

BK1934 P3889

FORSYTH CO, NC 104 FEE: \$ 32.00
PRESENTED & RECORDED: 02/12/1997 3:11PM
DICKIE C. WOOD REGISTER OF DEEDS BY: HODVA

DOCUMENT PREPARED BY AND *NationsBank Special Assets*
AFTER RECORDING RETURN TO: 101 North Tryon Street, NC1001-07-04
Stephen D. Poe, Esq. Attn: Jennifer Malone
P. O. Box 21029 Charlotte, NC 28255
Winston-Salem, NC 27120

EXTENSION AGREEMENT

THIS EXTENSION AGREEMENT ("Extension Agreement"), made as of the 31st day of October, 1996, by and between T & C PROPERTIES, a North Carolina general partnership ("Borrower"), TERRY T. BARBER, and CHARLES E. TALTON, JR., both as partners of the Borrower and as guarantors (the "Partners"), and ROBERT L. BARBER (the Partners and Robert L. Barber shall be referred to collectively as the "Guarantors"), and NATIONSBANK, N.A. (formerly NATIONSBANK, N.A. (CAROLINAS), NATIONSBANK OF NORTH CAROLINA, N.A., and NCNB NATIONAL BANK OF NORTH CAROLINA)) (the "Holder").

W I T N E S S E T H:

WHEREAS, Borrower is currently indebted to Holder for and on account of that certain loan and extension of credit, evidenced by a promissory note dated August 8, 1989, in the original principal amount of \$155,000 (the "Note"). The Holder is the owner and holder of the Note. The collateral security for payment of the indebtedness evidenced by the Note includes, without limitation, a North Carolina Deed of Trust dated August 8, 1989, from Borrower to a named Trustee, recorded in the Office of the Register of Deeds of Forsyth County, North Carolina in Book 1673, at Page 1513, covering real property located at 290 Charlois Boulevard, Winston-Salem, Forsyth County, North Carolina (the "Deed of Trust") and an Assignment of Lessor's Interest in Leases, Rents and Profits dated August 8, 1989, recorded in the Office of the Register of Deeds of Forsyth County, North Carolina in Book 1673, at Page 1518 (the "Assignment");

The Note is personally guaranteed by the Guarantors, pursuant to those certain guaranty agreements dated December 7, 1994 (the "Guaranties");

All liens, security interests and assignments securing the Note are collectively called the "Liens", and the Note, all renewals, extensions and modifications thereof, the Deed of Trust, the Assignment, the Guaranties and all other documents now or hereafter evidencing, securing, guaranteeing or executed in connection with the indebtedness evidenced by the Note, as renewed and extended, are collectively called the "Loan Documents". The real property covered by the deed of trust and the improvements and

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fixtures thereon and appurtenances thereto are referred to as the "Property";

WHEREAS, on or about September 13, 1996, the Holder declared the Note immediately due and payable due to certain defaults under the Note, but the Note was not paid; and

WHEREAS, Borrower and Holder have agreed to extend the maturity date of the Note, to make certain other changes specified below in this Agreement and to ratify the Liens and confirm that they continue to secure the Note, as modified hereby, all as set forth in the succeeding provisions of this Agreement.

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

1. Balance. The unpaid principal balance of the Note, as of October 31, 1996, shall not exceed \$108,851.80. The Borrower agrees to pay all amounts of principal, together with any unpaid interest and other fees or charges owed to the Holder, to reduce the principal balance of the Note to such amount as of such date.

2. Interest Rate. Interest shall accrue on the unpaid principal balance of the Note until the Maturity Date set forth below at the rate of NationsBank's Prime Rate, plus three-quarters of one percent (3/4%), as set forth in the Note. In the event of any default under the Note, or the failure of the Borrower to pay the Note in full on or before the Maturity Date (as defined below), the rate of interest on the Note shall become the Default Rate set forth in the Note.

3. Payment Schedule and Maturity Date. The maturity date of the Note is hereby extended to March 31, 1997 (the "Maturity Date"). The Borrower agrees to pay the indebtedness evidenced by the Note at the rate of \$645.83 per month, plus accrued interest, on the last day of each month, with a final payment of all remaining principal and accrued but unpaid interest on March 31, 1997 (the "Maturity Date"). Each such payment shall be made to the order of the Holder, at its address, NationsBank Commercial Collections, NC1-001-07-06, Charlotte, North Carolina 28255, or at such other address as Holder shall designate in writing.

