

**FORBEARANCE AGREEMENT
AND FIRST AMENDMENT TO LOAN AGREEMENT**

THIS FORBEARANCE AGREEMENT AND FIRST AMENDMENT TO LOAN AGREEMENT (the “**Agreement**”) is made effective as of the _____ day of _____, 20____, by and between: (i) _____ Bank (the “**Lender**”), (ii) _____, LLC, a Minnesota Limited liability company (the “**Borrower**”), (iii) _____, _____, and _____, each an individual resident of the State of Minnesota (each a “**Guarantor**” and collectively referred to herein as “**Guarantors**”), and (iv) _____ Management, Inc., a Minnesota corporation (the “**Manager**”).

RECITALS

A. Borrower and Lender entered into that certain Loan Agreement dated _____, 20____ (the “**Loan Agreement**”) pursuant to which Lender made a loan (the “**Loan**”) to Borrower in the original principal amount of \$____,____,000.00, which Loan is evidenced by, among other documents, that certain Promissory Note dated _____, 20____, executed by Borrower (the “**Note**”). Unless otherwise defined herein, all capitalized terms used herein shall bear the definition assigned in the Loan Agreement.

B. The Note is secured by, among other documents, (i) that certain Combination Mortgage, Security Agreement, Fixture Financing Statement and Assignment of Rents and Leases dated _____, 20____, and recorded in the Official Records of _____ County, Minnesota on _____, 20____, as Instrument Number _____ (the “**Security Instrument**”), executed by Borrower.

C. Each Guarantor executed a Guaranty dated _____, 20____ (each, a “**Guaranty**” and, collectively, the “**Guaranties**”) pursuant to which each Guarantor jointly and severally guaranteed, among other things, the payment and performance by Borrower of all of its Obligations and indebtedness to Lender.

D. Management of the Facility is provided by the Manager, who has executed a “**Subordination of Management Agreement**” agreeing that the Manager’s right to receive a fee under its agreement with the Borrower is subordinate to the rights of Lender in and to the Property, the Facility and the Enterprise (the “**Subordination of Management Agreement**”). The Management Agreement specifically provides that the Manager may not receive a management fee at any time after there has been a notice of default from Lender in connection with the Note or the Loan Agreement.

E. The Loan Agreement, the Note, the Security Instrument, the Guaranties, the Subordination of Management Agreement, and any and all other documents and instruments evidencing, securing or related to the Loan, including any and all renewals, extensions and amendments of any of the foregoing, are hereinafter referred to as the “**Loan Documents**.”

F. Borrower has failed to comply with the Note by failing to make the payments due and owing on _____, 20____, _____, 20____, _____, 20____ and _____, 20____. Borrower has failed to comply with certain covenants set forth in the

Loan Agreement, including, without limitation, Section 6.31(m) of the Loan Agreement, by, inter alia, loaning or otherwise disbursing proceeds received by Borrower from the Enterprise to Affiliates of Borrower. Borrower and Manager have failed to comply with the Subordination of Management Agreement in that Borrower has paid a management fee to manager after notice by Lender of defaults under the Note. Such failures constitute Events of Default under the Loan Documents (collectively, the “**Existing Defaults**”).

G. The Existing Defaults will be collectively referred to herein as the “**Existing Defaults**”. [Borrower acknowledges that the Loan is “cross-collateralized” and “cross-defaulted,” such that a default under one of the loans enables Lender to foreclose on both properties.]

H. BORROWER AND GUARANTORS ACKNOWLEDGE THAT (i) THE EXISTING DEFAULTS EACH CONSTITUTE AN EVENT OF DEFAULT UNDER THE LOAN DOCUMENTS; AND (ii) LENDER IS ENTITLED TO IMMEDIATELY PURSUE ALL REMEDIES AVAILABLE TO IT BY LAW, EQUITY OR CONTRACT AGAINST BORROWER AND/OR GUARANTORS, WITHOUT DEFENSE, SET-OFF OR COUNTERCLAIM BY BORROWER OR ANY GUARANTORS.

