that such consent shall not be needed with respect to an assignment from a Lender to either one of its Affiliated Lenders or to another Lender hereunder, (b) each such assignment shall be of a portion (or which may be all) of the assigning Lender's rights and obligations

under this Agreement relating to a specified Commitment amount and Commitment Percentage, (c) each assignment shall be in an amount of not less than \$10,000,000 and in integral multiples of \$1,000,000, (d) each Lender either shall assign all of its Commitment and cease to be a Lender hereunder or shall retain, free of any such assignment, an amount of its Commitment of not less than \$10,000,000, and (e) the parties to such assignment shall execute and deliver to Agent, for recording in the Register (as hereinafter defined), an Assignment and Acceptance, substantially in the form of Exhibit D hereto (an "Assignment and Acceptance"), together with any Notes subject to such assignment. Upon such execution, delivery, acceptance and recording, from and after the effective date specified in each Assignment and Acceptance, which effective date shall be at least five (5) Business Days after the execution thereof, (i) the assignee thereunder shall be a party hereto and, to the extent provided in such Assignment and Acceptance, have the rights and obligations of a Lender hereunder, and (ii) the assigning Lender shall, to the extent provided in such assignment and upon payment to Agent of the registration fee referred to in § 19.3, be released from its obligations under this Agreement. Notwithstanding the foregoing, Wells Fargo Bank, National Association agrees that at all times during which it is the Agent hereunder, so long as no Default or Event of Default has occurred and is continuing, it shall not reduce its Commitment to less than \$49,000,000 (which number will be reduced in proportion to any pro rata reduction in the Total Commitment pursuant to §§ 2.2(c) and 2.2(d)).

56

§ 19.2. *Certain Representations and Warranties; Limitations; Covenants.* By executing and delivering an Assignment and Acceptance, the parties to the assignment thereunder confirm to and agree with each other and the other parties hereto as follows: (a) other than the representation and warranty that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim, the assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, the other Loan Documents or any other instrument or document furnished pursuant hereto; (b) the assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of Borrower or any other Person primarily or secondarily liable in respect of any of the Obligations, or the performance or observance by Borrower or any other Person primarily or secondarily liable in respect of any of the Obligations of any of their obligations under this Agreement or any of the other Loan Documents or any other instrument or document furnished pursuant hereto or thereto; (c) such assignee confirms that it has received a copy of this Agreement, together with copies of the most recent financial statements referred to in § 6.4 and § 7.4 and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (d) such assignee will, independently and without reliance upon the assigning Lender, Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement, (e) such assignee represents and warrants that it is an Eligible Assignee; (f) such assignee appoints and authorizes Agent to take such action as "Agent" on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to Agent by the terms hereof or thereof, together with such powers as are reasonably incidental thereto; (g) such assignee agrees that it will perform in accordance with their terms all of the obligations that by the terms of this Agreement are required to be performed by it as a Lender; and (h) such assignee represents and warrants that it is legally authorized to enter into such Assignment and Acceptance.

§ 19.3. *Register.* Agent shall maintain a copy of each Assignment and Acceptance delivered to it and a register or similar list (the "Register") for the recordation of the names and addresses of the Lenders and the Commitment Percentages of, and principal amount of the Loans owing to the Lenders from time to time. The entries in the Register shall be conclusive, in the absence of manifest error, and Borrower, Agent and the Lenders may treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrower and the Lenders at any reasonable time and from time to time upon reasonable prior notice. From and after the Effective Date, upon each such recordation, the assigning Lender agrees to pay to Agent a registration fee in the sum of \$3,500.00. Agent may, without action by any other party, amend *Schedules 1* and *1.2* hereof to reflect the recording of any such assignments and shall immediately forward a copy of any such amendment to Borrower and each Lender.

§ 19.4. *New Notes.* Upon its receipt of an Assignment and Acceptance executed by the parties to such assignment, together with each Note subject to such assignment, Agent shall (a) record the information contained therein in the Register, and (b) give prompt notice thereof to Borrower and the Lenders (other than the assigning Lender). Within five (5) Business Days after receipt of such notice, Borrower, at its own expense, shall execute and deliver to Agent, in exchange for each surrendered Note, a new Note to the order of such Eligible Assignee in an amount equal to the amount assumed by such Eligible Assignee pursuant to such Assignment and Acceptance and, if the assigning Lender has retained some portion of its Loans hereunder, a new Note to the order of the assigning Lender in an amount equal to the amount retained by it hereunder. Such new Notes shall provide that they are replacements for the surrendered Notes and that they do not constitute a novation, shall be in an aggregate principal amount equal to the aggregate principal amount of the surrendered Notes, shall be dated the effective date of such Assignment and Acceptance and shall otherwise be in substantially the

57

form of the assigned Notes. Within five (5) days of issuance of any new Notes pursuant to this § 19.4, Borrower shall deliver an opinion of counsel, addressed to the Lenders and Agent, relating to the due authorization, execution and delivery of such new Notes and the legality, validity and binding effect thereof, and that the Obligations evidenced by the new Notes have the same validity and enforceability as if given on the Effective Date, in form and substance reasonably satisfactory to the Lenders who are the holders of such new Notes. The surrendered Notes shall be held by Agent in escrow and shall be deemed cancelled and returned to Borrower simultaneously upon the issuance and receipt by Agent of, and in exchange for, the New Notes.

§ 19.5. *Participations.* Each Lender may sell participations to one or more banks or other entities (any such entity, a "Participant") of all or a portion of such Lender's rights and obligations under this Agreement and the other Loan Documents; provided that (a) Agent shall have given its prior written consent to such participation, which consent shall not be unreasonably withheld or delayed, except that any Lender may sell participations to its Affiliated Lenders without such consent, (b) each such participation, other than participations to its Affiliated Lenders or to another Lender hereunder, shall be in an amount of not less than \$10,000,000, (c) any such sale or participation shall not affect the rights and duties of the selling Lender hereunder to Borrower and the Lender shall continue to exercise all approvals, disapprovals and other functions of a Lender, (d) the only rights granted to the Participant pursuant to such participation arrangements with respect to waivers, amendments or modifications of the Loan Documents shall be the rights to approve the vote of the Lender as to waivers, amendments or modifications that would reduce the principal of or the interest rate on any Loans, extend the term or increase the amount of the Commitment of such Lender as it relates to such Participant, reduce the amount of any fees to which such Participant is entitled or extend any regularly scheduled payment date for principal or interest, and (e) no Participant which is not a Lender hereunder shall have the right to grant further participations or assign its rights, obligations or interests under such participation to other Persons without the prior written consent of Agent. Agent shall promptly advise Borrower in writing of any such sale or participation.

§ 19.6. *Pledge by Lender.* Any Lender may at any time pledge all or any portion of its interest and rights under this Agreement (including all or any portion of its Note) to any of the twelve Federal Reserve Banks organized under § 4 of the Federal Reserve Act, 12 U.S.C. § 341. No such pledge or the

enforcement thereof shall release the pledgor Lender from its obligations hereunder or under any of the other Loan Documents.

§ 19.7. *No Assignment by Borrower.* Neither Borrower nor any Guarantor shall assign or transfer any of its rights or obligations under any of the Loan Documents without the prior written consent of each of the Lenders, and any such attempted assignment shall be null and void.

§ 19.8. *Disclosure.* Each of Borrower and the Guarantors agrees that in addition to disclosures made in accordance with standard banking practices any Lender may disclose information obtained by such Lender pursuant to this Agreement to assignees or participants and potential assignees or participants hereunder.

SECTION 20. *NOTICES, ETC.* Except as otherwise expressly provided in this Agreement, all notices and other communications made or required to be given pursuant to this Agreement or the Notes shall be in writing and shall be delivered in hand, mailed by United States registered or certified first class mail, postage prepaid, sent by overnight courier, or sent by telegraph, teletype, telefax or telex and confirmed by delivery via courier or postal service, addressed as follows:

- (a) if to Borrower, the Company or any of the Guarantors, at SL Green Operating Partnership, L.P., 420 Lexington Avenue, New York, New York 10170 (teletype number 212/216-1785), Attention: Chief Financial Officer and General Counsel, with a copy to Robert J. Ivanhoe, Esq., Greenberg Traurig, 200 Park Avenue, New York, New York 10166 (teletype number

58

212/801-6400), or at such other address for notice as Borrower shall last have furnished in writing to Agent;

- (b) if to Agent, at Wells Fargo Bank, National Association, Real Estate Group, 40 West 57th Street, 22nd Floor, New York, New York 10019 (teletype number 212/581-0979), with a copy to Wells Fargo Bank, Real Estate Group, 420 Montgomery Street, Sixth Floor, San Francisco, California 94111, Attention: Chief Credit Officer—Real Estate Group (teletype number 415/781-8324), or such other address for notice as Agent shall last have furnished in writing to Borrower; and
- (c) if to any Lender, at such Lender's address set forth on Schedule 1, hereto, or such other address for notice as such Lender shall have last furnished in writing to the Person giving the notice.

Any such notice or demand shall be deemed to have been duly given or made and to have become effective (i) if delivered by hand, overnight courier or facsimile to a responsible officer of the party to which it is directed, at the time of the receipt thereof by such officer or the sending of such facsimile and (ii) if sent by registered or certified first-class mail, postage prepaid, on the third Business Day following the mailing thereof.

SECTION 21. *GOVERNING LAW; CONSENT TO JURISDICTION AND SERVICE.* THIS AGREEMENT AND EACH OF THE OTHER LOAN DOCUMENTS, EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED THEREIN, ARE CONTRACTS UNDER THE LAWS OF THE STATE OF NEW YORK AND SHALL FOR ALL PURPOSES BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF SUCH STATE. EACH OF BORROWER, THE GUARANTORS, AGENT AND THE LENDERS AGREES THAT ANY SUIT BY IT FOR THE ENFORCEMENT OF THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS MAY BE BROUGHT IN THE COURTS OF THE CITY OF NEW YORK, STATE OF NEW YORK OR ANY FEDERAL COURT SITTING THEREIN AND BORROWER CONSENTS TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURT FOR ANY SUIT BY AGENT OR ANY LENDER AND THE SERVICE OF PROCESS IN ANY SUCH SUIT BEING MADE UPON BORROWER BY MAIL AT THE ADDRESS SPECIFIED IN § 20. EACH OF BORROWER, THE GUARANTORS, AGENT AND THE LENDERS HEREBY WAIVE ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH SUIT OR ANY SUCH COURT OR THAT SUCH SUIT IS BROUGHT IN AN INCONVENIENT COURT. IN ADDITION TO THE COURTS OF THE CITY OF NEW YORK, STATE OF NEW YORK OR ANY FEDERAL COURT SITTING THEREIN, AGENT OR ANY LENDER MAY BRING ACTION(S) FOR ENFORCEMENT ON A NONEXCLUSIVE BASIS WHERE ANY COLLATERAL EXISTS AND EACH OF BORROWER, THE GUARANTORS, AGENT AND THE LENDERS CONSENTS TO THE NON-EXCLUSIVE JURISDICTION OF SUCH COURT AND THE SERVICE OF PROCESS IN ANY SUCH SUIT BEING MADE UPON BORROWER, THE GUARANTORS, AGENT AND THE LENDERS BY MAIL AT THE ADDRESS SPECIFIED IN § 20.

SECTION 22. *HEADINGS.* The captions in this Agreement are for convenience of reference only and shall not define or limit the provisions hereof.

SECTION 23. *COUNTERPARTS.* This Agreement and any amendment hereof may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, and all of which together shall constitute one instrument. In proving this Agreement it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought.

59

SECTION 24. *ENTIRE AGREEMENT.* The Loan Documents and any other documents executed in connection herewith or therewith express the entire understanding of the parties with respect to the transactions contemplated hereby. Neither this Agreement nor any term hereof may be changed, waived, discharged or terminated, except as provided in § 26.

SECTION 25. *WAIVER OF JURY TRIAL AND CERTAIN DAMAGE CLAIMS.* EACH OF BORROWER, THE GUARANTORS, AGENT AND THE LENDERS HEREBY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, THE NOTES OR ANY OF THE OTHER LOAN DOCUMENTS, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR THEREUNDER OR THE PERFORMANCE OF SUCH RIGHTS AND OBLIGATIONS. EXCEPT TO THE EXTENT EXPRESSLY PROHIBITED BY LAW, EACH OF BORROWER AND THE GUARANTORS HEREBY WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY LITIGATION REFERRED TO IN THE PRECEDING SENTENCE ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. EACH OF BORROWER AND THE GUARANTORS (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF AGENT OR ANY LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT AGENT OR SUCH LENDER WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS AND (B) ACKNOWLEDGES THAT AGENT AND THE LENDERS HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS TO WHICH THEY ARE PARTIES BY, AMONG OTHER THINGS, THE WAIVERS AND CERTIFICATIONS CONTAINED HEREIN.