4. Application of Payments. All payments shall be applied first to accrued interest and the balance to principal. All prepayments shall be applied first to accrued interest and the balance to the remaining principal installments in the inverse order of their maturity.

5. Liens. The Borrower hereby ratifies and affirms the Liens and the validity and continued effect thereof as collateral security for all of the Borrower's indebtedness to the Holder pursuant to the Loan Documents.

6. Reaffirmation of Guaranties; Waiver. Each Guarantor, by signature below as such, for a valuable consideration, the receipt and adequacy of which are hereby acknowledged, hereby consents to and joins in this Extension Agreement and hereby declares to and agrees with Holder that its Guaranty is and shall continue in full force and effect for the benefit of Holder with respect to all obligations arising under the Note, this Extension Agreement and all addenda attached hereto, and the Loan Documents (collectively, the "Obligations"), as amended by this Extension Agreement; that there are no offsets, claims or defenses of Guarantor with respect to its Guaranty nor, to Guarantor's knowledge, with respect to the Obligations; that its Guaranty is not released, diminished or impaired in any way by this Extension Agreement or the transactions contemplated hereby; and that its Guaranty is hereby ratified and confirmed in all respects. Each Guarantor acknowledges that, without this consent and reaffirmation, Holder would not execute this Extension Agreement or otherwise consent to its terms. Each Guarantor agrees that Guarantor shall not be considered a "Debtor" as that term is defined in the Uniform Commercial Code. Each Guarantor's Obligations shall neither be released, diminished, impaired, reduced, nor adversely affected, and each Guarantor waives any common law, equitable, statutory or other rights that such Guarantor might otherwise have (including rights of contribution and subrogation), in the event that any payment or transfer by Borrower to Holder is held to constitute a preference under the Federal Bankruptcy Code or other bankruptcy laws, or if for any other reason Holder is required to refund such payment to Borrower or pay the amount thereof to any other party. Each Guarantor hereby waives all rights to which such Guarantor may or might otherwise become entitled pursuant to the provisions of N.C. GEN. STAT. Section 26-7, et seq., as amended, or any similar statutory provisions which would obligate Holder to sue Borrower on the Note or proceed to foreclose on the Property or otherwise realize on any collateral securing the Note prior to enforcement of the Obligations.

Additionally, the Partners acknowledge and agree that each of them is individually, and jointly and severally, liable as a general partner of the Borrower to the Holder for payment of the Note.

7. Expenses. To the extent not prohibited by law, Borrower shall pay, or reimburse Holder for payment of, all costs and expenses reasonably incurred by Holder, or by one or more third parties, in connection with the preparation and acceptance of this Agreement and the administration of the Note and other Loan

Documents, including, without limitation, attorney's fees, premiums for title policy endorsements, recurring fees incurred by Holder in connection with appraisals of the Property and environmental site assessments that are required by law or regulation or are otherwise reasonably deemed necessary or desirable by Holder, and recording fees. Notwithstanding any other provisions in the Note or in any other Loan Document, if Holder retains an attorney in order to enforce, defend or protect Holder's rights under the Note or any other Loan Document, or if Holder retains an attorney in connection with any default or at maturity of the Note in order to collect under the Note, or if Holder retains an attorney in connection with any lawsuit, probate, reorganization, bankruptcy or other proceeding involving the Note or any other Loan Document or if Borrower sues Holder in connection with the Note or any other Loan Document and does not prevail, then Borrower agrees to pay the Holder, in addition to principal and interest, all reasonable costs and expenses, including reasonable attorneys' fees, actually incurred by Holder. At such time as Holder may from time to time request, Borrower shall, at its sole cost and expense, cause to be issued and delivered to Holder such endorsements to any Mortgagee Policy of Title Insurance previously issued insuring the lien of the Deed of Trust.

