

HAZARDOUS SUBSTANCES INDEMNITY AGREEMENT

THIS HAZARDOUS SUBSTANCES INDEMNITY AGREEMENT ("Hazardous Agreement") is made as of September __, 2010, by _____ ("Indemnitor"), for the benefit of PREFERRED BANK, a California banking corporation ("Lender").

RECITALS

WHEREAS, contemporaneously with the execution of this Hazardous Agreement, Indemnitor, as maker, has executed and delivered to Lender, as payee, its Promissory Note (the "Note") in the principal face amount of Eighteen Million and No/100 Dollars (\$18,000,000.00) or so much thereof as may be advanced from time to time, in evidence of the loan (the "Loan") made this date by Lender to Indemnitor; and

WHEREAS, the Loan is secured in part by Indemnitor's interest in and to the real property (the "Mortgaged Property") described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, Lender has required, as a condition of funding the Loan, that Indemnitor indemnify and hold Lender harmless against and from certain obligations for which Lender may incur liability, whether as beneficiary of the Deed of Trust (as hereinafter defined), mortgagee in possession, or by foreclosure, by reason of the threat or presence of any hazardous substance at or near the Mortgaged Property.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Indemnitor, intending to be legally bound, hereby agrees as follows:

1. **RECITALS.** The foregoing recitals are incorporated into this Hazardous Agreement by this reference.
2. **REPRESENTATIONS AND WARRANTIES.**
 - 2.1 Except as provided in Exhibit "B", Indemnitor represents and warrants that (i) Indemnitor has no knowledge of any deposit, storage, disposal, burial, discharge, spillage, uncontrolled loss, seepage or filtration of oil, petroleum or chemical liquids or solids, liquid or gaseous products or any hazardous wastes or hazardous substances (collectively, "Hazardous Substances"), as those terms are used in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or in any other state or local law governing hazardous substances, as such laws may be amended from time to time (collectively, the "Hazardous Waste Laws"), at, upon, under or within the Mortgaged Property or any contiguous real estate, in violation of the Hazardous Waste Laws, and (ii) Indemnitor has not caused or permitted to occur, and shall not permit to

exist, any condition which may cause a discharge of any Hazardous Substances at, upon, under or within the Mortgaged Property. The term "Hazardous Substances" means and includes:

- (a) those substances included within the definitions of "hazardous substances", "hazardous materials", "toxic substances", or "solid waste" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901, et seq., the Hazardous Materials Transportation Act, as amended, 49 U.S.C. Section 1981, et seq., and the regulations promulgated pursuant to said laws;
- (b) those substances defined as "hazardous wastes" in Section 25117 of the California Health and Safety Code or as "hazardous substances" in Section 25316 of the California Health and Safety Code and the regulations promulgated thereunder;
- (c) those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the United States Environmental Protection Agency as hazardous substances (40 CFR Part 302 and amendments thereto); and
- (d) such other substances, materials and wastes which are or become regulated or which are classified as hazardous or toxic under federal, state, or local laws, statutes, ordinances or regulations.

- 2.2 Indemnitor further represents and warrants that (i) neither Indemnitor, nor to the best of Indemnitor's knowledge, any other party has been, is or will be involved in operations at or near the Mortgaged Property which operations could lead to (A) the imposition of liability on Indemnitor, or, to the best of Indemnitor's knowledge, on any subsequent or former owner of the Mortgaged Property or (B) the creation of a lien on the Mortgaged Property under the Hazardous Waste Laws or under any similar laws or regulations; and (ii) Indemnitor has not permitted, and will not permit, any tenant or occupant of the Mortgaged Property to engage in any activity that could impose liability under the Hazardous Waste Laws on such tenant or occupant, on Indemnitor or on any other owner of any of the Mortgaged Property.

3. **COVENANTS.**

- 3.1 Indemnitor shall comply strictly and in all respects with the requirements of the Hazardous Waste Laws and related regulations and with all similar laws and regulations and shall notify Lender immediately in the event of

any discharge or discovery of any Hazardous Substance at, upon, under or within the Mortgaged Property. Indemnitor shall promptly forward to Lender copies of all orders, notices, permits, applications or other communications and reports in connection with any discharge or the presence of any Hazardous Substance (the "Environmental Reports") or any other matters relating to the Hazardous Waste Laws or any similar laws or regulations, as they may affect the Mortgaged Property.