SECTION 26. *CONSENTS, AMENDMENTS, WAIVERS, ETC.* Except as otherwise specifically set forth herein or in any other Loan Document, any consent or approval required or permitted by this Agreement may be given, and any term of this Agreement or of any other instrument related hereto or mentioned herein may be amended, and the performance or observance by Borrower and the Guarantors of any terms of this Agreement or such other instrument or the continuance of any Default or Event of Default may be waived (either generally or in a particular instance and either retroactively or prospectively) with, but only with, the written consent of the Majority Lenders, and, in the case of amendments, with the written consent of Borrower other than amendments to schedules made in the ordinary course as contemplated by this Agreement. Notwithstanding the foregoing, (i) the rate of interest on, and the term or amount of, the Notes or the date of any payment due hereunder or thereunder, (ii) the amount of the Commitments of the Lenders (other than changes in Commitments pursuant to Assignments under § 19 or pursuant to changes in the Total Commitment under § 2.2), (iii) the amount of any fee payable to a Lender hereunder, (iv) any provision herein or in any of the Loan Documents which expressly requires consent of all the Lenders (including this § 26) or of the Requisite Lenders, (v) the funding provisions of § 2.5 and § 2.7 hereof, (vi) the rights, duties and obligations of Agent specified in § 14 hereof, and (vii) the definitions of Majority Lenders or Requisite Lenders, may not be amended or compliance therewith waived without the written consent of each Lender affected thereby, nor may Agent release Borrower or any Guarantor from its liability with respect to the Obligations (other than pursuant to § 18.8), without first obtaining the written consent of all the Lenders. Unless otherwise directed by Agent, any request for amendment or waiver shall be made on no less than ten (10) Business Days notice to the Lenders. Unless otherwise directed by Agent, the failure of a Lender to respond to a request for waiver or amendment shall be deemed to constitute such Lender's consent to such waiver or amendment requested (unless such waiver or amendment requires the consent of all Lenders). No waiver shall extend to or affect any obligation not expressly waived or impair any right consequent thereon. No course of dealing or delay or omission on the part of Agent or any Lender in exercising any right shall operate as a waiver thereof or otherwise be prejudicial thereto. No notice to or demand upon Borrower shall entitle Borrower to other or further notice or demand in similar or other circumstances.

60

SECTION 27. *SEVERABILITY.* The provisions of this Agreement are severable, and if any one clause or provision hereof shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

SECTION 28. *ACKNOWLEDGMENTS.* Each of Borrower and the Guarantors hereby acknowledges that: (i) neither Agent nor any Lender has any fiduciary relationship with, or fiduciary duty to, Borrower and the Guarantors arising out of or in connection with this Agreement or any of the other Loan Documents; (ii) the relationship in connection herewith between Agent and the Lenders, on the one hand, and Borrower and each Guarantor, on the other hand, is solely that of debtor and creditor and (iii) no joint venture or partnership among any of the parties hereto is created hereby or by the other Loan Documents, or otherwise exists by virtue of the Facility or the Loans.

SECTION 29. *TRANSITIONAL ARRANGEMENTS.*

§ 29.1. *Original Agreement Superseded.* This Agreement shall supersede the Original Agreement in its entirety, except as provided in this § 29. On the Effective Date, the rights and obligations of the parties under the Original Agreement and the "Notes" defined therein shall be subsumed within and be governed by this Agreement and the Notes, *provided, however*, that any of the "Loans" (as defined in the Original Agreement) outstanding under the Original Agreement shall, for purposes of this Agreement, be Loans hereunder. This Agreement is given as a substitution of, and not as a payment of, the obligation of Borrower under the Original Agreement and is not intended to constitute a novation of the Original Agreement. The Lenders' interests in such Loans shall be reallocated on the Effective Date in accordance with each Lender's applicable Commitment Percentage in order that, after giving effect thereto, the Lenders shall have outstanding Loans representing their portion of the Total Commitment, as described on *Schedule 1.2*, and the Lenders shall make appropriate payments to each other in order to accomplish such reallocation.

§ 29.2. *Return and Cancellation of Notes.* Upon its receipt of the Notes to be delivered hereunder on the Effective Date, each Lender will promptly return to Borrower, marked "Cancelled" or "Replaced", the notes of Borrower held by such Lender pursuant to the Original Agreement.

§ 29.3. *Interest and Fees under the Original Agreement.* All interest and all commitment, facility and other fees and expenses that have accrued before the date hereof under or in respect of the Original Agreement shall be calculated as of the Effective Date (prorated in the case of any fractional periods), and Borrower shall continue to be liable in respect of such amounts to the Lenders a party to the Original Agreement and to Agent, in accordance with the Original Agreement, as if the Original Agreement were still in effect.

[The remainder of this page left intentionally blank]

61

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as a sealed instrument as of the date first set forth above.

BORROWER:

SL GREEN OPERATING PARTNERSHIP, L.P.

By: SL Green Realty Corp., its general partner

By: _____

Name:

Title:

GUARANTOR:

SL GREEN REALTY CORP.

By:

Name:
Title:

GUARANTOR:

NEW GREEN 1140 REALTY LLC

By: SL Green Operating Partnership, L.P., its manager

By: SL Green Realty Corp., its general partner

By:

Name:
Title:

62

GUARANTOR:

SLG 17 BATTERY LLC

By: SL Green Operating Partnership, L.P., its manager

By: SL Green Realty Corp., its general partner

By:

Name:
Title:

GUARANTOR:

SL GREEN MANAGEMENT LLC

By: SL Green Operating Partnership, L.P., its manager

By: SL Green Realty Corp., its general partner

By:

Name:
Title:

63

GUARANTOR:

SLG IRP REALTY LLC

By: SL Green Operating Partnership, L.P., its manager

By: SL Green Realty Corp., its general partner

By:

Name:
Title:

GUARANTOR:

GREEN 286 MADISON LLC

By: SL Green Operating Partnership, L.P., its manager

By: SL Green Realty Corp., its general partner

By: _____

Name:

Title:

64

GUARANTOR:

GREEN 1370 BROADWAY LLC

By: SL Green Operating Partnership, L.P., its manager

By: SL Green Realty Corp., its general partner

By: _____

Name:

Title:

GUARANTOR:

GREEN 292 MADISON LLC

By: SL Green Operating Partnership, L.P., its manager

By: SL Green Realty Corp., its general partner

By: _____

Name:

Title:

65

ADMINISTRATIVE AGENT:

WELLS FARGO BANK, NATIONAL ASSOCIATION, As Administrative Agent

By: _____

Christopher B. Wilson

Vice President

LENDER:

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: _____

Christopher B. Wilson

Vice President

66

LENDER:

COMMERZBANK AG NEW YORK BRANCH

By: _____

Name:

Title:

By: _____

Name:

Title:

LENDER:

EUROHYPO AG, NEW YORK BRANCH

By: _____

Name:
Title:

By: _____

Name:
Title:

68

LENDER:

PB CAPITAL CORPORATION

By: _____

Name:
Title:

By: _____

Name:
Title:

69

LENDER:

KEYBANK NATIONAL ASSOCIATION

By: _____

Name:
Title:

70

EXHIBIT A

FORM OF NOTE

Lender: New York, New York

Commitment: , 200

FOR VALUE RECEIVED, the undersigned, SL GREEN OPERATING PARTNERSHIP, L.P., a limited partnership duly organized and validly existing under the laws of the State of Delaware ("Borrower"), hereby unconditionally promises to pay, in accordance with, and subject to, the provisions of the Credit Agreement (as hereinafter defined), to the order of Lender stated above ("Lender") at the office of Wells Fargo Bank, National Association located at 2120 East Park Place, Suite 100, El Segundo, California 90245, in lawful money of the United States of America and in immediately available funds, on the Maturity Date a principal amount equal to the lesser of (a) the Commitment stated above and (b) the aggregate outstanding principal amount of the Loans from time to time made by Lender to Borrower pursuant to the Credit Agreement. Borrower further agrees to pay interest in like money at such office on the unpaid principal amount hereof from time to time outstanding at the rates and on the dates specified in the Credit Agreement.

The holder of this Note is authorized to endorse on the schedules annexed hereto, which shall be attached hereto and made a part hereof, the date, Type and amount of the Loans made by Lender pursuant to the Credit Agreement and the date and amount of each payment or prepayment of principal thereof, each continuation thereof, each conversion of all or a portion thereof to another Type and, in the case of LIBOR Rate Loans, the length of each Interest Period with respect thereto. Each such endorsement shall constitute prima facie evidence of the accuracy of the information endorsed. The failure to make any such endorsement shall not affect the obligation of Borrower to repay the Loans in accordance with the terms of the Credit Agreement.

The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the date of the proposed Borrowing, before and after giving effect to the proposed Borrowing:

- (a) except as otherwise disclosed to Agent herein in writing, the representations and warranties contained in Section 6 of the Credit Agreement and in the other Loan Documents are true and correct in all material respects as though made on and as of such date (except to the extent such representations and warranties relate to a specific date, in which case they are true and correct in all material respects as of such date);
- (b) no Default or Event of Default has occurred and is continuing, or would result from such proposed Borrowing; and
- (c) the proposed Borrowing will not cause the aggregate principal amount of Outstanding Obligations to exceed the Maximum Credit Amount.

[Remainder of page intentionally left blank]

Borrower represents and warrants, as of the date hereof, that after giving effect to the Borrowing requested above, all the requirements contained in Section 11 of the Credit Agreement are satisfied.

SL GREEN OPERATING PARTNERSHIP, L.P.

By: SL Green Realty Corp., its General Partner

By

Name:

Title:

2

EXHIBIT C

COMPLIANCE CERTIFICATE

This COMPLIANCE CERTIFICATE is delivered pursuant to that certain Amended and Restated Credit and Guaranty Agreement, dated as of February 6, 2003 (as amended or supplemented from time to time, the "Credit Agreement"), among SL Green Operating Partnership, L.P., as Borrower, SL Green Realty Corp. and certain of its subsidiaries signatory thereto, as Guarantors, Lenders signatory thereto, and Wells Fargo Bank, National Association, as Administrative Agent for Lenders and as Arranger. Capitalized terms not defined herein shall have the same meanings ascribed thereto in the Credit Agreement.

1. The Company is the sole general partner of Borrower.
2. The individual executing this Compliance Certificate is the duly qualified _____ of the Company and is executing this Compliance Certificate on behalf of the Company and Borrower, provided, however, that such individual shall incur no personal liability by reason of the execution of this Compliance Certificate.
3. The undersigned has reviewed the terms of the Credit Agreement and has made a review of the transactions, financial condition and other affairs of the Company, Borrower, each Guarantor and each of their respective Subsidiaries as of _____, 200__ and the undersigned has no knowledge of the existence, as of the date hereof, of any condition or event which (i) renders untrue or incorrect, in any material respect, any of the representations and warranties contained in Article 6 of the Credit Agreement (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct only as of such specified date), except as set forth in Schedule II hereto, or (ii) constitutes a Default or Event of Default under the Credit Agreement as of the date hereof.
4. Schedule I attached hereto accurately and completely sets forth the financial data, computations and other matters required to establish compliance with the criteria set forth in the defined terms and the following sections of the Credit Agreement:
 - (a) Value of All Unencumbered Assets (Section 9.1):
 - (b) Minimum Debt Service Coverage (Section 9.2):
 - (c) Total Debt to Total Assets (Section 9.3):
 - (d) Maximum Secured Indebtedness; Secured Recourse Indebtedness (Section 9.4):
 - (e) Minimum Tangible Net Worth (Section 9.5):
 - (f) Unencumbered Asset Adjusted Net Operating Income to Assumed Debt Service (Section 9.6):
 - (g) Adjusted EBITDA to Fixed Charges (Section 9.7):
 - (h) Aggregate Occupancy Rate (Section 9.8):
 - (i) Distributions (Section 8.6):

5. No Default or Event of Default has occurred and is continuing.

Agent and Lenders and their respective successors and assigns may rely on the truth and accuracy of the foregoing in connection with the extensions of credit to Borrower and the Company pursuant to the Credit Agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the undersigned has executed this Compliance Certificate on behalf of the Company and Borrower this _____ day of _____, 2000 .

SL GREEN REALTY CORP.

By _____

Name:
Title:

SL GREEN OPERATING PARTNERSHIP, L.P.

By: SL Green Realty Corp.

By _____

Name:
Title:

EXHIBIT D

FORM OF ASSIGNMENT AND ACCEPTANCE

Reference is made to the Amended and Restated Credit and Guaranty Agreement, dated as of February 6, 2003 (as amended or supplemented from time to time, the "Credit Agreement"), among SL Green Operating Partnership, L.P., as Borrower, SL Green Realty Corp. and certain of its subsidiaries signatory thereto, as Guarantors, and Wells Fargo Bank, National Association, as Administrative Agent for Lenders and as Arranger. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings assigned to such terms by the Credit Agreement.