I. Borrower has requested that Lender temporarily forbear from exercising its rights and remedies under the Loan Documents, and Lender has agreed to temporarily forbear, subject to the terms and conditions contained herein and without waiving the Existing Defaults.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, it is agreed as follows:

1. **Acknowledgement of Recitals.** Borrower, each Guarantor, and Manager each acknowledge that the Recitals herein are true and correct statements of fact.

2. **Existing Defaults/Conditional Forbearance.** Borrower, Manager and each Guarantor hereby acknowledge and agree that (a) the Existing Defaults have occurred and are continuing under the terms of the Loan Documents and that all of the outstanding amounts owed by Borrower to Lender under the Loan Documents, as set forth herein, are due and owing **without any defense, right of setoff or counterclaim of Borrower, Guarantors or any other Person [see also Paragraph 11]**, and (b) Lender has the immediate right to exercise all rights and remedies provided under the Loan Documents including, without limitation, foreclosure of the lien of the Security Instrument, obtaining the appointment of a receiver on each Property, and imposing the default rate of interest retroactive to _____, 20____.

Subject to the terms and conditions of this Agreement, Lender agrees to temporarily forbear from exercising its foreclosure and related remedies under the Loan Documents; provided, however, that such agreement to temporarily forbear by Lender shall immediately terminate on the earlier of (i) a termination of this Agreement by Lender in accordance with paragraph 4.(g), below, or (ii) the occurrence of an Event of Default (as defined below). The period of time from the date of this Agreement until the termination of Lender’s forbearance as provided in the previous sentence is referred to herein as the “**Forbearance Period.**” If this Agreement is terminated by reason of item (i) or (ii), above, then Lender may exercise all of its

rights on account of all Existing Defaults, as well as any additional Events of Default, including, without limitation, the imposition of default interest retroactive to _____, 20__.

This Agreement will expire on _____, 20__ (the “**Expiration Date**”). Upon expiration, if the Existing Defaults have not been cured, Lender may pursue and enforce any and all of its remedies against the Borrower, including, without limitation, the imposition of default interest retroactive to _____, 20__.

3. **Borrower's Acknowledgement.** Borrower and Guarantors acknowledge and agree that:

- a) as of _____, 20__, the outstanding principal balance on the Note is \$____,____,000.00, and accrued but unpaid interest is \$____,____.____, late charge (for the June, 20__ through September, 20__ payments) of \$____,____.00, for a total of \$____,____,000.00 (plus Interest at the Default Rate, accrued but unpaid fees, and costs); and
- b) that, in accordance with paragraph 1.01 (Definition of Collateral Accounts) of the Loan Agreement, all Collateral Accounts have been frozen by Lender and no amounts will be released by Lender, nor may be withdrawn by Borrower therefrom, without Lender’s express permission.

4. **Amendments.**

- a) At Borrower's request, Lender will use the amount necessary from the Renovation Reserve being held for each Loan to make the principal, interest and tax reserve payments owing for the Loan for _____, _____, _____ and _____, 20__ (this amount does not include late fees or default interest rates [see below]). It is the intent of Borrower and Lender that the combined Renovation Reserve funds from the Loan will be used to make the payments, and specifically, it is anticipated that some Renovation Reserve funds from the Loan will be necessary to make the payment in full on the Loan.
- b) Beginning in _____, 20__, money from the accounts subject to the Control Agreement (described below) will be applied, first to Operating Expenses (including property tax escrows), and second, on a pro rata basis (based on the amount of the monthly payments owing, respectively, to Lender on account of the Loan and to Manager using a management fee of __% of gross receipts), toward principal and interest owing to Lender, on the one hand, and to payment of a Management Fee to Manager, on the other hand. This payment structure will be reflected in the Control Agreement.
- c) On the first and fifteenth day of each month during the Forbearance Period, Borrower will provide financial updates reasonably acceptable to Lender concerning income from and expenses for the Facility, including, without limitation, bank information showing the deposits of all income from the Facility, and a detail of all disbursements made for Operating Expenses sufficient to enable

Lender to determine that expenses paid were used specifically for operations of each respective Enterprise.