- 3.2 Promptly upon the written request of Lender, Indemnitor shall provide Lender, at Indemnitor's expense, with an environmental site assessment or environmental audit report prepared by an environmental engineering firm acceptable to Lender, to assess with a reasonable degree of certainty the presence or absence of any Hazardous Substances and the potential costs in connection with abatement, cleanup or removal of any Hazardous Substances found on, under, at or within the Mortgaged Property.
- 3.3 Indemnitor shall deliver to Lender such affidavits, reports, certificates or other written instruments as may be requested by Lender, in Lender's sole and absolute opinion and judgment, pertaining to Indemnitor's compliance with this Hazardous Agreement. Additionally, Lender and Lender's agents shall have the right at all times to enter upon the Mortgaged Property to determine for itself Indemnitor's compliance with this Hazardous Agreement; provided, however, Lender may conclusively assume that the statements, facts, information, and representations contained herein and/or in any affidavits, orders, receipts, or other written instruments that are filed with Lender or exhibited to it, are true and correct and Lender may rely thereon without any investigation or inquiry; and provided further, that by accepting or approving anything required to be observed, performed, fulfilled, or given to Lender pursuant to this Hazardous Agreement, Lender shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, with any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or representation to anyone with respect thereto by Lender.
- 3.4 Promptly and, in any event, within the time required by law, upon discovery of a Hazardous Substance in, on or under the Mortgaged Property, the existence of which substance is required to be reported pursuant to federal, state or local laws, or the regulations promulgated thereunder, Indemnitor will make such report.

4. **INDEMNITY.**

- 4.1 Indemnitor does and shall at all times indemnify and hold harmless Lender against and from any and all claims, liability, suits, actions, debts, damages, costs, losses, obligations, judgments, charges, and expenses, of any nature whatsoever suffered or incurred by Lender, whether as

beneficiary of the Deed of Trust, mortgagee in possession, or as successor-in-interest to Indemnitor by foreclosure deed or deed in lieu of foreclosure, under or on account of the Hazardous Waste Laws or any similar laws or regulations, including the assertion of any lien thereunder, with respect to:

- (a) any discharge of Hazardous Substances, the threat of a discharge of any Hazardous Substances, or the presence of any Hazardous Substances affecting the Mortgaged Property whether or not the same originates or emanates from the Mortgaged Property or any contiguous real estate including any loss of value of the Mortgaged Property as a result of any of the foregoing;
- (b) any costs of removal or remedial action incurred by the United States Government or any costs incurred by any other person or damages from injury to, destruction of, or loss of natural resources, including costs of assessing such injury, destruction or loss incurred pursuant to any Hazardous Waste Laws;
- (c) liability for personal injury or property damage arising under any statutory or common law tort theory, including, without limitation, damages assessed for the maintenance of a public or private nuisance or for the carrying on of an abnormally dangerous activity at or near the Mortgaged Property;
- (d) any other environmental matter affecting the Mortgaged Property within the jurisdiction of the Environmental Protection Agency, any other federal agency, or any state or local environmental agency; and/or
- (e) any failure to report the existence of a Hazardous Substance in, on or under the Mortgaged Property to the appropriate governmental agency(s).

Indemnitor's obligations under this Hazardous Agreement shall arise upon the discovery of the presence of any Hazardous Substance, whether or not the Environmental Protection Agency, any other federal agency, or any state or local environmental agency has taken or threatened any action in connection with the presence of any Hazardous Substances.

- 4.2 In the event of any discharge of Hazardous Substances, the threat of a discharge of any Hazardous Substances, or the presence of any Hazardous Substances affecting the Mortgaged Property whether or not the same originates or emanates from the Mortgaged Property or any contiguous real estate, and/or if Indemnitor shall fail to comply with any of the requirements of the Hazardous Waste Laws or related regulations or any other environmental law or regulation, Lender may at its election, but without the obligation so to do, give such notices and/or cause such work

to be performed at the Mortgaged Property and/or take any and all other actions as Lender shall deem necessary or advisable in order to abate the discharge of any Hazardous Substance, remove the Hazardous Substance or cure Indemnitor's noncompliance.

- 4.3 Indemnitor acknowledges that Lender has agreed to make the Loan in reliance upon Indemnitor's representations, warranties and covenants in this Hazardous Agreement. For this reason, it is the intention of Indemnitor and Lender that the provisions of this Hazardous Agreement shall supersede any provisions in any and all documents evidencing the Loan (the "Loan Documents") which in any way limit the personal liability of Indemnitor and that Indemnitor shall be personally liable for any obligations arising under this Hazardous Agreement even if the amount of liability exceeds the Loan and that this Hazardous Agreement shall survive the repayment of the Note and/or the release of the lien of the deed of trust, which is one of the Loan Documents (the "Deed of Trust") from the Mortgaged Property and shall survive the transfer of any or all right, title and interest in and to the Mortgaged Property by Indemnitor to any party, whether or not affiliated with Indemnitor.