_____ ("Assignor") and _____ ("Assignee") hereby agree as follows:

- Assignor hereby irrevocably sells, assigns and delegates to Assignee without recourse to Assignor, and Assignee hereby purchases and assumes from Assignor, without recourse to and without representation or warranty by Assignor except as otherwise specifically set forth in Section 2 below, a \$ _____ * interest in and to all of Assignor's rights and obligations under and in respect of Assignor's Commitment and Loans and its Note set forth on Schedule I hereto (the "Assigned Loan") and related rights and obligations under the Credit Agreement and other Loan Documents.
- Assignor (a) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Credit Agreement, any other Loan Document or any other instrument or document furnished pursuant thereto or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Agreement, any other Loan Document or any other instrument or document furnished pursuant thereto, other than that it has not created any adverse claim upon the interest being assigned by it hereunder and that such interest is free and clear of any such adverse claim; (b) makes no representation or warranty and assumes no responsibility with respect to the financial condition of Borrower or Guarantor or the performance or observance by Borrower or Guarantor of their respective obligations under the Credit Agreement or any other Loan Document or any other instrument or document furnished pursuant hereto or thereto; and (c) attaches the Note evidencing the Assigned Loan and requests that the Administrative Agent exchange such Note for [(i)] a new Note, dated the Effective Date, in the principal amount of \$ _____ payable to the order of Assignee[, and (ii) a new Note dated the Effective Date, in the principal amount of \$ _____ payable to the order of Assignor].
- Assignee (a) represents and warrants that it is legally authorized to enter into this Assignment and Acceptance; (b) confirms that it has received a copy of the Credit Agreement, together with copies of the financial statements referenced therein and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Acceptance; (c) acknowledges and agrees that it has made and will make such inquiries and has taken and will take such care on its own behalf as would have been the case had it made a Loan directly to Borrower without the intervention of Assignor, Agent or any other Person; (d) acknowledges and agrees that it will perform in accordance with their terms all of the obligations that, by the terms of any Loan Document, are required to be performed by it as a Lender; (e) agrees that it will, independently and without reliance upon Assignor, Agent or any other Person which is or has become a Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement; (f) appoints and authorizes Agent to take such

* The minimum amount that may be assigned is equal to the lesser of (i) \$10,000,000 or (ii) the Commitment of the Assignor as determined in accordance with the Credit Agreements.

action as agent on its behalf and to exercise such powers under the Credit Agreement as are delegated to Agent by the terms thereof, together with such powers under the Credit Agreement as are incidental thereto; (g) agrees that it will be bound by the provisions of the Credit Agreement and will perform in accordance with its terms all the obligations which by the terms of the Credit Agreement are required to be performed by it as a Lender including, if it is organized under the laws of a jurisdiction outside the United States, its obligation pursuant to the Credit Agreement to deliver the forms prescribed by the Internal Revenue Service of the United States certifying as to Assignee's exemption from United States withholding taxes with respect to all payments to be made to Assignee under the Credit Agreement, or such other documents as are necessary to indicate that all such payments are subject to such tax at a rate reduced by an applicable tax treaty; (h) confirms that Assignee is an "Eligible Assignee" under the terms of the Credit Agreement; (i) acknowledges and agrees that neither Assignor nor Agent makes any representation or warranty or assumes any responsibility with respect to any statements, warranties or representations made in or in connection with any Loan Document or any other instrument or document furnished pursuant thereto or the authorization, execution, legality, validity, enforceability, genuineness, sufficiency or value of any Loan Document or any other instrument or document furnished pursuant thereto; and (j) acknowledges and agrees that neither Assignor nor Agent makes any representation or warranty or assumes any responsibility with respect to the financial condition or creditworthiness of Borrower, the Guarantor or any other Person or the performance or observance by Borrower, the Guarantor or any other Person of any obligations under any Loan Document or any other instrument or document furnished pursuant thereto.

4. The effective date for this Assignment and Acceptance shall be _____ (the "Effective Date")*. Following the execution of this Assignment and Acceptance by Assignor and Assignee, it will be delivered to the Administrative Agent for acceptance by the Administrative Agent, and Assignor and Assignee shall pay to the Administrative Agent a \$3,500 registration fee. Following such payment, and acceptance by the Administrative Agent of this Assignment and Acceptance, a photostatic copy hereof shall be delivered to Borrower and the Administrative Agent. Within five (5) Business Days after Borrower's receipt of such photostatic copy, Borrower shall execute and deliver to the Administrative Agent the new Note or Notes to be held in escrow by the Administrative Agent pending release of the Note (in the appropriate outstanding principal amount) evidencing the Assigned Loan to Borrower. The Administrative Agent shall deliver the new Note or Notes to the payee(s) thereof, shall mark the Note evidencing the Assigned Loan as "replaced" and shall deliver the same to Borrower.
5. Upon such acceptance by the Administrative Agent, as of the Effective Date:
 - (a) From and after the Effective Date, (i) Assignee shall be a party to the Credit Agreement and, to the extent provided in this Assignment and Acceptance, have the rights and obligations of Lender thereunder and under the other Loan Documents and shall be bound by the provisions thereof, and Assignee, in addition to any rights, benefits and obligations under the Loan Documents held by it immediately prior to the Effective Date, shall have the rights, benefits and obligations of a Lender under the Loan Documents that have been assigned to it (including, but not limited to, obligations to Borrower under the Loan Documents) pursuant to this Assignment and Acceptance. Assignee shall become a Lender for all purposes of the Credit Agreement and the other Loan Documents, and execution hereof shall be deemed to be execution of the Credit Agreement; and
 - (b) Assignor, to the extent provided in this Assignment and Acceptance, shall relinquish its rights (except as provided in the Credit Agreement) and benefits and be released

* The requested effective date must be at least five Business Days after the executive of this Assignment and Acceptance.

from its obligations under the Credit Agreement (and, in the case of an assignment covering all or the remaining portion of Assignor's rights, benefits and obligations under the Loan Documents, Assignor shall cease to be a Lender under the Loan Documents, except as provided in the Credit Agreement).

6. Upon such acceptance by the Administrative Agent, from and after the Effective Date, the Administrative Agent shall make payments under the Credit Agreement in respect of the Assigned Loan (including, without limitation, all payments of principal, interest and fees with respect thereto) to Assignee, whether such amounts have accrued prior to the Effective Date or accrue subsequent to the Effective Date. Assignor and Assignee agree that they shall make all appropriate adjustments in payments under the Credit Agreement by the Administrative Agent for periods prior to the Effective Date directly between themselves.
7. Assignor agrees to give written notice of this Assignment and Acceptance to Agent, each Lender and Borrower, which written notice shall include the addresses and related information with respect to Assignee.
8. THIS ASSIGNMENT AND ACCEPTANCE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK, INCLUDING, WITHOUT LIMITATION, SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW.
9. EACH OF ASSIGNOR AND ASSIGNEE HEREBY WAIVES (TO THE EXTENT PERMITTED BY LAW) THE RIGHT TO A TRIAL BY JURY IN ANY LITIGATION IN ANY COURT WITH RESPECT TO, IN CONNECTION WITH, OR ARISING OUT OF THIS ASSIGNMENT AND ACCEPTANCE, ANY INSTRUMENT OR DOCUMENT DELIVERED PURSUANT TO THIS ASSIGNMENT AND ACCEPTANCE, OR THE VALIDITY, INTERPRETATION, OR ENFORCEMENT THEREOF.

IN WITNESS WHEREOF, the undersigned have caused this Assignment and Acceptance to be duly executed and delivered by their respective officers thereunto duly authorized as of the date and year first above written.

[NAME OF ASSIGNOR]

By

Name:

Title:

[NAME OF ASSIGNOR]

Notices:

590 Madison Avenue, 30th Floor
New York, New York

Attention: Ms. Connie Pun
Telephone: 212/756-5626
Telefax: 212/756-5536

Funding/Payments/Rate Options:

Attention: Ms. Sharon Fong (Operations/Administration)
Telephone: 212/756-5503
Telefax: 212/756-5536

KEYBANK NATIONAL ASSOCIATION

Notices:

575 Fifth Avenue, 38th Floor
New York, New York 10017

Attention: Mr. Timothy J. Mertens Vice President
Telephone: 917/368-2390
Telefax: 917/368-2370

1146 19th Street, N.W., Suite 400
Washington, District of Columbia

Attention: Ms. Jennifer Dakin
Telephone: 202/452-4940
Telefax: 202/452-4925

Funding/Payments/Rate Options:

127 Public Square
OH-01-27-0839
Cleveland, Ohio 44114

Attention: Mr. R. J. Quinn (Operations/Administration)
Telephone: 216/689-4343
Telefax: 216/689-4721

SCHEDULE 1.1

UNENCUMBERED ASSETS

ASSET	OWNERSHIP
1. 1372 Broadway, New York, New York	Borrower
2. 1140 Avenue of the Americas, New York, New York (leasehold).	New Green 1140 Realty LLC
3. 1466 Broadway, New York, New York	Borrower
4. 440 Ninth Avenue, New York, New York	Borrower
5. Condominium Units known as the Commercial Unit, as set forth in the Declaration of Condominium and By-Laws of the Home Savings of America New York Headquarters Condominium, and located in the building known as 110 East 42nd Street, New York, New York	Borrower
6. Condominium Unit #3, as set forth in the Declaration of Condominium and By-Laws, and located in the building known as 17 Battery Place (North Building), New York, New York	SLG 17 Battery LLC
7. 470 Park Avenue South, New York, New York	Borrower
8. 1370 Broadway, New York, New York	Green 1370 Broadway LLC
9. 292 Madison Avenue, New York, New York	Green 292 Madison LLC
10. 286 Madison Avenue, New York, New York	Green 286 Madison LLC

SCHEDULE 1.2

COMMITMENTS AND COMMITMENT PERCENTAGES

Financial Institution	Commitment	Percentage Commitment
Wells Fargo Bank, National Association	\$ 49,000,000	32.66666666%
Commerzbank AG New York Branch	34,000,000	22.66666667%
Eurohypo AG, New York Branch	24,000,000	16.00000000%
PB Capital Corporation	24,000,000	16.00000000%
KeyBank National Association	19,000,000	12.66666667%
	<u>\$ 150,000,000</u>	<u>100.00000000%</u>

SCHEDULE 1.3

**RELATED COMPANIES, GUARANTOR
SUBSIDIARIES AND UNCONSOLIDATED ENTITIES**

A. Related Companies:

Entity	% Directly/Indirectly Owned by Borrower
1. New Green 673 Realty LLC	100
2. New Green 50W23 Realty LLC	100
3. New Green 1140 Realty LLC	100
4. Green W. 57th St., LLC	100
5. Green 292 Madison LLC	100
6. Green 290 Madison LLC	100
7. Green 286 Madison LLC	100
8. Green 1414 Manager LLC	100
9. Green 1414 Property LLC	99.5
10. Green 70W36 Manager LLC	100
11. Green 70W36 Property LLC	99.5
12. SLG Graybar Sublease Corp.	0
13. SLG Graybar Sublease LLC	99.99
14. SLG Graybar Mesne Lease Corp.	0
15. SLG Graybar Mesne Lease LLC	99.99
16. SL Green Management LLC	100
17. SLG Warrant LLC	75
18. Green 711 Sublease Manager LLC	100
19. SLG 711 Third LLC	99.5
20. Green 711 Fee Manager LLC	100
21. SLG 711 Fee LLC	99.5
22. Green 711 Mortgage Manager LLC	100
23. Green 711 LM LLC	99.5
24. New Green 1140 Realty LLC	100
25. SLG 17 Battery LLC	100
26. Green 1370 Broadway LLC	100
27. SLG One Park Shareholder LLC	100
28. Green 317 Madison LLC	100
29. Greater New York Property LLC	100
30. SL Green Realty Acquisition LLC	100
31. SLG Asset Management Fee LLC	100
32. Structured Finance TRS Corp.	100
33. SLGLB Promote LLC	100
34. SLGLB Owner LLC	100
35. 1250 Broadway SPE Corp.	100
36. SLG 1250 Broadway Finance LLC	100
37. Green 1250 Broadway LLC	99.9
38. Green 1250 Broadway Acquisition LLC	99.9
39. News Option LLC	100
40. SL Green Funding LLC	100
41. Green 1412 Preferred LLC	100
42. News Funding LLC	100
43. 1515 Broadway Finance LLC	100

44.	SLGLB Special Purpose Corp.	100
45.	SL Green Servicing Corp.	100
46.	SLG One Park Member LLC	100
47.	SLG One Park Shareholder LLC	100
48.	Green Three Pack Funding LLC	100
49.	SLG IRP LLC	100
50.	469 Preferred Member LLC	100
51.	1515 SLG Private REIT LLC	100
52.	1515 Promote LLC	100
53.	1515 SLG Optionee LLC	100
54.	Green 1370 Broadway LLC	100
55.	SL Green 100 Park LLC	100
56.	SLG 1440 Broadway Funding LLC	100
57.	eEmerge, Inc.	100
58.	SLG [Penncom] Funding LLC	100
59.	SLG 500-512 Funding LLC	100
60.	Metrostar 34th St. Funding LLC	100
61.	SLG Metrostar Investments LLC	100