8. Extension of Indebtedness and Liens. The extension of the Note shall be without prejudice to Holder's rights at any time in the future to exercise any and all rights conferred upon Holder by the Loan Documents and the Note in the event of a future default thereunder, including the right to accelerate the maturity date thereof. Borrower ratifies and confirms the Liens as valid, subsisting and continuing to secure the Note, as modified hereby, and hereby promises to pay to the order of Holder the principal sums set forth in paragraph 1 or so much thereof as is outstanding from time to time, together with interest at the rate and in the manner specified herein, and to observe, comply with and perform each and every term and condition of the Note and Loan Documents, as modified hereby. Nothing herein shall in any manner diminish, impair or extinguish the Note or the liens securing them. Except as hereby expressly modified, all terms of the Note and Loan Documents (as they may have previously been modified by any written agreement), remain in full force and effect. To the extent of any conflict between the Note (or any modifications to them) and this Agreement, this Agreement shall control. The Liens securing the Note are not waived or released hereby.

9. Miscellaneous. This Agreement (a) shall bind and benefit the Borrower and the Holder and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns (provided, that the Borrower shall not assign any rights hereunder without the prior written consent of the Holder); (b) may be modified or amended only by a writing signed by each party; (c) may be executed in several counterparts,

and by the parties hereto on separate counterparts, and each counterpart, when executed and delivered, shall constitute an original agreement enforceable against all who signed it without production of or accounting for any other counterpart, and all separate counterparts shall constitute the same agreement, and (d) embodies the entire agreement and understanding between the parties with respect to modifications of instruments provided for herein and supersedes all prior conflicting or inconsistent agreements, consents and understandings relating to such subject matter. Any exhibits, appendices and annexes attached hereto are hereby incorporated by reference as a part hereof. "Successors" as applied to Holder, includes any receivers for Holder and any assignees thereof. Whenever used herein, the singular number shall include the plural and the plural the singular, and any gender shall be applicable to all genders. The use of the words "herein", "hereof," "hereunder" and other similar compounds of the word "here" shall refer to this entire Agreement and not to any particular section, paragraph or provision.) The headings in this Agreement shall be accorded no significance in interpreting it. Terms utilized in all exhibits and addenda hereto shall have the same meaning as used herein, unless otherwise defined in the exhibit(s) or addenda.

10. Waiver of Claims. Borrower and Guarantors warrant and represent to Holder that their indebtedness identified by this Agreement, as evidenced by the Note and the Guaranty, respectively, is subject to no one or more credits, charges, claims, or rights of offset or deduction of any kind or character whatsoever; and Borrower and Guarantors release and discharge Holder, its officers, directors, agents and employees, from any and all claims and causes of action, whether known or unknown and whether now existing or hereafter arising, including without limitation, any usury claims, that have at any time been owned, or that are hereafter owned, by the Borrower and/or the Guarantors, and that arise out of any one or more circumstances or events that occurred prior to the date hereof.

11. Further Assurances; Financial Statements. Borrower and Guarantors agree to execute and deliver to Holder, promptly upon request from Holder, such other and further documents as may be reasonably necessary or appropriate to consummate the transactions contemplated herein or to perfect the Liens, and do further agree to execute, certify and deliver to Holder, promptly upon Holder's request, annual financial statements of Borrower and Guarantors, in a form reasonably acceptable to Holder. Borrower and Guarantors further agree to deliver to the Holder annually, within thirty (30) days of the due date thereof, copies of their federal income tax returns.

12. Applicable Law and Venue. EXCEPT WHERE FEDERAL LAW IS APPLICABLE, THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH

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THE LAWS OF THE STATE OF NORTH CAROLINA AND THE LAWS OF THE UNITED STATES APPLICABLE TO TRANSACTIONS IN SUCH STATE. This Agreement is entered into, and is intended to be performed in Forsyth County, North Carolina and venue for purposes of enforcing any provisions of this Agreement shall be in such county.