5. **HAZARDOUS AGREEMENT NOT SECURED BY DEED OF TRUST.**

The obligations of Indemnitor under this Hazardous Agreement shall not be secured by the Deed of Trust or any other documents and instruments executed in connection with the Loan, and shall not be subject to California Code of Civil Procedure Sections 580a, 580d, 726 or any other antideficiency laws. The representations and warranties made herein are intended by Indemnitor to be such that should any such representation or warranty be false or misleading, such would be actionable under California Civil Code Section 1572 and California Financial Code Sections 779 and 7460 and any statute of similar tenor. Indemnitor's obligations under this Hazardous Agreement shall survive the repayment of Indemnitor's obligations owing to Lender under the Loan and the termination of the lien of the Deed of Trust.

This agreement to defend, indemnify, protect, save and hold harmless shall be in addition to any other obligations or liability that Indemnitor may have to Lender at common law or by statute, or otherwise, and shall survive Lender's transfer of title to the Mortgaged Property. In particular, this Hazardous Agreement is intended to be cumulative of any rights of Lender under California Code of Civil Procedure Sections 564, 726.5 and 736 and under California Civil Code Section 2929.5. Indemnitor hereby waives any restrictions or limitations which such statutes may impose on Indemnitor's liability or Lender's rights or remedies under this Hazardous Agreement. Indemnitor expressly agrees that this indemnity is not personal to Lender, and that the benefits under this Hazardous Agreement may be assigned to subsequent parties in interest, including any purchaser of the Mortgaged Property from Lender, and any such party in interest may proceed directly against Indemnitor to recover pursuant to this Hazardous Agreement.

6. **ATTORNEYS' FEES.** If Lender, or someone on Lender's behalf, retains the services of any attorney in connection with the subject of indemnity herein, Indemnitor shall pay Lender costs and attorneys' fees thereby incurred. Lender may employ an attorney of Lender's own choice.
7. **INTEREST.** In the event that Lender incurs any obligations, costs or expenses under this Hazardous Agreement, Indemnitor shall pay Lender immediately on demand, and if such payment is not received within ten (10) days, interest on such amount shall, after expiration of the ten (10) day period, accrue at the Default Rate of interest (as defined in the Note) until such amount, plus interest, is paid in full.
8. **JOINT AND SEVERAL LIABILITY.** In the event that this Hazardous Agreement is executed by more than one party as Indemnitor, the liability of such parties is joint and several. Indemnitor's obligation hereunder are joint and several with any other person now or hereafter obligated under the Loan Documents. A separate action or actions may be brought and prosecuted against Indemnitor, whether or not action is brought against any other person or whether or not any other person is joined in such action or actions.
9. **CONSENT TO JURISDICTION.** Indemnitor consents to the exercise of personal jurisdiction over Indemnitor by any federal or state court in the State of California and consents to the laying of venue in any jurisdiction or locality in the State of California.
10. **NOTICE.** All notices, demands, requests and other communications required hereunder shall be in writing and shall be deemed to have been properly given if personally delivered or sent by United States certified or registered mail, return receipt requested, postage prepaid, addressed to the party for whom it is intended at its address hereinafter set forth:

If to

Attention: _____

If to Lender: PREFERRED BANK
601 S. Figueroa Street, 29th Floor
Los Angeles, California 90017
Attention: Joann Gaspard
Manager, Note Department

Notice shall be deemed given upon receipt. Any party may designate a change of address by written notice to the others, given at least ten (10) days before such change of address is to become effective.

11. **WAIVERS.** The failure of Lender to insist upon strict compliance with any of the terms hereof shall not be considered to be a waiver of any such terms, nor shall it prevent Lender from insisting upon strict compliance with this Hazardous Agreement at any time thereafter.
12. **SEVERABILITY.** If any clause or provision herein contained operates or would prospectively operate to invalidate this Hazardous Agreement in whole or in part, then such clause or provision shall be held for naught as though not contained herein, and the remainder of this Hazardous Agreement shall remain operative and in full force and effect.
13. **INCONSISTENCIES AMONG THE LOAN DOCUMENTS.** Nothing contained herein is intended to modify in any way the obligations of Indemnitor under the Note, the Deed of Trust or any other Loan Documents. Any inconsistencies among the Loan Documents shall be construed, interpreted and resolved so as to benefit Lender, and Lender's election of which interpretation or construction is for Lender's benefit shall govern.
14. **SUCCESSORS AND ASSIGNS.** Indemnitor may not assign this Hazardous Agreement without the written consent of Lender. In the event Lender consents to an assignment of this Hazardous Agreement, this Hazardous Agreement shall be binding upon Indemnitor's successors, assigns, heirs, personal representatives and estate and shall inure to the benefit of Lender and its successors and assigns.
15. **CONTROLLING LAWS.** This Hazardous Agreement shall be governed by, and construed in accordance with, the laws of the State of California.
16. **OBLIGATIONS HEREUNDER NOT RELATED TO NOTE.** The obligations of Indemnitor hereunder are not related to the amount of the Note but only to the liability, expenses and costs covered by this Hazardous Agreement.
17. **WAIVER OF RIGHT TO TRIAL BY JURY; JUDICIAL REFERENCE IN THE EVENT OF JURY TRIAL WAIVER UNENFORCEABILITY.** INDEMNITOR HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (1) ARISING UNDER THIS HAZARDOUS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION THEREWITH, OR (2) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF INDEMNITOR HERETO OR ANY OF THEM WITH RESPECT TO THIS HAZARDOUS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND INDEMNITOR HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF

ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY. NOTWITHSTANDING THE FOREGOING TO THE CONTRARY, IN THE EVENT THAT THE JURY TRIAL WAIVER CONTAINED HEREIN SHALL BE HELD OR DEEMED TO BE UNENFORCEABLE, INDEMNITOR HERETO HEREBY EXPRESSLY AGREES TO SUBMIT TO JUDICIAL REFERENCE ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING HEREUNDER FOR WHICH A JURY TRIAL WOULD OTHERWISE BE APPLICABLE OR AVAILABLE. PURSUANT TO SUCH JUDICIAL REFERENCE, INDEMNITOR AGREE TO THE APPOINTMENT OF A SINGLE REFEREE AND SHALL USE THEIR BEST EFFORTS TO AGREE ON THE SELECTION OF A REFEREE. IF INDEMNITOR IS UNABLE TO AGREE ON A SINGLE REFEREE, A REFEREE SHALL BE APPOINTED BY THE COURT TO HEAR ANY DISPUTES HEREUNDER IN LIEU OF ANY SUCH JURY TRIAL. INDEMNITOR ACKNOWLEDGES AND AGREES THAT THE APPOINTED REFEREE SHALL HAVE THE POWER TO DECIDE ALL ISSUES IN THE APPLICABLE ACTION OR PROCEEDING, WHETHER OF FACT OR LAW, AND SHALL REPORT A STATEMENT OF DECISION THEREON; PROVIDED, HOWEVER, THAT ANY MATTERS WHICH WOULD NOT OTHERWISE BE THE SUBJECT OF A JURY TRIAL WILL BE UNAFFECTED BY THIS WAIVER AND THE AGREEMENTS CONTAINED HEREIN. INDEMNITOR HERETO HEREBY AGREES THAT THE PROVISIONS CONTAINED HEREIN HAVE BEEN FAIRLY NEGOTIATED ON AN ARM'S-LENGTH BASIS, WITH BOTH SIDES AGREEING TO THE SAME KNOWINGLY AND BEING AFFORDED THE OPPORTUNITY TO HAVE THEIR RESPECTIVE LEGAL COUNSEL CONSENT TO THE MATTERS CONTAINED HEREIN. ANY PARTY TO THIS HAZARDOUS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF S HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY AND THE AGREEMENTS CONTAINED HEREIN REGARDING THE APPLICATION OF JUDICIAL REFERENCE IN THE EVENT OF THE INVALIDITY OF SUCH JURY TRIAL WAIVER.

Indemnitor has initialed this Section 17 to further indicate its awareness and acceptance of each and every provision hereof.

Indemnitor's Initials

[Signature page to follow.]

IN WITNESS WHEREOF, Indemnitor has executed this Hazardous Agreement
as of the date first above written.

“INDEMNITOR”

_____,
a _____

By: _____
Name: _____
Its: _____

EXHIBIT "A"
LEGAL DESCRIPTION

EXHIBIT "B"
PERMITTED TOXIC MATERIALS

There shall not be any hazardous and/or toxic materials at, on, in, around and/or under the Mortgaged Property and improvements, other than those as used in the regular course of business and for which Indemnitor has licenses from the proper authority, such as a government agency or regulatory body, and further, notwithstanding the foregoing, Indemnitor hereby expressly covenants, represents and warrants to Lender that all such materials shall be used or stored in strict compliance with the provisions as set forth in Section 6(c) of said Deed of Trust for compliance with all state and federal laws, rules, regulations, relating to or governing the use, storage and/or presence of toxic substances and/or hazardous materials.

Notwithstanding any provisions to the contrary contained in this Exhibit "B" and Section 6(c) of the Deed of Trust, the covenants, duties and liabilities of Indemnitor, and the rights and remedies of Lender with respect to the subject of hazardous materials and/or toxic substances, shall be governed by the provisions of this Hazardous Agreement in addition to the provisions of the Deed of Trust; provided, however, that the provisions of this Hazardous Agreement shall prevail and exclusively govern the subject matter to the extent of any duplication, conflict or inconsistency between such provisions and the provisions of the Deed of Trust, and payment or performance of Indemnitor's obligations under this Hazardous Agreement shall not be secured by the Deed of Trust, but shall be and remain unsecured obligations of the Indemnitor.