B. Unconsolidated Entities:

	Entity	% Directly/Indirectly Owned by Borrower
1.	SL Green Management Corp.	95 (non-voting shares)
2.	SLG 100 Park LLC	49.9
3.	1250 Broadway Realty Corp.	55
4.	SLG Elevator Holdings LLC	75
5.	NJ Mortgage Acquisition LLC	9.9
6.	MSSG Realty Partners I, L.L.C. (180 Madison Avenue)	49.9
7.	MSSG Realty Partners II, L.L.C. (469 Seventh Avenue)	35
8.	MSSG Realty Partners III, L.L.C. ⁽¹⁾ (321 West 44th Street)	52
9.	One Park Realty Corp.	55
10.	1515 Broadway Realty Corp.	55

(1) 52% membership interest/35% economic interest

2

C. Guarantors:

	Entity	% Directly/Indirectly Owned by Borrower
1.	New Green 1140 Realty LLC	100
2.	SLG 17 Battery LLC	100
3.	Green 286 Madison LLC	100
4.	Green 292 Madison LLC	100
5.	SL Green Management LLC	100
6.	SLG IRP Realty LLC	100
7.	Green 1370 Broadway LLC	100

3

SCHEDULE 6.3

TITLE TO PROPERTIES

- 1 Park Avenue, New York, New York (Borrower indirectly owns a 55.00% interest in an entity which indirectly owns, in whole or in part, fee title to, and a ground lease interest in, this property).
- 1515 Broadway, New York, New York (Borrower indirectly owns a 54.96% interest in an entity which indirectly holds fee title to this property).
- 100 Park Avenue, New York, New York (Borrower owns 100% of SL Green 100 Park LLC, which owns a 49.9% interest in SLG 100 Park LLC, which holds fee title to this property).
- 1250 Broadway, New York, New York (Borrower indirectly owns a 54.86% interest in an entity which indirectly holds fee title to this property).
- 180 Madison Avenue, New York, New York (The Borrower owns a 49.9% interest in MSSG Realty Partners I, L.L.C., which owns 100% of Green 180 Madison Avenue LLC, which holds fee title to this property).
-

321 West 44th Street, New York, New York (Borrower owns a 35% economic interest, and a 52% membership interest, in MSSG Realty Partners III, L.L.C., which owns 100% of Green 321W44 LLC which holds fee title to this property).

7. 711 Third Avenue, New York, New York (Borrower owns 100% of SLG 711 Fee LLC, which holds fee title to this property as a tenant-in-common with an entity unrelated to Borrower).

SCHEDULE 6.7

LITIGATION

NONE

SCHEDULE 6.15

INSIDER TRANSACTIONS

Cleaning Services

First Quality Maintenance, L.P. ("First Quality") provides cleaning, extermination and related services with respect to certain of the properties owned by Borrower. First Quality is owned by Gary Green, a son of Stephen L. Green, Chairman of the Board and Chief Executive Officer of the Company. First Quality also provides additional services directly to tenants on a separately negotiated basis. The aggregate amount of fees paid by Borrower to First Quality for services provided (excluding services provided directly to tenants) was approximately \$2,843,000 in 1999, \$2,837,000 in 2000 and \$3,591,000 in 2001. In addition, First Quality has the non-exclusive opportunity to provide cleaning and related services to individual tenants at Borrower's properties on a basis separately negotiated with any tenant seeking such additional services. First Quality leases 12,290 square feet of space at 70 West 36th Street pursuant to a lease that expires on December 31, 2005 and provides for annual rental payments of approximately \$232,293.

Leases

Nancy Peck and Company ("NP&C") leases 2,013 feet of space at 420 Lexington Avenue, New York, New York 10170 pursuant to a lease that expires on June 30, 2005 and provides for annual rental payments of approximately \$62,705. NP&C is owned by Nancy Peck, the wife of Stephen L. Green

Security Services

Classic Security LLC ("Classic Security") provides security services with respect to certain properties owned by the Company. Classic Security is owned by Gary Green, a son of Stephen L. Green. The aggregate amount of fees paid by Borrower for such services was approximately \$1,864,000 in 1999, \$1,807,000 in 2000 and \$2,214,000 in 2001.

Brokerage Services

Sonnenblick-Goldman Company, a nationally recognized real estate investment banking firm ("Sonnenblick"), provided mortgage brokerage services with respect to securing approximately \$205,000,000 of first mortgage financing for 100 Park Avenue in 2000 and 1250 Broadway in 2001. Morton Holliday, the father of Marc Holliday (President of the Company), was a Managing Director of Sonnenblick at the time of the financings. The fees paid by Borrower to Sonnenblick for such services were approximately \$358,000 in 2000 and \$319,000 in 2001.

Management Fees

SL Green Management Corp. receives property management fees from certain entities in which Stephen L. Green owns an interest. The aggregate amount of fees paid to SL Green Management Corp. from such entities was approximately \$171,000 in 1999, \$209,000 in 2000 and \$212,000 in 2001.

SCHEDULE 6.16

EMPLOYEE BENEFIT PLANS

1. The Company's 401(k) Plans
 2. The Company's Health Plan (Empire Blue Cross Blue Shield)
 3. The Company's Dental Plan (Guardian)
 4. The Company's Short Term Disability Insurance Plan (First Fortis)
 5. The Health, Pension and Annuity Plans of Local 32B-J and of Local 94
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SCHEDULE 6.18

ENVIRONMENTAL MATTERS

NONE

SCHEDULE 6.19

COMPANY ASSETS

NONE

SCHEDULE 6.21

BUILDING STRUCTURAL DEFECTS, ETC.

The Unencumbered Assets listed below are currently undergoing facade maintenance and repairs in accordance with the laws of the City of New York.

ASSET	Estimated Balance of Cost to Complete Work
1140 Avenue of the Americas, New York, New York	\$ 300,000

SCHEDULE 6.22

INDEBTEDNESS

(All balances set forth below are as of Effective Date.)

- \$1,736,830 loan from MSREF III Special Fund, L.P., MSP Real Estate Fund, L.P., Morgan Stanley Real Estate Investors III, L.P., and MSP Co-Investment Partnership, L.P., collectively, as lender, and SL Green Operating Partnership, L.P., as borrower, in connection with certain membership interests of the borrower in MSSG Realty Partners III, L.L.C. Maturity Date: July 28, 2004.
 - \$25,660,839.56 loan from CIBC, Inc., as lender, to Green 70W36 Property LLC, and Green 1414 Property LLC, collectively, as borrower, in connection with the properties located at 70 West 36th Street, New York, New York and 1414 Avenue of the Americas, New York, New York. Maturity Date: May 1, 2009.
 - \$20,875,561.60 loan from Lehman Brothers Holdings Inc., as lender, to New Green 50 W 23 Realty LLC, as borrower, in connection with the property located at 50 West 23rd Street, New York, New York. Maturity Date: August 1, 2007.
 - \$48,419,361.15 loan from Morgan Guaranty Trust Company of New York, as lender, to SLG 711 Fee LLC and SLG 711 Third LLC, collectively, as borrower, in connection with the property located at 711 Third Avenue, New York, New York. Maturity Date: September 10, 2005.
 - \$122,981,520.48 loan from German American Capital Corporation, as lender, to SLG Graybar Mesne Lease LLC and SLG Graybar Sublease LLC, collectively, as borrower, in connection with certain leasehold interests in the property located at 420 Lexington Avenue, New York, New York. Maturity Date: November 1, 2010.
 - \$65,000,000 loan from Wells Fargo Bank, National Association, as lender, to Green 317 Madison LLC, as borrower, in connection with the property located at 317 Madison Avenue, New York, New York. Maturity Date: August 20, 2004.
 - \$14,830,529.03 loan from Legg Mason Real Estate Services Incorporated, as lender, to SLG Shelton Realty LLC, as borrower, in connection with the property located at 875 Bridgeport Avenue, Shelton, Connecticut. Maturity Date: May 10, 2025.
 - \$68,198,016.00 loan from Bank of New York, as agent and lender, to Green W. 57th St., LLC, as borrower, in connection with the property located at 555 West 57th Street, New York, New York. Maturity Date: November 4, 2004.
 - \$300,000,000 unsecured revolving credit facility from Fleet National Bank, N.A., and other lenders, to SL Green Operating Partnership, L.P. Maturity Date: June 27, 2003.
 - \$75,000,000 secured revolving credit facility from Fleet National Bank, N.A., and other lenders, to SL Green Operating Partnership, L.P. Maturity Date: December 20, 2003.
 - \$22,178,400 repurchase agreement from Salomon Brothers Holding Company Inc., as lender, to Green 3 Pack Funding LLC, as borrower in connection with the properties located at 509, 535 and 545 Fifth Avenue, New York, New York. Maturity Date: November 1, 2003.
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SCHEDULE 8.2(d)

INVESTMENTS

- Borrower's 100% of the voting shares of eEmerge, Inc.

2. Borrower's 100% interest in SLG IRP Realty LLC
 3. Borrower's 100% equity interest SLG Warrant LLC
 4. Borrower's 75% equity interest in SLG Elevator Holdings LLC
 5. Borrower's 100% interest in SL Green Management LLC
 6. Borrower's 95% equity interest in SL Green Management Corp.
 7. Borrower's 100% interest in 469 Preferred Member LLC
 8. Borrower's 100% interest in Green 1412 Preferred LLC
 9. Borrower's 100% interest in SLG 1440 Broadway Funding LLC
 10. Borrower's 100% interest in SL Green Funding LLC
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QuickLinks

[TABLE OF CONTENTS](#)

[AMENDED AND RESTATED CREDIT AND GUARANTY AGREEMENT](#)

[EXHIBIT A FORM OF NOTE](#)

[SCHEDULE 1 to NOTE LOANS, CONVERSIONS AND PAYMENTS OF BASE RATE LOANS](#)

[SCHEDULE 1 to NOTE LOANS, CONVERSIONS AND PAYMENTS OF BASE RATE LOANS](#)

[EXHIBIT B FORM OF LOAN REQUEST](#)

[EXHIBIT C COMPLIANCE CERTIFICATE](#)

[EXHIBIT D FORM OF ASSIGNMENT AND ACCEPTANCE](#)

[SCHEDULE 1 LENDERS; DOMESTIC AND LIBOR LENDING OFFICES](#)

[SCHEDULE 1.1 UNENCUMBERED ASSETS](#)

[SCHEDULE 1.2 COMMITMENTS AND COMMITMENT PERCENTAGES](#)

[SCHEDULE 1.3 RELATED COMPANIES, GUARANTOR SUBSIDIARIES AND UNCONSOLIDATED ENTITIES](#)

[SCHEDULE 6.3 TITLE TO PROPERTIES](#)

[SCHEDULE 6.7 LITIGATION NONE](#)

[SCHEDULE 6.15 INSIDER TRANSACTIONS](#)

[SCHEDULE 6.16 EMPLOYEE BENEFIT PLANS](#)

[SCHEDULE 6.18 ENVIRONMENTAL MATTERS NONE](#)

[SCHEDULE 6.19 COMPANY ASSETS NONE](#)

[SCHEDULE 6.21 BUILDING STRUCTURAL DEFECTS, ETC.](#)

[SCHEDULE 6.22 INDEBTEDNESS \(All balances set forth below are as of Effective Date.\)](#)

[SCHEDULE 8.2\(d\) INVESTMENTS](#)

EMPLOYMENT AND NONCOMPETITION AGREEMENT

This EMPLOYMENT AND NONCOMPETITION AGREEMENT ("Agreement") is made as of August 20, 2002 between Stephen L. Green ("Executive") and SL Green Realty Corp., a Maryland corporation with its principal place of business at 420 Lexington Avenue, New York, New York 10170 (the "Employer").

1. *Term.* The term of this Agreement shall commence on the date first above written and, unless earlier terminated as provided in Section 6 below, shall terminate on December 31, 2007 (the "Current Term"); provided, however, that Section 8 (and any enforcement or other procedural provisions hereof affecting Section 8) hereof shall survive the termination of this Agreement as provided therein. The Current Term shall automatically be extended for successive one year periods (each, a "Renewal Term"), unless either party shall notify the other in writing at least three months prior to the expiration of the Current Term or the applicable Renewal Term of its intention not to renew such Term. The period of Executive's employment hereunder consisting of the Current Term and all Renewal Terms, if any, is herein referred to as the "Employment Period".