13. Notice. Notwithstanding any provision in the Note, this Extension Agreement, the Deed of Trust or the other Loan Documents to the contrary, the addresses for notice to Borrower, the Guarantors and Holder are as follows:

BORROWER:

T & C Properties
290 Charlois Boulevard
Winston-Salem, NC 27104

GUARANTORS:

Terry T. and Robert L. Barber
470 Burkes Crossing Drive
Winston-Salem, NC 27104

Charles E. Talton, Jr.
11022 Schrimshaw Lane
Charlotte, NC 28215

HOLDER:

NationsBank Commercial Collections
NC1-001007-06
Charlotte, NC 28255

Notice shall be in writing, and shall be deemed to have been given (a) 72 hours after being sent by certified or registered mail, return receipt requested, postage prepaid and addressed as set forth above; or (b) if by personal delivery (i) to Borrower or Guarantors, when personally delivered to a Borrower or Guarantors at their respective address set forth above, or, (ii) if to Holder, when personally delivered to an officer of the Holder at the address set forth above. Rejection or other refusal to accept or inability to deliver because of a changed address of which no notice has been received shall also constitute service of notice. Borrower, Guarantors and Holder may change such addresses by sending written notice to the others in accordance with the foregoing; however, no written notice of change of address shall be effective until the date of receipt thereof.

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THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, the undersigned have executed and delivered this Agreement, under seal, as of the date first written above.

BORROWER:

T & C PROPERTIES

BY: Terry T. Barber
General Partner

BY: Charles E. Talton Jr.
General Partner

GUARANTORS:

Terry T. Barber (SEAL)
TERRY T. BARBER

Robert L. Barber (SEAL)
ROBERT L. BARBER

Charles E. Talton Jr. (SEAL)
CHARLES E. TALTON JR.

HOLDER:

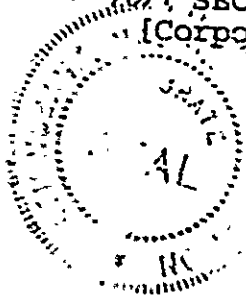
NATIONSBANK, N.A.

By: Janqueline Couston

Title: Vice-President

ATTEST:

Kenneth Sewell
[Corporate Seal]
SECRETARY

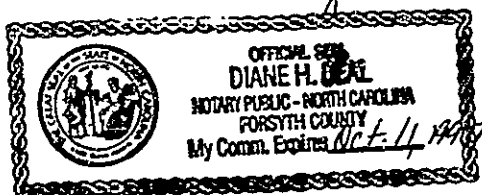


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STATE OF NORTH CAROLINA, COUNTY OF Forsyth

I, a Notary Public of the County and State aforesaid, certify that Jerry T. Barker personally appeared before me this day and acknowledged the execution of the foregoing instrument.

WITNESS my hand and official stamp or seal, this 7th day of January February, 1997.



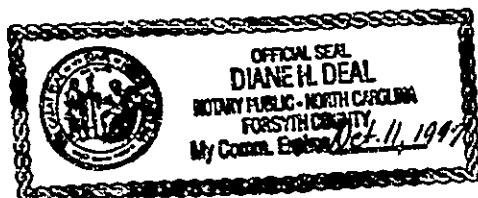
Diane H. Deal
Notary Public

My Commission expires: Oct. 11, 1997

STATE OF NORTH CAROLINA, COUNTY OF Forsyth

I, a Notary Public of the County and State aforesaid, certify that Robert L. Barker personally appeared before me this day and acknowledged the execution of the foregoing instrument.

WITNESS my hand and official stamp or seal, this 7th day of January February, 1997.



Diane H. Deal
Notary Public

My Commission expires: Oct. 11, 1997

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STATE OF NORTH CAROLINA, COUNTY OF MECKLENBURG

I, a Notary Public of the County and State aforesaid, certify that CHARLES E. TALTON, JR. personally appeared before me this day and acknowledged the execution of the foregoing instrument.

WITNESS my hand and official stamp or seal, this 7th day of ~~January~~ FEBRUARY, 1997.

Jarah L. Johnson
Notary Public

My Commission expires: November 7, 1999

STATE OF NORTH CAROLINA, COUNTY OF _____

I, a Notary Public of the County and State aforesaid, certify that _____ personally appeared before me this day and acknowledged the execution of the foregoing instrument.

WITNESS my hand and official stamp or seal, this _____ day of January _____, 1997.