- d) The Manager hereby reaffirms that its management fees are subordinate to all payments owing to Lender. Manager and Borrower acknowledge and agree that Borrower may not pay any amount to Manager, on account of a management fee or otherwise, in any month unless and until the payments described in paragraphs 4.(a) through (d) have been timely and completely made to Lender; provided, however, that payments to Lender and Manager are to be made on a pro rata bases as set forth in paragraphs 4.(c) and 4.(d). Borrowers further agree that the Borrower will not disburse any funds to any of the Tenants In Common unless all amounts as contractually required to be paid to Lender required herein, or under the Loan Documents, have first been paid in full.
- e) The Lender has sent a demand letter but, in reliance on Borrower's promise as set forth herein, has not commenced an action against Borrower for foreclosure, receivership or other remedies.
- f) The parties will use commercially reasonable best efforts to enter into a control agreement with a bank (the "**Control Bank**") approved by Lender (which Control Bank may be Lender) and Borrower that is consistent with the priority of payments to Lender as outlined herein (the "**Control Agreement**") by _____, 20____. The control agreement will (i) require Borrower to cause all rental payments from tenants of the Property to be made directly to the Control Bank and deposited directly into the Control Accounts, and (ii) with respect to any rental payment inadvertently deposited into Borrowers' account at _____ Bank, require _____ Bank to sweep from the account, on a daily basis, all deposits made into the accounts from the Facility, and wire the same to Lender. Lender will open two accounts with the Control Bank (the "**Control Account**") and will deposit all swept funds into the Control Account for use in accordance with the Control Agreement.
- g) The Control Agreement will require Lender to disburse to Borrower, on a weekly basis, an amount equal to 120% of approved budgetary Operating Expenses (as more specifically defined and described in the Control Agreement) for use by Borrower in operating the Enterprise. The Control Agreement will also specify a "waterfall" for disbursement of remaining funds in the Control Account consistent with the disbursement as set forth in this Agreement. If the parties have not secured a control agreement by _____, 20____, such failure will not be an Event of Default by Borrower under this Agreement; however, Lender may terminate this Agreement and immediately exercise any and all remedies available to Lender under the Loan Documents, including, without limitation, the imposition of Interest at the Default Rate retroactive to _____, 20____.
- h) Section 8.19 of the Loan Agreement is hereby amended to eliminate the five day notice provision with respect to Lender's right of set-off against Collateral Accounts. Lender may thus exercise its right of set-off against Collateral

Accounts after the occurrence of any Event of Default under this Agreement without further notice. Borrower hereby acknowledges that any such set-off will not violate any “one form of action” or similar rule, and hereby waives any defense or claim that such set-off otherwise vitiates, terminates or in any way affects the lien created by the Security Instrument. Borrower and Guarantors also waive any other rights to notice prior to Lender taking any action on account of the Obligations of Borrower to Lender.

- i) Borrower will not make any loans, advances, gifts or other disbursements of any kind to any Tenants In Common, Affiliates or other third parties who are not parties to the Loan Agreement, without Lender consent.
- j) Time is of the essence for the payment dates set forth in this Paragraph 4. There is no “grace period” or similar period applicable to these payments. Any failure to make a payment on the date specified herein will be strictly construed as an Event of Default.

5. **Conditions Precedent.** Lender’s agreement to temporarily forbear from exercising its rights and remedies as provided herein shall be effective when Lender shall have received an executed original hereof together with each of the following, each in substance and form acceptable to Lender in its sole discretion:

- a) A certificate dated the date hereof, signed by the Secretary of Borrower and in form and substance satisfactory to Lender certifying: (i) resolutions duly adopted by the Board of Directors of Borrower authorizing the execution of this Agreement and the transactions contemplated hereby; and (ii) the true and correct signatures of the officers of Borrower and their respective offices.
- b) All other documents Lender may request with respect to any matter relevant to this Agreement or the transactions contemplated hereby.
- c) Borrower shall have paid or reimbursed Lender for all costs and expenses related to the preparation, negotiation and delivery of this Agreement and all documents related hereto, including without limitation, fees and expenses of Lender’s counsel (Borrower and Lender agree that this sum will be \$_____, which will be deducted from the management fee, one-half of which will be paid on execution of this Agreement, and the other one-half within one month of this Agreement), all title insurance costs, all recording costs, UCC search costs, and filing fees.
- d) Lender’s receipt, along with this fully executed Agreement, of the payments outlined in paragraph 4.(b), above.