2. *Employment and Duties.*

- (a) *Duties.* During the Employment Period, Executive shall be employed in the business of the Employer and its affiliates. Executive shall serve the Employer as a senior corporate executive and shall have the title of Chief Executive Officer of the Employer and Chairman of the Board of Directors of the Employer (the "Board"); provided that Executive may resign from one or the other of such offices. Executive's duties and authority shall be as set forth in the By-laws of the Employer and as otherwise established from time to time by the Board, but in all events such duties shall be commensurate with his title and position with the Employer.
- (b) *Best Efforts.* Executive agrees to his employment as described in this Section 2 and agrees to devote substantially all of his business time and efforts to the performance of his duties under this Agreement, except as otherwise approved by the Board; provided, however, that nothing herein shall be interpreted to preclude Executive, so long as there is no material interference with his duties hereunder, from (i) participating as an officer or director of, or advisor to, any charitable or other tax exempt organization or otherwise engaging in charitable, fraternal or trade group activities; (ii) continuing to serve on boards of directors of which Executive is a member at the time this Agreement is executed, and, with the consent of the Employer (which shall not be unreasonably withheld), serving on other boards of directors, or (iii) investing and managing his assets as a passive investor in other entities or business ventures, provided that he performs no management or similar role with respect to such entities or ventures and such investment does not violate Section 8 hereof.
- (c) *Travel.* In performing his duties hereunder, Executive shall be available for all reasonable travel as the needs of the Employer's business may require. Executive shall be based in the metropolitan area of New York City.

3. *Compensation and Benefits.* In consideration of Executive's services hereunder, the Employer shall compensate Executive as provided in this Agreement.

- (a) *Base Salary.* For the period from the date hereof through December 31, 2002, the Employer shall pay Executive an aggregate minimum annual salary at the rate of \$400,000 per annum during the Employment Period ("Base Salary"). Thereafter, Base Salary shall be \$600,000. Base Salary shall be payable monthly in accordance with the Employer's normal business practices, and shall be reviewed by the Board or Compensation Committee at least annually. In no event shall Executive's Base Salary in effect at a particular time be reduced without his prior written consent.
- (b) *Incentive Compensation/Bonuses.* In addition to Base Salary, during the Employment Period, Executive shall be eligible for and shall receive such discretionary annual bonuses and shall be

eligible to participate in any incentive compensation plans in effect with respect to senior executive officers of the Employer, as the Board, in its sole discretion, may deem appropriate to reward Executive for job performance.

- (c) *Stock Options.* As determined by the Board in its sole discretion, Executive may be eligible to participate in the Employer's then current Stock Option and Incentive Plan (the "Plan"), which authorizes the grant of stock options and stock awards.
- (d) *Other Equity Awards.* Effective as of January 1, 2003, Executive shall be granted 175,000 restricted shares of Common Stock under the Plan. The grant shall generally be subject to the terms of the Plan and definitive award agreements between the Employer and Executive substantially in the form attached hereto as Exhibits A and B. In addition, the Employer shall pay Executive an additional cash amount, intended to serve generally as a tax gross-up, upon each date on which the restricted shares vest and become taxable, equal to 40% of the value of the shares included in Executive's taxable income on such date.
- (e) *Expenses.* Executive shall be reimbursed for all reasonable business related expenses incurred by Executive at the request of or on behalf of the Employer, provided that such expenses are incurred and accounted for in accordance with the policies and procedures established by the Employer. Any expenses incurred during the Employment Period but not reimbursed by the Employer by the end of the Employment Period, shall remain the obligation of the Employer to so reimburse Executive.
- (f) *Health and Welfare Benefit Plans.* During the Employment Period, Executive and Executive's immediate family shall be entitled to participate in such health and welfare benefit plans as the Employer shall maintain from time to time for the benefit of senior executive officers of the Employer and their families, on the terms and subject to the conditions set forth in such plan. Nothing in this Section shall limit the Employer's right to change or modify or terminate any benefit plan or program as it sees fit from time to time in the normal course of business so long as it does so for all senior executives of the Employer.
- (g) *Vacations.* Executive shall be entitled to paid vacations in accordance with the then regular procedures of the Employer governing senior executive officers.

(h) *Other Benefits.* During the Employment Period, the Employer shall provide to Executive such other benefits as generally made available to other senior executives of the Employer. In addition, the Employer shall maintain life insurance for the benefit of Executive's beneficiaries in a face amount equal to \$5,000,000; provided, however, that, such coverage shall only be required if available to the Employer at reasonable rates. If such insurance is not available at reasonable rates, then the Employer shall provide such coverage on a self-insured basis, at a cost to the Employer not to exceed the amount Executive would receive upon a termination by the Employer without Cause (as defined in Section 6(a)(iii) below) under Section 7(a)(ii); provided that, for purposes of this sentence, the multiplier in clause (y) of such Section shall be the lesser of (i) three or (ii) the number of years (including partial years) remaining in the then current Employment Period.

4. *Indemnification and Liability Insurance.* The Employer agrees to indemnify Executive to the fullest extent permitted by applicable law, as the same exists and may hereafter be amended, from and against any and all losses, damages, claims, liabilities and expenses asserted against, or incurred or suffered by, Executive (including the costs and expenses of legal counsel retained by the Employer to defend Executive and judgments, fines and amounts paid in settlement actually and reasonably incurred by or imposed on such indemnified party) with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding") in which Executive is made a party or threatened to be made a party, either with regard to his entering into this Agreement with the

2

Employer or in his capacity as an officer or director, or former officer or director, of the Employer or any affiliate thereof for which he may serve in such capacity. Such indemnification shall continue even after Executive is no longer employed by the Employer and shall inure to the benefit of his heirs, executors, and administrators. Expenses incurred by Executive in connection with any Proceeding shall be paid by the Employer in advance, upon request of Executive that the Employer pay such expenses. The Employer also agrees to secure and maintain officers and directors liability insurance providing coverage for Executive. The provisions of this Section 4 shall remain in effect after this Agreement is terminated irrespective of the reasons for termination. The indemnification provisions of this Section 4 shall not supersede or reduce any indemnification provided to Executive under any separate agreement, or the by-laws of the Employer, since it is intended that this Agreement shall, to the extent necessary, expand and extend Executive's rights to receive indemnity.

5. *Employer's Policies.* Executive agrees to observe and comply with the reasonable rules and regulations of the Employer as adopted by the Board from time to time regarding the performance of his duties and to carry out and perform orders, directions and policies communicated to him from time to time by the Board, so long as same are otherwise consistent with this Agreement.

6. *Termination.* Executive's employment hereunder may be terminated under the following circumstances:

(a) *Termination by the Employer.*

(i) *Death.* Executive's employment hereunder shall terminate upon his death.

(ii) *Disability.* If, as a result of Executive's incapacity due to physical or mental illness or disability, Executive shall have been incapable of performing his duties hereunder even with a reasonable accommodation on a full-time basis for the entire period of 90 consecutive days or any 90 days in a 180-day period, and within 30 days after written Notice of Termination (as defined in Section 6(c)) is given he shall not have returned to the performance of his duties hereunder on a full-time basis, the Employer may terminate Executive's employment hereunder.

(iii) *Cause.* The Employer may terminate Executive's employment hereunder for Cause. For purposes of this Agreement, "Cause" shall mean: (i) Executive's commission of a felony; (ii) Executive's gross negligence, willful or material misconduct or material fraud; (iii) Executive's material breach of any of his obligations in Sections 8(a) through 8(e) of this Agreement; or (iv) Executive's repeated failure to competently perform his duties after receiving at least 30 days notice from the Employer specifically identifying the manner in which Executive has failed to competently perform and being given sufficient time to correct his incompetent performance (it being understood that, for this purpose, the manner and level of Executive's performance shall not be determined based on the financial performance of the Employer).

(iv) *Without Cause.* Executive's employment hereunder may be terminated by the Employer at any time with or without Cause (as defined in Section 6(a)(iii) above), by a majority vote of all of the members of the Board (other than Executive) upon written notice to Executive, subject only to the severance provisions specifically set forth in Section 7.

(b) *Termination by Executive.*

(i) *Disability.* Executive may terminate his employment hereunder for Disability within the meaning of Section 6(a)(ii) above.

(ii) *With Good Reason.* Executive's employment hereunder may be terminated by Executive with Good Reason effective immediately by written notice to the Board. For purposes of this Agreement, with "Good Reason" shall mean, without Executive's prior written

3

consent: (i) a failure of the Board to elect Executive to office of Chief Executive Officer or of Executive to be elected as Chairman of the Board (unless, in each case, Executive has declined to seek such respective office) as set forth in Section 2; (ii) a failure by the Employer to pay compensation in accordance with the provisions of Section 3, which failure has not been cured within 14 days after the notice of the failure (specifying the same) has been given by Executive to the Employer; (iii) a material breach by the Employer of any other provision of this Agreement which has not been cured within 30 days after notice of noncompliance (specifying the nature of the noncompliance)

has been given by Executive to the Employer; (iv) the occurrence of a Change-in-Control (as defined in Section 6(c) below); or (v) the relocation of the Employer's principal executive offices or Executive's own office location to a location which is not in the metropolitan area of New York City.

(iii) *Without Good Reason.* Executive shall have the right to terminate his employment hereunder without Good Reason, subject to the terms and conditions of this Agreement.

(c) *Definitions.* The following terms shall be defined as set forth below.

(i) A "Change-in-Control" shall be deemed to have occurred if:

- (A) any Person, together with all "affiliates" and "associates" (as such terms are defined in Rule 12b-2 under the Securities Exchange Act of 1934 (the "Exchange Act")) of such Person, shall become the "beneficial owner" (as such term is defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Employer or SL Green Operating Partnership, L.P. (the "OP") representing 25% or more of either (1) the combined voting power of the Employer's and/or OP's then outstanding securities having the right to vote in an election of the Board ("Voting Securities") or (2) the then outstanding shares of all classes of stock of the Employer or OP (in either such case other than as a result of the acquisition of securities directly from the Employer or OP); or
- (B) the members of the Board at the beginning of any consecutive 24-calendar-month period commencing on or after the date hereof (the "Incumbent Directors") cease for any reason other than due to death to constitute at least a majority of the members of the Board; provided that any director whose election, or nomination for election by the Employer's stockholders, was approved by a vote of at least a majority of the members of the Board then still in office who were members of the Board at the beginning of such 24-calendar-month period, shall be deemed to be an Incumbent Director; or
- (C) the stockholders of the Employer shall approve (1) any consolidation or merger of the Employer or any subsidiary where the stockholders of the Employer, immediately prior to the consolidation or merger, would not, immediately after the consolidation or merger, beneficially own (as such term is defined in Rule 13d-3 under the Exchange Act), directly or indirectly, shares representing in the aggregate at least 50% of the voting shares of the corporation issuing cash or securities in the consolidation or merger (or of its ultimate parent corporation, if any), (2) any sale, lease, exchange or other transfer (in one transaction or a series of transactions contemplated or arranged by any party as a single plan) of all or substantially all of the assets of the Employer, if the shareholders of the Employer and unitholders of the OP taken as a whole and considered as one class immediately before such transaction own, immediately after consummation of such transaction, equity securities and partnership units possessing less than fifty (50%) percent of the

4

surviving or acquiring company and partnership taken as a whole or (3) any plan or proposal for the liquidation or dissolution of the Employer;

(D) Notwithstanding the foregoing, a "Change-in-Control" shall not be deemed to have occurred for purposes of the foregoing clause (A) solely as the result of an acquisition of securities by the Employer which, by reducing the number of shares of stock or other Voting Securities outstanding, increases (x) the proportionate number of shares of stock of the Employer beneficially owned by any Person to 25% or more of the shares of stock then outstanding or (y) the proportionate voting power represented by the Voting Securities beneficially owned by any Person to 25% or more of the combined voting power of all then outstanding Voting Securities; provided, however, that if any Person referred to in clause (x) or (y) of this sentence shall thereafter become the beneficial owner of any additional stock of the Employer or other Voting Securities (other than pursuant to a share split, stock dividend, or similar transaction), then a "Change-in-Control" shall be deemed to have occurred for purposes of the foregoing clause (A).

(ii) "Person" shall have the meaning used in Sections 13(d) and 14(d) of the Exchange Act; provided, however, that the term "Person" shall not include (A) Stephen L. Green, or (B) the Employer, any of its subsidiaries, or any trustee, fiduciary or other person or entity holding securities under any employee benefit plan of the Employer or any of its subsidiaries. In addition, no Change-in-Control shall be deemed to have occurred under clause (i)(A) above by virtue of a "group" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becoming a beneficial owner as described in such clause, if any individual or entity described in clause (A) or (B) of the foregoing sentence is a member of such group.

(d) *Notice of Termination.* Any termination of Executive's employment by the Employer or by Executive (other than on account of death) shall be communicated by written Notice of Termination to the other party hereto in accordance with Section 12 of this Agreement. For purposes of this Agreement, a "Notice of Termination" shall mean a notice which shall indicate the specific termination provision in this Agreement relied upon and, as applicable, shall set forth in reasonable detail the fact and circumstances claimed to provide a basis for termination of Executive's employment under the provision so indicated.