Notary Public

My Commission expires: _____

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STATE OF NORTH CAROLINA, COUNTY OF FORSYTH

I, _____, a Notary Public of the County and State aforesaid, do hereby certify that TERRY T. BARBER and CHARLES E. TALTON, JR. personally appeared before me this day and acknowledged that they are the general partners of T & C PROPERTIES, a North Carolina general partnership, and that as the act of said partnership and on behalf thereof, they signed the foregoing instrument.

WITNESS my hand and official stamp or seal this the _____ day of January, 1997.

(Stamp/Seal)

Notary Public

My Commission expires: _____

STATE OF NORTH CAROLINA, COUNTY OF MECKLENBURG

I, SARAH S. JOHNSON, a Notary Public of the County and State aforesaid, do hereby certify that JACQUELINE CRISTIANO SWIFT personally appeared before me this day and acknowledged that (s)he is ASST. Secretary of NATIONS BANK, N.A., a national banking association, and that by authority given and as the act of said association, the foregoing instrument was signed in its name by its VICE President, sealed with its corporate seal and attested by herself/himself as its ASST. Secretary.

WITNESS my hand and official stamp or seal this the 10th day of January, 1997.

(Stamp/Seal)

Sarah S. Johnson
Notary Public

My Commission expires: November 7, 1999



STATE OF NC - FORSYTH CO

The foregoing certificate of Dion H. Deul, NP

Sarah S. Johnson, NP

is certified to be correct this the 12th day of February, 19 97

Dickie C. Wood, Register of Deeds by: [Signature] 700/Deputy

ADDENDUM TO EXTENSION AGREEMENT REGARDING ENVIRONMENTAL MATTERS

1. Future Performance. Borrower will not cause or permit the real property comprising a part of the "Property", as that term is defined in the Extension Agreement (the "Property") or any part thereof or Borrower to be in violation of, or do anything or permit anything to be done which will subject the Property to any remedial obligations under applicable laws pertaining to health or the environment (such laws as they now exist or are hereafter enacted and/or amended are hereinafter sometimes collectively called "Applicable Environmental Laws"), including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (as amended, hereinafter called "CERCLA"), the Resource Conservation and Recovery Act of 1976, as amended by the Used Oil Recycling Act of 1980, the Solid Waste Disposal Act Amendments of 1980, the Hazardous and Solid Waste Amendments of 1984 (as amended, hereinafter called "RCRA"), and any applicable state statute or regulation concerning public health or the environment, as each of said laws may be amended from time to time, assuming disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances, if any, pertaining to the Property. Borrower is not required to obtain any permits, licenses or similar authorizations to construct, occupy, operate or use for Borrower's intended use any buildings, improvements, fixtures or equipment forming a part of the Property by reason of any Applicable Environmental Laws, or if Borrower is so required, Borrower has obtained such permits or authorizations and has fully advised Holder of the nature thereof. Borrower will promptly notify Holder in writing of any existing, pending or, to the best knowledge of Borrower, threatened investigation or inquiry by any governmental authority in connection with any Applicable Environmental Laws. Borrower will not cause or permit the disposal or other release of any hazardous substance or solid waste on or to the Property or any part thereof and Borrower covenants and agrees to keep or cause the Property to be kept free of any hazardous substance or solid waste and to remove the same (or if removal is prohibited by law, to take whatever action is required by law) promptly upon discovery, at Borrower's sole expense. Without limitation of Holder's rights to declare a default hereunder and to exercise all remedies available by reason thereof, if Borrower fails to comply with or perform any of the foregoing covenants and obligations, Holder may (without any obligation, express or implied) remove any hazardous substance or solid waste from the Property (or if removal is prohibited by law, take whatever action is required by law) and the cost of the removal or such other action shall be a demand obligation owing by Borrower to Holder (which obligation Borrower hereby promises to pay) pursuant to this Extension Agreement. Borrower grants to Holder and its agents, employees, contractors and consultants