Borrower and Guarantors specifically acknowledge that all of the conditions set forth in this Section are for the sole and exclusive benefit of Lender, and Lender shall have the unilateral right to waive any condition by written notice to Borrowers.

6. **Representations and Warranties.** Borrower and each Guarantor hereby represent and warrant to Lender as follows:

- a) Borrower and each Guarantor have all requisite power and authority to execute this and to perform all of its or his obligations hereunder, and this Agreement has been duly executed and delivered by Borrower and Guarantors and constitutes the legal, valid and binding obligation of Borrower and Guarantors, enforceable in accordance with its terms.
- b) All of the representations and warranties contained in the Loan Documents are true and correct on and as of the date hereof as though made on and as of such date.
- c) There are no Events of Default under the Loan Agreement or other Loan Documents except for the Existing Defaults.

7. **Events of Default.** The occurrence of one or more of the following shall constitute an “Event of Default” within the meaning of this Agreement:

- a) Borrower or Guarantors shall fail to abide by or observe any term, condition or covenant of this Agreement, or any representation made by Borrower or Guarantors herein was materially false when made.
- b) There shall be any other Event of Default (as defined in the Loan Agreement) other than the Existing Defaults.
- c) Any Borrower becomes insolvent; or any Borrower or Guarantor make an assignment for the benefit of creditors; or a custodian, trustee or receiver is appointed for any Borrower or Guarantor or for any of their properties; or bankruptcy, reorganization or liquidation proceedings are instituted by or against any Borrower or Guarantor.
- d) Any other creditor of any Borrower or Guarantor commences foreclosure proceedings or otherwise exercises any of its rights or remedies as a result of a default by such Borrower, or a judgment is entered in favor of any person (other than Lender) against any Borrower or Guarantor.
- e) Any person or entity seizes or pursues repossession, foreclosure, replevin or liquidation of any property of any Borrower or Guarantor.
- f) There shall exist or occur any event or condition which Lender in good faith believes impairs, or is substantially likely to impair, the prospect of payment or performance by Borrower of its obligations under this Agreement or any of the other Loan Documents.

Notwithstanding the foregoing, an action for foreclosure, receivership, or other remedy that involves a loan for which a Guarantor of the Loan has given a guaranty will not constitute an Event of Default under this Agreement.

Upon the occurrence of any Event of Default or at any time thereafter, Lender or the holder of all or any of the Loan Documents may declare all amounts owed under the Loan Documents to be due and payable, and all such amounts shall immediately become due and payable, and Lender shall be entitled to the immediate exercise of all its rights and remedies available to it under all of the Loan Documents and applicable law, including, without limitation, the imposition of Interest at the Default Rate retroactive to _____, 20____.

8. **Enforcement.** Borrower and each Guarantor acknowledge that:
 - a) LENDER EXPECTS AND ANTICIPATES, AND HAS THE UNQUALIFIED RIGHT, TO REQUIRE FULL AND PROMPT PAYMENT AND PERFORMANCE BY BORROWER AND GUARANTORS OF THEIR OBLIGATIONS HEREUNDER AND IN THE OTHER LOAN DOCUMENTS.
 - b) LENDER INTENDS, AND HAS THE UNQUALIFIED RIGHT, TO PROMPTLY AND FULLY UTILIZE THE RIGHTS AND REMEDIES AVAILABLE TO IT UNDER THE LOAN DOCUMENTS AND UNDER APPLICABLE LAW UPON THE OCCURRENCE OF AN EVENT OF DEFAULT OR BREACH OF ANY OF THE TERMS OF THIS AGREEMENT OR AS OTHERWISE PROVIDED IN THIS AGREEMENT.
 - c) LENDER SHALL BE ENTITLED TO RECOVER ALL ATTORNEY'S FEES AND COSTS RESULTING FROM ANY DEFAULT UNDER THIS AGREEMENT.