7. Compensation Upon Termination.

(a) *Termination By Employer Without Cause or By Executive With Good Reason.* If (i) Executive is terminated by the Employer without Cause pursuant to Section 6(a)(iv) above, or (ii) Executive shall terminate his employment hereunder with Good Reason pursuant to Section (6)(b)

(ii) above, then the Employment Period shall terminate as of the effective date set forth in the written notice of such termination (the "Termination Date") and Executive shall be entitled to the following payments and benefits:

- (i) Executive shall receive any earned and accrued but unpaid Base Salary on the Termination Date, and any earned and accrued but unpaid incentive compensation and bonuses payable at such times as would have applied without regard to such termination.
- (ii) The Employer shall make a lump sum payment to Executive on the Termination Date equal to (x) the sum of the average of the Base Salary paid to Executive for the year in which the Termination Date occurs and the year immediately prior thereto, plus the average of the annual performance bonuses paid to Executive for the immediately preceding two years, multiplied (y) by three.

5

- (iii) Executive shall continue to receive the benefits described in Section 3(f) existing on the date of termination for a period of three years following such termination; provided that, if such continued coverage is not feasible in light of tax or other legal considerations or as a result of the terms of the underlying benefit arrangements, the Employer shall reimburse Executive for his costs that exceed the amount Executive would have otherwise paid for his portion of the premiums for such benefits.
- (iv) Any unvested shares of restricted stock (i.e., shares then still subject to restrictions under the applicable award agreement) granted to Executive by the Employer shall become vested (i.e., free from such restrictions) and, as applicable, Executive shall be entitled to receive the cash amount described in the last sentence of Section 3(d), and any unexercisable or unvested stock options granted to Executive by the Employer shall become exercisable and vested on the date of Executive's termination. Any unexercised stock options granted to Executive by the Employer shall remain exercisable for the initial applicable term stated at the time of the grant.

Other than as expressly provided in this Section 7(a), the Employer shall have no further obligations hereunder following such termination.

- (b) *Termination By the Employer For Cause or By Executive Without Good Reason.* If (i) Executive is terminated by the Employer for Cause pursuant to Section 6(a)(iii) above, or (ii) Executive voluntarily terminates his employment hereunder without Good Reason pursuant to Section 6(b)(iii) above, then the Employment Period shall terminate as of the effective date set forth in the written notice of such termination (the "Termination Date") and Executive shall be entitled to receive his earned and accrued but unpaid Base Salary at the rate then in effect until the Termination Date. In addition, in such event, Executive shall be entitled (i) to receive any earned and accrued but unpaid incentive compensation or bonuses, payable at such times as would have applied without regard to such termination, (ii) to exercise any options which have vested as of the termination of Executive's employment and are exercisable to the extent provided by and otherwise in accordance with the terms of the applicable option grant agreement or plan, and (iii) to retain any restricted shares of the Employer's stock which have vested as of the termination of Executive's employment. Other than as expressly provided in this Section 7(b), the Employer shall have no further obligations hereunder following such termination.
- (c) *Termination by Reason of Death.* If Executive's employment terminates due to his death, (i) Executive's estate or beneficiaries shall be entitled to receive (A) any earned and accrued but unpaid Base Salary and any earned and accrued but unpaid annual performance bonuses or incentive compensation, payable at such times as would have applied without regard to such termination, and (B) any proceeds from applicable life insurance on the life of Executive (or alternative coverage) as contemplated by Section 3(h), and (ii) all unvested shares of restricted stock and all stock options granted to Executive shall become vested and exercisable on the date of Executive's termination due to his death and, as applicable, Executive shall be entitled to receive the cash amount described in the last sentence of Section 3(d) with respect to the restricted shares referenced in such Section 3(d). Any unexercised stock options granted to Executive shall remain exercisable for the initial applicable term stated at the time of the grant. Other than as expressly provided in this Section 7(c), the Employer shall have no further obligations hereunder following such termination.
- (d) *Termination by Reason of Disability.* If Executive's employment terminates due to his disability as defined in Section 6(a)(ii) above, (i) Executive shall be entitled to receive (A) any earned and accrued but unpaid Base Salary and any earned and accrued but unpaid annual performance bonuses or incentive compensation, payable at such times as would have applied

6

without regard to such termination, and (B) for a period of three years following such termination, Executive shall be entitled to receive (without duplication of amounts described in clause (A)) (x) continuing payments at the rate of the average of the Base Salary paid to Executive for the year in which the Termination Date occurs and the year immediately prior thereto, to be paid at the times salary payments are made to continuing senior executives, and (y) payments each equal in amount to the average of the annual performance bonuses paid to Executive for the immediately preceding two years, each to be paid at the times bonus payments are to be made (for each full performance year ending within such three-year period) to continuing senior executives; and (ii) all unvested shares of restricted stock and all stock options granted to Executive shall become vested and exercisable on the date of Executive's termination due to his disability and, as applicable, Executive shall be entitled to receive the cash amount described in the last sentence of Section 3(d) with respect to the restricted shares referenced in such Section 3(d). Any unexercised stock options granted to Executive shall remain exercisable for the initial applicable term stated at the time of the grant. Other than as expressly provided in this Section 7(d), the Employer shall have no further obligations hereunder following such termination.

8. *Confidentiality; Prohibited Activities.* Executive and the Employer recognize that due to the nature of his employment and relationship with the Employer, Executive has access to and develops confidential business information, proprietary information, and trade secrets relating to the business and operations of the Employer. Executive acknowledges that such information is valuable to the business of the Employer, and that disclosure to, or use for the benefit of, any person or entity other than the Employer, would cause irreparable damage to the Employer. Executive further acknowledges that his duties for the Employer include the duty to develop and maintain client, customer, employee, and other business relationships on behalf of the Employer; and that access to and development of those close business relationships for the Employer render his services special, unique and extraordinary. In recognition that the good will and business relationships described herein are valuable to the Employer and that loss of or damage to those relationships would destroy or diminish the value of the Employer, and in consideration of the compensation (including severance) arrangements hereunder, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by Executive, Executive agrees as follows:

- (a) *Confidentiality.* During the term of this Agreement (including any renewals), and at all times thereafter, Executive shall maintain the confidentiality of all confidential or proprietary information of the Employer ("Confidential Information"), and, except in furtherance of the business of the Employer or as specifically required by law or by court order, he shall not directly or indirectly disclose any such information to any person or entity; nor shall he use Confidential Information for any purpose except for the benefit of the Employer. For purposes of this Agreement, "Confidential Information" includes, without limitation: client or customer lists, identities, contacts, business and financial information (excluding those of Executive prior to employment with Employer); investment strategies; pricing information or policies, fees or commission arrangements of the Employer; marketing plans, projections, presentations or strategies of the Employer; financial and budget information of the Employer; new personnel acquisition plans; and all other business related information which has not been publicly disclosed by the Employer. This restriction shall apply regardless of whether such Confidential Information is in written, graphic, recorded, photographic, data or any machine-readable form or is orally conveyed to, or memorized by, Executive.

7

- (b) *Prohibited Activities.* Because Executive's services to the Employer are essential and because Executive has access to the Employer's Confidential Information, Executive covenants and agrees that:
- (i) during the Employment Period, and for the 18-month period following the termination of Executive by either party for any reason including the expiration of the term of this Agreement, Executive will not, without the prior written consent of the Board which shall include the unanimous consent of the Directors other than Executive or any other officer of the Employer, directly or indirectly (individually, or through or on behalf of another entity as owner, partner, agent, employee, consultant, or in any other capacity), engage, participate or assist, as an owner, partner, employee, consultant, director, officer, trustee or agent, in the acquisition, development, management, leasing or financing of any office real estate property anywhere in the New York City metropolitan area, subject, however, to Section 8(c) below; and
 - (ii) during the Employment Period, and for the 18-month period following the termination of Executive by either party for any reason (including the expiration of the term of this Agreement), Executive will not, without the prior written consent of the Board which shall include the unanimous consent of the Directors other than Executive or any other officer of the Employer, directly or indirectly (individually, or through or on behalf of another entity as owner, partner, agent, employee, consultant, or in any other capacity), solicit, encourage, or engage in any activity to induce any employee of the Employer to terminate employment with the Employer, or to become employed by, or to enter into a business relationship with, any other person or entity. For purposes of this subsection, the term "employee" means any individual who is an employee of or consultant to the Employer (or any affiliate) during the six-month period prior to Executive's last day of employment.
- (c) *Other Investments.* Notwithstanding anything contained herein to the contrary, Executive is not prohibited from (i) maintaining his investment in any Option Property (as such term is defined in the Employer's final prospectus relating to the Employer's IPO) or in any asset listed in the Employer's final prospectus relating to the IPO under the caption "The Properties—Assets Not Being Transferred to the Company" and (ii) from making investments in any entity that engages, directly or indirectly, in the acquisition, development, construction, operation, management, financing or leasing of office real estate properties, regardless of where they are located if Executive's aggregate investment in such entity constitutes less than one percent of the equity ownership of such entity.
- (d) *Employer Property.* Executive acknowledges that all originals and copies of materials, records and documents generated by him or coming into his possession during his employment by the Employer are the sole property of the Employer ("Employer Property"). During his employment, and at all times thereafter, Executive shall not remove, or cause to be removed, from the premises of the Employer, copies of any record, file, memorandum, document, computer related information or equipment, or any other item relating to the business of the Employer, except in furtherance of his duties under this Agreement. When Executive terminates his employment with the Employer, or upon request of the Employer at any time, Executive shall promptly deliver to the Employer all originals and copies of Employer Property in his possession or control and shall not retain any originals or copies in any form.
- (e) *No Disparagement.* For one year following termination of Executive's employment for any reason, Executive shall not intentionally disclose or cause to be disclosed any negative, adverse or derogatory comments or information about (i) the Employer and its parent, affiliates or subsidiaries, if any; (ii) any product or service provided by the Employer and its parent,

8

affiliates or subsidiaries, if any; or (iii) the Employer's and its parent's, affiliates' or subsidiaries' prospects for the future. For one year following termination of Executive's employment for any reason, the Employer shall not disclose or cause to be disclosed any negative, adverse or derogatory comments or information about Executive. Nothing in this Section shall prohibit either the Employer or Executive from testifying truthfully in any legal or administrative proceeding.

- (f) *Remedies.* Executive declares that the foregoing limitations in Sections 8(a) through 8(e) above are reasonable and necessary for the adequate protection of the business and the goodwill of the Employer. If any restriction contained in this Section 8 shall be deemed to be invalid, illegal or unenforceable by reason of the extent, duration or scope thereof, or otherwise, then the court making such determination shall have the right to reduce such extent, duration, scope, or other provisions hereof to make the restriction consistent with applicable law, and in its reduced form such restriction shall then be enforceable in the manner contemplated hereby. In the event that Executive breaches any of the promises contained in this Section 8, Executive acknowledges that the Employer's remedy at law for damages will be inadequate and that the Employer will be entitled to specific performance, a temporary restraining order or preliminary injunction to prevent Executive's prospective or continuing breach and to maintain the status quo. The existence of this right to injunctive relief, or other equitable relief, or the Employer's exercise of any of these rights, shall not limit any other rights or remedies the Employer may have in law or in equity, including, without limitation, the right to arbitration contained in Section 9 hereof and the right to compensatory and monetary damages. In the event that a final non-appealable judgment is entered in favor of one of the parties, that party shall be reimbursed by the other party for all costs and attorneys' fees incurred by such party in such action.

Executive hereby agrees to waive his right to a jury trial with respect to any action commenced to enforce the terms of this Agreement.

- (g) *Transition.* Regardless of the reason for his departure from the Employer, Executive agrees that at the Employer's sole costs and expense, for a period of not more than 30 days after termination of Executive, he shall take all steps reasonably requested by the Employer to effect a successful transition of client and customer relationships to the person or persons designated by the Employer, subject to Executive's obligations to his new employer.
- (h) *Cooperation with Respect to Litigation.* During the Employment period and at all times thereafter, Executive agrees to give prompt written notice to the Employer of any claim relating to the Employer and to cooperate fully, in good faith and to the best of his ability with the Employer in connection with any and all pending, potential or future claims, investigations or actions which directly or indirectly relate to any action, event or activity about which Executive may have knowledge in connection with or as a result of his employment by the Employer hereunder. Such cooperation will include all assistance that the Employer, its counsel or its representatives may reasonably request, including reviewing documents, meeting with counsel, providing factual information and material, and appearing or testifying as a witness; provided, however, that the Employer will reimburse Executive for all reasonable expenses, including travel, lodging and meals, incurred by him in fulfilling his obligations under this Section 8(h) and, except as may be required by law or by court order, should Executive then be employed by an entity other than the Employer, such cooperation will not materially interfere with Executive's then current employment.
- (i) *Survival.* The provisions of this Section 8 shall survive termination of Executive's employment and any other provisions relating to the enforcement thereof. The covenants contained in Section 8 shall be construed as independent of any of other provisions contained in this

9

Agreement and shall be enforceable regardless of whether Executive has a claim against the Employer under this Agreement or otherwise.