access to the Property and the license [which is coupled with an interest and irrevocable while any indebtedness or other obligations evidenced by the Extension Agreement (the "Indebtedness") is outstanding] to remove the hazardous substance or solid waste (or if removal is prohibited by law, to take whatever action is required by law) and agrees to indemnify and save Holder harmless from all costs and expenses involved therewith. Upon Holder's reasonable request, at any time and from time to time, so long as the Indebtedness is outstanding, but not more frequently than once per calendar year, Borrower will provide at Borrower's sole expense an inspection or audit of the Property from an engineering or consulting firm approved by Holder, indicating the presence or absence of hazardous substances and solid waste on the Property. If Borrower fails to provide same after thirty (30) days' notice, Holder may order same, and Borrower grants to Holder and its employees, agents, contractors and consultants access to the Property and a license (which is coupled with an interest and irrevocable while this Extension Agreement is in effect) to perform inspections and tests, including but not limited to the taking of soil borings and groundwater samples. The cost of such inspections and tests shall be a demand obligation owing by Borrower (which Borrower hereby promises to pay) to Holder pursuant to the Extension Agreement. The terms "hazardous substance" and "release" as used herein shall have the meanings specified in CERCLA, and the terms "solid waste" and "disposal" (or "disposed") shall have the meanings specified in RCRA; provided, that if either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply hereunder subsequent to the effective date of such amendment and provided further, to the extent that the laws of the State in which the Property is located establish a meaning for "hazardous substance," "release," "solid waste," or "disposal" which is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply.

2. Indemnification Regarding Future Environmental Matters. Borrower agrees to indemnify and hold Holder and Trustee (for purposes of this paragraph, the term "Holder" and "Trustee" shall include the directors, officers, partners, employees, agents and successors of Holder and Trustee, respectively, any persons or entities owned or controlled by, owning or controlling, or under common control or affiliated with Holder and Trustee, respectively) harmless from and against, and to reimburse Holder and Trustee with respect to, any and all claims, demands, losses, damages (including consequential damages), liabilities, causes of action, judgments, penalties, costs and expenses (including attorneys' fees and court costs) of any and every kind or character, known or unknown, fixed or contingent, imposed on, asserted against or incurred by Holder and/or Trustee at any time and from time to time by reason of, in connection with or arising out of (a) the failure of Borrower to perform any obligation herein required to be performed by Borrower

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regarding Applicable Environmental Laws, (b) any violation on or before the Release Date (as hereinafter defined) of any Applicable Environmental Law in effect on or before the Release Date, (c) the removal of hazardous substances or solid wastes from the Property, and (d) any act, omission or event occurring on or prior to the Release Date (including without limitation the presence on the Property or release from the Property of hazardous substances or solid wastes disposed of or otherwise released on or prior to the Release Date) or any circumstance existing prior to the Release Date, resulting from or in connection with the ownership, construction, occupancy, operation, use and/or maintenance of the Property, regardless of whether the act, omission, event or circumstance constituted a violation of any Applicable Environmental Law at the time of its existence or occurrence. The "Release Date" as used herein shall mean the later of the following two dates: (i) the date on which the Indebtedness secured by the Extension Agreement have been paid and performed in full and the Liens have been fully released, or (ii) the date on which the Liens, as modified hereby, are foreclosed or a conveyance by deed in lieu of such foreclosure is fully effective; provided, if such payment, performance, release, foreclosure or conveyance is challenged, in bankruptcy proceedings or otherwise, the Release Date shall be deemed not to have occurred until such challenge is rejected, dismissed or withdrawn with prejudice. The foregoing indemnities shall not terminate upon the Release Date or upon the release, foreclosure or other termination of the Extension Agreement and the Deed of Trust but will survive the Release Date, foreclosure of the Liens, as modified by the Extension, or conveyance in lieu of foreclosure, and the repayment of the Indebtedness and the discharge and release of Liens created by the Deed of Trust, as modified by the Extension Agreement, and the other documents evidencing and/or securing the Indebtedness. Any amount to be paid under this paragraph by Borrower to Holder and/or Trustee shall be a demand obligation owing by Borrower (which Borrower hereby promises to pay) to Holder and/or Trustee pursuant to this Extension Agreement. Nothing in this paragraph, elsewhere in this Extension Agreement or in any other document evidencing, securing or relating to the Indebtedness, as modified by the Extension Agreement, shall limit or impair any rights or remedies of Holder and/or Trustee against Borrower or any third party under Applicable Environmental Laws, including without limitation any rights of contribution or indemnification available thereunder.