9. **Costs, Expenses and Attorneys' Fees.** Borrower shall pay to Lender the full amount of all payments, advances, charges, costs and expenses, including attorneys' fees (including outside counsel fees and all allocated costs of Lender's in-house counsel), expended or incurred by Lender in connection with the administration or maintenance of this Agreement, all documents related hereto and the Loan Documents, and in connection with the enforcement of any of Lender's rights, powers or remedies and/or the collection of any amounts which become due to Lender under this Agreement and/or the other Loan Documents, and the prosecution or defense of any action in any way related to this Agreement and/or the other Loan Documents, whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including, without limitation, any adversary proceeding, contested matter or motion brought by Lender or any other person). Without in any way limiting the foregoing, Borrower hereby reaffirms its agreement under the applicable Loan Documents to pay or reimburse Lender on demand for certain costs and expenses incurred by Lender, including without limitation fees and disbursements of legal counsel, in connection with the Loan Documents and all other documents contemplated thereby. Lender is hereby authorized to debit such fees, costs and expenses from Borrower's accounts with Lender.

10. **No Waiver.** The execution of this Agreement and acceptance of any documents related hereto shall not be deemed to be a waiver of any event of default (including the Existing Defaults) under any of the Loan Documents, whether or not known to Lender and whether or not existing on the date of this Agreement. Borrower acknowledges that Lender is not waiving the

Existing Defaults, but is simply agreeing to forbear from exercising its rights with respect to the Existing Defaults to the extent expressly set forth in this Agreement. Without limiting the generality of the foregoing, Borrower acknowledges and agrees that immediately upon expiration of the Forbearance Period, Lender has all of its rights and remedies with respect to the Existing Defaults to the same extent, and with the same force and effect, as if the forbearance had not occurred. Borrower will not assert and hereby forever waives any right to assert that Lender is obligated in any way to continue beyond the Forbearance Period to forbear from enforcing its rights or remedies or that Lender is not entitled to act on the Existing Defaults after the termination of the Forbearance Period as if such default had just occurred and the Forbearance Period had never existed. Borrower acknowledges that Lender has made no representations as to what actions, if any, Lender will take after the Forbearance Period, and Lender must and does hereby specifically reserve any and all rights and remedies it has with respect to the Existing Defaults and each other default or Event of Default that may occur.

11. **Release.** Borrower and Guarantors hereby absolutely and unconditionally release and forever discharge Lender, and any and all participants, parent corporations, subsidiary corporations, affiliated corporations, insurers, indemnitors, successors and assigns thereof, together with all of the present and former directors, officers, agents and employees of any of the foregoing, from any and all claims, demands or causes of action of any kind, nature or description, whether arising in law or equity or upon contract or tort or under any state or federal law or otherwise, which Borrower or Guarantors have had, now have or have made claim against any such person for or by reason of any act, omission, matter, cause or thing whatsoever arising from the beginning of time to and including the date of this Agreement, whether such claims, demands and causes of action are matured or unmatured or known or unknown, and Borrower and Guarantors hereby further acknowledge and agree that as of the date hereof they have no existing defenses to the enforcement of any of the Loan Documents and to the extent that any exist as of the date hereof, each of them are hereby absolutely and forever waived.

12. **Acknowledgement and Reaffirmation of Guarantors.** By signing this Agreement, each Guarantor consents and agrees to the terms of this Agreement and acknowledges that all indebtedness arising under the Loan Documents shall continue to constitute obligations guaranteed under the Guaranty executed by such Guarantor. The foregoing confirmation shall not be deemed to limit the terms of the Guaranty in any manner. Each Guarantor acknowledges that this paragraph merely confirms the terms of the Guaranty and that no such confirmation is required in connection with this Agreement. Each Guarantor acknowledges to and agrees with Lender that no events, conditions or circumstances have arisen or exist as of the date hereof which would give the undersigned the right to assert a defense, counterclaim and/or setoff to any claim by Lender for the payment and performance of the obligations of such Guarantor under the Guaranty, or to the extent that any such defense, counterclaim and/or setoff exist as of the date hereof, the same are hereby absolutely and forever waived and released.