9. *Arbitration.* Any controversy or claim arising out of or relating to this Agreement or the breach of this Agreement (other than a controversy or claim arising under Section 8, to the extent necessary for the Employer (or its affiliates, where applicable) to avail itself of the rights and remedies referred to in Section 8(f)) that is not resolved by Executive and the Employer (or its affiliates, where applicable) shall be submitted to arbitration in New York, New York in accordance with New York law and the procedures of the American Arbitration Association. The determination of the arbitrator(s) shall be conclusive and binding on the Employer (or its affiliates, where applicable) and Executive and judgment may be entered on the arbitrator(s)' award in any court having jurisdiction.

10. *Conflicting Agreements.* Executive hereby represents and warrants that the execution of this Agreement and the performance of his obligations hereunder will not breach or be in conflict with any other agreement to which he is a party or is bound, and that he is not now subject to any covenants against competition or similar covenants which would affect the performance of his obligations hereunder.

11. *No Duplication of Payments.* Executive shall not be entitled to receive duplicate payments under any of the provisions of this Agreement.

12. *Notices.* All notices or other communications required or permitted to be given hereunder shall be in writing and shall be delivered by hand and or sent by prepaid telex, cable or other electronic devices or sent, postage prepaid, by registered or certified mail or telecopy or overnight courier service and shall be deemed given when so delivered by hand, telexed, cabled or telecopied, or if mailed, three days after mailing (one business day in the case of express mail or overnight courier service), as follows:

- (a) if to Executive:

Stephen L. Green
845 United Nations Plaza
Apartment 65 B&C
New York, NY 10017

- (b) if to the Employer:

SL Green Realty Corp.
420 Lexington Avenue
New York, New York 10170
Attention: President

with a copy to:

Clifford Chance US LLP
200 Park Avenue
New York, New York 10166
Attention: Robert E. King, Jr.

or such other address as either party may from time to time specify by written notice to the other party hereto.

13. *Amendments.* No amendment, modification or waiver in respect of this Agreement shall be effective unless it shall be in writing and signed by the party against whom such amendment, modification or waiver is sought.

14. *Severability.* If any provision of this Agreement (or any portion thereof) or the application of any such provision (or any portion thereof) to any person or circumstances shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof (or the remaining portion hereof) or the application of such provision to any other persons or circumstances.

15. *Withholding.* The Employer shall be entitled to withhold from any payments or deemed payments any amount of tax withholding it determines to be required by law.

16. *Successors and Assigns.* This Agreement shall be binding upon and inure to the benefit of both parties and their respective successors and assigns, including any corporation with which or into which the Employer may be merged or which may succeed to its assets or business, provided, however, that the obligations of Executive are personal and shall not be assigned by him. This Agreement shall inure to the benefit of and be enforceable by Executive's personal and legal representatives, executors, administrators, assigns, heirs, distributees, devisees and legatees.

17. *Counterparts.* This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more such counterparts have been signed by each of the parties and delivered to the other party.

18. *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made and to be performed entirely within such State, without regard to the conflicts of law principles of such State.

19. *Choice of Venue.* Executive agrees to submit to the jurisdiction of the United States District Court for the Southern District of New York or the Supreme Court of the State of New York, New York County, for the purpose of any action to enforce any of the terms of this Agreement.

20. *Parachutes.* Notwithstanding any other provision of this Agreement, if all or any portion of the payments and benefits provided under this Agreement (including without limitation any accelerated vesting), or any other payments and benefits which Executive receives or is entitled to receive from the Employer or an affiliate, or any combination of the foregoing, would constitute an excess "parachute payment" within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the "Code") (whether or not under an existing plan, arrangement or other agreement) (each such parachute payment, a "Parachute Payment"), and would result in the imposition on Executive of an excise tax under Section 4999 of the Code or any successor thereto, then, in addition to any other benefits to which Executive is entitled under this Agreement, Executive shall be paid by the Employer an amount in cash equal to the sum of the excise taxes payable by Executive by reason of receiving Parachute Payments plus the amount necessary to put Executive in the same after-tax position (taking into account any and all applicable federal, state and local excise, income or other taxes at the highest possible applicable rates on such Parachute Payments (including without limitation any payments under this Section 20) as if no excise taxes had been imposed with respect to Parachute Payments (the "Parachute Gross-up"). The amount of any payment under this Section 20 shall be computed by a certified public accounting firm of national reputation reasonably selected by Executive and reasonably acceptable to the Employer. If the Employer desires to dispute the computation rendered by such accounting firm, the Employer may select an alternative certified public accounting firm of national reputation to perform the applicable computations. If the two accounting firms cannot agree upon the computations, Executive and the Employer will jointly appoint a third certified public accounting firm of national reputation, reasonably acceptable to Executive and the Employer, within 10 calendar days after the two conflicting computations have been rendered. Such third accounting firm shall be asked to determine within 30 calendar days the computation of the Parachute Gross-up to be paid to Executive, and payments shall be made accordingly. In any event, the Employer will pay to Executive or pay on Executive's behalf the Parachute Gross-up as computed by the accounting firm initially selected by Executive by the time any taxes payable by Executive as a result of the Parachute Payments become

11

due, with Executive agreeing to return the excess amount of such payment over the final computation rendered from the process described in this Section 20. Executive and the Employer will provide the accounting firms with all information which any accounting firm reasonably deems necessary in computing the Parachute Gross-up to be made available to Executive. The costs and expenses of all of the accounting firms retained to perform the computations described above shall be borne by the Employer. In the event that the Internal Revenue Service or a court, as applicable, finally and in a decision that has become unappealable, determines that a greater or lesser amount of tax is due, then the Employer shall within five business days thereafter shall pay the additional amounts, or Executive within five business days after receiving a refund shall pay over the amount refunded to the Employer, respectively; provided that (i) Executive shall not initiate any proceeding or other contests regarding these matters, other than at the direction of the Employer, and shall provide notice to the Employer of any proceeding or other contest regarding these matters initiated by the Internal Revenue Service, and (ii) the Employer shall be entitled to direct and control all such proceeding and other contests, if it commits to and does pay all costs (including without limitation legal and other professional fees) associated therewith.

21. *Entire Agreement.* This Agreement contains the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter. The parties hereto shall not be liable or bound to any other party in any manner by any representations, warranties or covenants relating to such subject matter except as specifically set forth herein.

22. *Section Headings.* Section headings used in this Agreement are included for convenience of reference only and will not affect the meaning of any provision of this Agreement.

23. *Board Approval.* The Employer represents that the Board has approved the economic terms of this Agreement.

IN WITNESS WHEREOF, this Agreement is effective as of the day and year first written above, and is being executed on January 23, 2003.

SL GREEN REALTY CORP.

By:

Name: Andrew S. Levine
Title: Executive Vice President

Stephen L. Green

EXHIBIT A

**SL GREEN REALTY CORP.
AMENDED 1997 STOCK OPTION AND INCENTIVE PLAN
RESTRICTED STOCK AWARD AGREEMENT**

AGREEMENT by and between SL Green Realty Corp., a Maryland corporation (the "Company") and Stephen L. Green (the "Grantee"), dated as of the 23rd day of January, 2003.

WHEREAS, the Company maintains the SL Green Realty Corp. Amended 1997 Stock Option and Incentive Plan, as it may be amended from time to time (the "Plan") (capitalized terms used but not defined herein shall have the respective meanings ascribed thereto by the Plan);

WHEREAS, the Grantee is an employee of the Company; and

WHEREAS, pursuant to the Grantee's employment agreement with the Company dated as of August 20, 2002 (the "Employment Agreement"), the Committee has determined that it is in the best interests of the Company and its shareholders to grant restricted stock to the Grantee subject to the terms and conditions set forth below.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. *Grant of Restricted Stock.*

The Company hereby grants the Grantee 87,500 restricted shares of Common Stock of the Company (the "Restricted Stock"), subject to the following terms and conditions and subject to the provisions of the Plan. The Plan is hereby incorporated herein by reference as though set forth herein in its entirety.

2. *Restrictions and Conditions.*

- (a) The Restricted Stock shall be subject to the following restrictions and conditions:
- (i) Subject to clauses (iii) and (iv) below, the period of restriction with respect to shares of Restricted Stock granted hereunder (the "Restriction Period") shall begin on the date hereof, and lapse in accordance with Schedule I. Subject to the provisions of the Plan and this Agreement, during the Restriction Period, except as may otherwise be permitted by the Committee (after consideration of, among other things, any applicable securities and tax considerations) in connection with the Grantee's trust or estate planning, the Grantee shall not be permitted voluntarily or involuntarily to assign, transfer, or otherwise encumber or dispose of shares of Restricted Stock awarded under the Plan.
 - (ii) Except as provided in the foregoing clause (i), the Grantee shall have, in respect of the Restricted Stock, all of the rights of a stockholder of the Company, including the right to vote the underlying shares. The Grantee shall be entitled to receive any cash dividends on any shares of Restricted Stock (whether or not then subject to restrictions) which have not been forfeited. Certificates for shares of Stock (not subject to restrictions) shall be delivered to the Grantee promptly after, and only after, the Restriction Period shall lapse without forfeiture in respect of such shares.
 - (iii) Subject to clause (iv) below, upon the termination of the Grantee's employment with the Company and its Affiliates for any reason by the Company and its Affiliates or by the Grantee during the Restriction Period, then all shares of Restricted Stock still subject to restriction shall thereupon, and with no further action, be forfeited by the Grantee.
 - (iv) In the event that during the Restriction Period the Grantee's employment with the Company and its Affiliates terminates (A) on account of the death or disability (as defined in the Employment Agreement) of the Grantee as contemplated by the Employment Agreement; (B) by the Company Without Cause (as defined in the Employment Agreement); or (C) by the Executive for Good Reason (as defined in the Employment Agreement) as contemplated by the Employment Agreement, then any

restrictions provided herein will immediately lapse on all Restricted Stock, and the Grantee (or designee) shall own such shares free and clear of all restrictions imposed hereby, free to hold or dispose of such shares in the Grantee's (or designee's) discretion, subject to all applicable federal and state laws.

- (b) The Grantee shall be issued a stock certificate in respect of the shares of Restricted Stock awarded hereunder. Such certificate shall be registered in the name of the Grantee, and may include any legend which the Committee deems appropriate to reflect any restrictions on transfer provided hereunder or under the Plan, or as the Committee may otherwise deem appropriate, and, without limiting the generality of the foregoing, shall bear a legend referring to the terms, conditions, and restrictions applicable to this Agreement, substantially in the following form:

THE TRANSFERABILITY OF THIS CERTIFICATE AND THE SHARES OF STOCK REPRESENTED HEREBY ARE SUBJECT TO THE TERMS AND CONDITIONS (INCLUDING FORFEITURE) OF THE SL GREEN REALTY CORP. AMENDED 1997 STOCK OPTION AND INCENTIVE PLAN, AS IT MAY BE AMENDED FROM TIME TO TIME, AND AN AWARD AGREEMENT ENTERED INTO BETWEEN THE REGISTERED OWNER AND SL GREEN REALTY CORP. COPIES OF SUCH PLAN AND AWARD AGREEMENT ARE ON FILE IN THE OFFICES OF SL GREEN REALTY CORP. AT 420 LEXINGTON AVENUE, NEW YORK, NEW YORK 10170.

The Committee shall require that such stock certificate be held in custody by the Company until the restrictions hereunder shall have lapsed, and that, as a condition of the shares of Restricted Stock awarded hereunder, the Grantee shall deliver a stock power, endorsed in blank, relating to the

shares covered by this Agreement. If and when such restrictions so lapse, such stock certificate shall be delivered by the Company to the Grantee or his or her designee, and the Grantee (or designee) shall own such shares free and clear of all restrictions imposed hereby, free to hold or dispose of such shares in the Grantee's (or designee's) discretion, subject to all applicable federal and state laws.

3. *Miscellaneous.*

- (a) **THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO PRINCIPLES OF CONFLICT OF LAWS.** The captions of this Agreement are not part of the provisions hereof and shall have no force or effect. This Agreement may not be amended or modified except by a written agreement executed by the parties hereto or their respective successors and legal representatives. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.
- (b) The Committee may make such rules and regulations and establish such procedures for the administration of this Agreement as it deems appropriate. Without limiting the generality of the foregoing, the Committee may interpret this Agreement, with such interpretations to be conclusive and binding on all persons and otherwise accorded the maximum deference permitted by law. In the event of any dispute or disagreement as to the interpretation of this Agreement or of any rule, regulation or procedure, or as to any question, right or obligation arising from or related to this Agreement, the decision of the Committee shall be final and binding upon all persons.