13. **Reaffirmation of Loan Documents; Entire Agreement.** Except as specifically modified herein, the terms and conditions of the Note, the Security Instrument, the Guaranties and the other Loan Documents remain in full force and effect in accordance with their original terms, not subject to any defense, right of setoff or counterclaim against Lender. All prior oral and written communications, commitments, alleged commitments, promises, alleged promises,

agreements and alleged agreements by or among Lender, Borrower and Guarantors related to the Loan are hereby merged into this Agreement and the Loan Documents, and shall not be enforceable unless expressly set forth in this Agreement and the Loan Documents. This Agreement may not be modified except in writing signed by all parties hereto. Nothing contained in this Agreement shall constitute or be deemed to be a commitment or agreement on the part of Lender to restructure any indebtedness of Borrower or to amend any of the provisions of Loan Documents or to forbear from exercising any of Lender's rights and remedies under the Loan Documents except to the limited extent specifically agreed to herein.

14. **Legal Counsel.** Borrower and Guarantors hereby warrant and represent to Lender that they consulted with and received advice from legal counsel of their choice with respect to this Agreement and the documents related thereto, or they have had an opportunity to consult with legal counsel of their choice and have made the decision not to consult with legal counsel. Without limiting the forgoing, Borrower and Guarantors acknowledge that they have legal and business options available to them other than the execution and delivery of this Agreement but have nonetheless decided to execute this Agreement and have done so voluntarily and without duress. The parties hereby agree that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

15. **Further Assurances and Additional Documents.** Borrower and Guarantors shall, at the request of Lender, at any time and from time to time following the execution of this Agreement promptly execute and deliver, or cause to be executed and delivered, to Lender all such further documents and instruments and take all such further action as may be reasonably necessary or appropriate to confirm or carry out the provisions and intent of this Agreement, specifically including all documents necessary to the continued perfection of the security interest in the collateral referenced in the Loan Documents.

16. **Cumulative Rights.** Each right, power or remedy herein conferred upon Lender or in the Loan Documents is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, available to Lender at law or in equity, under the Uniform Commercial Code or other law, or under the Loan Documents, or under any other agreement, and each and every right, power and remedy herein set forth or otherwise existing may be exercised from time to time as often and in such order as may be deemed expedient by Lender, and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy. No delay or omission by Lender in the exercise of any right, power or remedy shall impair any such right, power or remedy or the right of any such party to resort thereto at a later date. Nor shall any such delay or omission be construed to be waiver of any default.

17. **Severability of Provisions.** Any provision of this Agreement that is prohibited or unenforceable shall be ineffective to the extent of such portion without invalidating the remaining provisions of this Agreement, or any other agreement executed between Lender, on the one hand, and Borrower and/or Guarantors, on the other hand, or affecting the validity or enforceability of such provisions.

18. **Successors and Assigns.** This Agreement is binding upon the parties and their respective successors, assigns, heirs and personal representatives, except that neither Borrower

nor Guarantors may assign or transfer their rights or obligations hereunder without the prior written consent of Lender.

19. **Governing Law; Jury Trial Waiver.** This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Montana. BORROWER AND GUARANTORS HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION RELATING TO THIS AGREEMENT AND/OR ANY OF THE OTHER LOAN DOCUMENTS.

20. **No Third Party Reliance.** No third party shall be entitled to rely upon this Agreement or to have any of the rights or benefits hereunder.

21. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Forbearance Agreement and First Amendment to Loan Agreement effective as of the date first above stated.

Lender:

_____ **BANK**

By: _____
Name: _____
Title: Vice President

Borrower:

_____, **LLC**

By: _____
Name: _____
Title: _____

Guarantor:

Guarantor:

Guarantor:

Manager:

_____ **Management, Inc.**

By: _____
Its: _____