2

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- (c) All notices hereunder shall be in writing, and if to the Company or the Committee, shall be delivered to the Board or mailed to its principal office, addressed to the attention of the Board; and if to the Grantee, shall be delivered personally or mailed to the Grantee at the address appearing in the records of the Company. Such addresses may be changed at any time by written notice to the other party given in accordance with this paragraph 3(b).
- (d) Without limiting the Grantee's rights as may otherwise be applicable in the event of a Change of Control (as defined in the Employment Agreement), if the Company shall be consolidated or merged with another corporation or other entity, the Grantee may be required to deposit with the successor corporation the certificates for the stock or securities or the other property that the Grantee is entitled to receive by reason of ownership of Restricted Stock in a manner consistent with the Plan, and such stock, securities or other property shall become subject to the restrictions and requirements imposed under the Plan and this Agreement, and the certificates therefor or other evidence thereof shall bear a legend similar in form and substance to the legend set forth in the Plan.

Any shares or other securities distributed to the Grantee with respect to Restricted Stock or otherwise issued in substitution of Restricted Stock shall be subject to the restrictions and requirements imposed by the Plan and this Agreement, including depositing the certificates therefor with the Company together with a stock power and bearing a legend as provided in the Plan.

- (e) The failure of the Grantee or the Company to insist upon strict compliance with any provision of this Agreement or the Plan, or to assert any right the Grantee or the Company, respectively, may have under this Agreement or the Plan, shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement or the Plan.
- (f) The Company shall be entitled to withhold from any payments or deemed payments any amount of tax withholding it determines to be required by law.
- (g) Nothing in this Agreement shall confer on the Grantee any right to continue in the employ or other service of the Company or its Subsidiaries or interfere in any way with the right of the Company or its Subsidiaries and its shareholders to terminate the Grantee's employment or other service at any time.
- (h) This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, written or oral, with respect thereto.

3

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

SL GREEN REALTY CORP.

By: _____

Name: Andrew S. Levine
Title: Executive Vice President

STEPHEN L. GREEN

4

SCHEDULE I

The shares of Restricted Stock shall become free from restriction on each January 1 commencing on January 1, 2004 (each, a "Vesting Date"), on an annual basis, in the amount of 17,500 shares per year, subject to the achievement of certain performance criteria set forth below:

- (i) All 17,5000 shares shall become free from restriction in an applicable year if the Company achieves either (A) a 7% increase in funds from operations on a per-share basis or (B) a 10% total return to shareholders (including all dividends and stock appreciation) on each share of Common Stock, during the last fiscal year completed before the applicable Vesting Date.
- (ii) If the performance criteria set forth in paragraph (i) above is not achieved in the fiscal year immediately preceding the applicable Vesting Date, the shares of Restricted Stock that did not become free from restriction in such year may still become free from restriction upon the satisfaction of the performance criteria on a cumulative basis beginning with the first fiscal year applicable to this Agreement and ending with the then-current fiscal year. If the cumulative performance measures are satisfied, then any restrictions on shares of Restricted Stock that failed to lapse during such prior year shall lapse as of the applicable Vesting Date.

Notwithstanding the foregoing, if the performance criteria set forth in paragraph (i) above for a particular year is not met, but the Company's total return to shareholders is in the top one-third of its peer group companies (as to be determined for such year by the Committee in its sole discretion) during the last fiscal year completed immediately prior to the applicable Vesting Date, then the restrictions on 100% of the shares of Restricted Share that otherwise would have become free of restriction on such Vesting Date shall become free from restriction.

EXHIBIT B

SL GREEN REALTY CORP. AMENDED 1997 STOCK OPTION AND INCENTIVE PLAN RESTRICTED STOCK AWARD AGREEMENT

AGREEMENT by and between SL Green Realty Corp., a Maryland corporation (the "Company") and Stephen L. Green (the "Grantee"), dated as of the 23rd day of January, 2003.

WHEREAS, the Company maintains the SL Green Realty Corp. Amended 1997 Stock Option and Incentive Plan, as it may be amended from time to time (the "Plan") (capitalized terms used but not defined herein shall have the respective meanings ascribed thereto by the Plan);

WHEREAS, the Grantee is an employee of the Company; and

WHEREAS, pursuant to the Grantee's employment agreement with the Company dated as of August 20, 2002 (the "Employment Agreement"), the Committee has determined that it is in the best interests of the Company and its shareholders to grant restricted stock to the Grantee subject to the terms and conditions set forth below.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. *Grant of Restricted Stock.*

The Company hereby grants the Grantee 87,500 restricted shares of Common Stock of the Company (the "Restricted Stock"), subject to the following terms and conditions and subject to the provisions of the Plan. The Plan is hereby incorporated herein by reference as though set forth herein in its entirety.

2. *Restrictions and Conditions.*

(a) The Restricted Stock shall be subject to the following restrictions and conditions:

- (i) Subject to clauses (iii) and (iv) below, the period of restriction with respect to shares of Restricted Stock granted hereunder (the "Restriction Period") shall begin on the date hereof, and lapse with respect to 20% of such shares on January 1, 2004, and with respect to an additional 20% of such shares on each of the first four anniversaries of the date hereof (with the result that all of the shares shall become free from restriction on January 1, 2008). Subject to the provisions of the Plan and this Agreement, during the Restriction Period, except as may otherwise be permitted by the Committee (after consideration of, among other things, any applicable securities and tax considerations) in connection with the Grantee's trust or estate planning, the Grantee shall not be permitted voluntarily or involuntarily to assign, transfer, or otherwise encumber or dispose of shares of Restricted Stock awarded under the Plan.
- (ii) Except as provided in the foregoing clause (i), the Grantee shall have, in respect of the Restricted Stock, all of the rights of a stockholder of the Company, including the right to vote the underlying shares. The Grantee shall be entitled to receive any cash dividends on any shares of Restricted Stock (whether or not then subject to restrictions) which have not been forfeited. Certificates for shares of Stock (not subject to restrictions) shall be delivered to the Grantee promptly after, and only after, the Restriction Period shall lapse without forfeiture in respect of such shares.
- (iii) Subject to clause (iv) below, upon the termination of the Grantee's employment with the Company and its Affiliates for any reason by the Company and its Affiliates or by the Grantee during the Restriction Period, then all shares of Restricted Stock still subject to restriction shall thereupon, and with no further action, be forfeited by the Grantee.
- (iv) In the event that during the Restriction Period the Grantee's employment with the Company and its Affiliates terminates (A) on account of the death or disability (as defined in the Employment Agreement) of the Grantee as contemplated by the Employment Agreement; (B) by the Company Without Cause (as defined in the

Employment Agreement); or (C) by the Executive for Good Reason (as defined in the Employment Agreement) as contemplated by the Employment Agreement, then any restrictions provided herein will immediately lapse on all Restricted Stock, and the Grantee (or designee) shall own such shares free and clear of all restrictions imposed hereby, free to hold or dispose of such shares in the Grantee's (or designee's) discretion, subject to all applicable federal and state laws.

- (b) The Grantee shall be issued a stock certificate in respect of the shares of Restricted Stock awarded hereunder. Such certificate shall be registered in the name of the Grantee, and may include any legend which the Committee deems appropriate to reflect any restrictions on transfer provided hereunder or under the Plan, or as the Committee may otherwise deem appropriate, and, without limiting the generality of the foregoing, shall bear a legend referring to the terms, conditions, and restrictions applicable to this Agreement, substantially in the following form:

THE TRANSFERABILITY OF THIS CERTIFICATE AND THE SHARES OF STOCK REPRESENTED HEREBY ARE SUBJECT TO THE TERMS AND CONDITIONS (INCLUDING FORFEITURE) OF THE SL GREEN REALTY CORP. AMENDED 1997 STOCK OPTION AND INCENTIVE PLAN, AS IT MAY BE AMENDED FROM TIME TO TIME, AND AN AWARD AGREEMENT ENTERED INTO BETWEEN THE REGISTERED OWNER AND SL GREEN REALTY CORP. COPIES OF SUCH PLAN AND AWARD AGREEMENT ARE ON FILE IN THE OFFICES OF SL GREEN REALTY CORP. AT 420 LEXINGTON AVENUE, NEW YORK, NEW YORK 10170.

The Committee shall require that such stock certificate be held in custody by the Company until the restrictions hereunder shall have lapsed, and that, as a condition of the shares of Restricted Stock awarded hereunder, the Grantee shall deliver a stock power, endorsed in blank, relating to the shares covered by this Agreement. If and when such restrictions so lapse, such stock certificate shall be delivered by the Company to the Grantee or his or her designee, and the Grantee (or designee) shall own such shares free and clear of all restrictions imposed hereby, free to hold or dispose of such shares in the Grantee's (or designee's) discretion, subject to all applicable federal and state laws.

3. *Miscellaneous.*

- (a) **THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO PRINCIPLES OF CONFLICT OF LAWS.** The captions of this Agreement are not part of the provisions hereof and shall have no force or effect. This Agreement may not be amended or modified except by a written agreement executed by the parties hereto or their respective successors and legal representatives. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.
- (b) The Committee may make such rules and regulations and establish such procedures for the administration of this Agreement as it deems appropriate. Without limiting the generality of the foregoing, the Committee may interpret this Agreement, with such interpretations to be conclusive and binding on all persons and otherwise accorded the maximum deference permitted by law. In the event of any dispute or disagreement as to the interpretation of this Agreement or of any rule, regulation or procedure, or as to any question, right or obligation arising from or related to this Agreement, the decision of the Committee shall be final and binding upon all persons.
- (c) All notices hereunder shall be in writing, and if to the Company or the Committee, shall be delivered to the Board or mailed to its principal office, addressed to the attention of the

2

Board; and if to the Grantee, shall be delivered personally or mailed to the Grantee at the address appearing in the records of the Company. Such addresses may be changed at any time by written notice to the other party given in accordance with this paragraph 3(b).

- (d) Without limiting the Grantee's rights as may otherwise be applicable in the event of a Change of Control (as defined in the Employment Agreement), if the Company shall be consolidated or merged with another corporation or other entity, the Grantee may be required to deposit with the successor corporation the certificates for the stock or securities or the other property that the Grantee is entitled to receive by reason of ownership of Restricted Stock in a manner consistent with the Plan, and such stock, securities or other property shall become subject to the restrictions and requirements imposed under the Plan and this Agreement, and the certificates therefor or other evidence thereof shall bear a legend similar in form and substance to the legend set forth in the Plan.

Any shares or other securities distributed to the Grantee with respect to Restricted Stock or otherwise issued in substitution of Restricted Stock shall be subject to the restrictions and requirements imposed by the Plan and this Agreement, including depositing the certificates therefor with the Company together with a stock power and bearing a legend as provided in the Plan.

- (e) The failure of the Grantee or the Company to insist upon strict compliance with any provision of this Agreement or the Plan, or to assert any right the Grantee or the Company, respectively, may have under this Agreement or the Plan, shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement or the Plan.
- (f) The Company shall be entitled to withhold from any payments or deemed payments any amount of tax withholding it determines to be required by law.
- (g) Nothing in this Agreement shall confer on the Grantee any right to continue in the employ or other service of the Company or its Subsidiaries or interfere in any way with the right of the Company or its Subsidiaries and its shareholders to terminate the Grantee's employment or other service at any time.
- (h) This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, written or oral, with respect thereto.

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

SL GREEN REALTY CORP.

By:

Name: Andrew S. Levine
Title: Executive Vice President

QuickLinks

[EMPLOYMENT AND NONCOMPETITION AGREEMENT](#)

[EXHIBIT A SL GREEN REALTY CORP. AMENDED 1997 STOCK OPTION AND INCENTIVE PLAN RESTRICTED STOCK AWARD AGREEMENT SCHEDULE I](#)

[EXHIBIT B SL GREEN REALTY CORP. AMENDED 1997 STOCK OPTION AND INCENTIVE PLAN RESTRICTED STOCK AWARD AGREEMENT](#)

Consent of Independent Auditors

We consent to the incorporation by reference in the Registration Statements (Form S-3 for the registration of (i) \$400,000,000 of its common and preferred stock, No. 333-68493; (ii) 2,383,284 shares of its common stock, No. 333-70111 and (iii) 1,173,232 shares of its common stock, No. 333-30394 and Form S-8 pertaining to the Amended 1997 Stock Option and Incentive Plan) of SL Green Realty Corp. and in the related Prospectus of our report dated November 20, 2002, with respect to the statement of revenues and certain expenses of 220 News LLC for the year ended December 31, 2001, included in its Current Report on Form 8-K dated February 21, 2003, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

New York, New York
February 20, 2003

QuickLinks

[Consent of Independent Auditors](#)