

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION**

**MERCATA JUSTA, L.L.C.,**

**Plaintiff,**

**v.**

**DEAN KRETSCHMAR,**

**Defendant.**

)  
)  
)  
) **Case No.** 2010L010797  
) **Breach of Contract**  
)  
)  
) **Jury Demanded**  
)

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 CIRCUIT COURT OF COOK  
 COUNTY, ILLINOIS  
 LAW DIVISION  
 CHEROKEE PERKINS, CLERK

**COMPLAINT**

Plaintiff Mercata Justa, L.L.C. ("Plaintiff"), by and through its undersigned counsel, complains of Defendant Dean Kretschmar ("Kretschmar" or "Defendant") as follows:

**NATURE OF THIS ACTION**

1. This is an action for breach of contract based on a Loan Agreement (the "Loan Agreement," Ex. A hereto) created on October 22, 2009 in Cook County, Illinois by and between Plaintiff as lender, Mercata Justa Partners, L.L.C. as borrower (the "Borrower"), and Defendant as guarantor, and to enforce certain obligations of Defendant in relation thereto. Pursuant to the Loan Agreement, Plaintiff made a loan of \$4,500,000 (the "Term Loan") to Borrower. In connection therewith, Borrower executed, and Defendant in his individual capacity acknowledged, a Term Note in favor of Plaintiff (the "Term Note," Ex. B hereto). Also on October 22, 2009, Defendant executed a Guaranty Agreement (the "Guaranty Agreement," Ex. C hereto) pursuant to which he agreed, as primary obligor, to absolutely, unconditionally, irrevocably and continually guarantee the full, prompt, faithful payment when due of any and all debts, obligations, and liabilities of Borrower to Plaintiff, whether arising under the Loan Agreement, the Term Note, or otherwise. In furtherance of Defendant's obligations under the Loan Agreement and Guaranty, on October 22, 2009 Defendant also entered into a Security Agreement (the "Security Agreement," Ex. D hereto) in favor of Plaintiff pursuant to which

Defendant agreed to secure his obligations to Plaintiff with all of his assets. Finally, in partial fulfillment of his obligations under the Security Agreement, Defendant executed a second mortgage (the "Mortgage," Ex. E hereto) (the Guaranty Agreement, Security Agreement, and Mortgage will be collectively referred to as the "Financing Agreements") on his personal residence in favor of Plaintiff. Plaintiff brings this action because Borrower has breached its duties under the Loan Agreement and the Security Agreements and Defendant has failed or otherwise refused to honor his obligations under the Financing Agreements.

### **THE PARTIES**

2. Plaintiff Mercata Justa, L.L.C. is a Delaware limited liability company.
3. Defendant Dean Kretschmar is an individual and resident of the State of Florida.
4. Borrower Mercata Justa Partners, L.L.C. is a Delaware limited liability company.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this matter pursuant to 735 ILCS 5/2-209(a)(1) & (7) in that Defendant transacted business within Illinois and entered into the Financing Agreements in Illinois. Pursuant to the Loan Agreement, Defendant also agreed that any and all disputes regarding the Loan Agreement would be resolved in Cook County, Illinois.

6. Venue is proper pursuant to 735 ILCS 5/2-101 in that the transaction(s), or some part thereof, out of which this cause of action arose, took place or is taking place within this County.

## RELEVANT FACTS

### Creation of the Financing Agreements

7. On October 22, 2009, Plaintiff, Defendant and Borrower entered into the Loan Agreement wherein Borrower agreed to borrow, and Defendant agreed to serve as Guarantor in respect of, the Term Loan of \$4,500,000 being made by Plaintiff.

8. On October 22, 2009, Borrower executed, and Defendant in his individual capacity acknowledged, a Term Note in favor of Plaintiff.

9. On October 22, 2009, Defendant, in his individual capacity, executed a Guaranty Agreement pursuant to which he agreed as primary obligor to absolutely, unconditionally, irrevocably and continually guarantee the full, prompt, faithful payment when due of any and all debts, obligations, and liabilities of Borrower to Plaintiff, whether arising under the Loan Agreement, the Term Note, or otherwise.

10. On October 22, 2009, Defendant entered into the Security Agreement in favor of Plaintiff pursuant to which Defendant agreed to secure his obligations under the Financing Agreements with all of his assets.

11. Finally, in partial fulfillment of his obligations under the Security Agreement, on October 22, 2009, Defendant executed a second Mortgage on his personal residence in favor of Plaintiff.

### Terms of the Financing Agreements

12. Pursuant to the Loan Agreement, Plaintiff lent Borrower the Term Loan of \$4,500,000.

13. The Term Loan was due to be repaid in March 2010 – the “Term Maturity Date” as defined by the Loan Agreement. *See* Loan Agreement at pp. 1, 23.

14. The Loan Agreement provides that the Borrower “shall pay interest on the unpaid principal amount of the Term Loan at the rate of 20% per annum (the “Applicable Rate”), from the date on which the Term Loan is made until paid in full” and further provides that “[u]pon the occurrence of an ‘Event of Default’ and during the continuance thereof, interest shall accrue on all Liabilities at the per annum rate of five (5) percentage points in excess of the Applicable Rate. Any interest payment, charge, or fee not paid when due shall be added to and become a part of the Liabilities.” *See* Loan Agreement at pp. 1-2.

15. The Loan Agreement provides a list of “Event(s) of Default,” (*See* Loan Agreement at pp. 10-12) and pursuant to Section 7.2, that the occurrence of any Event of Default entitles Plaintiff to “declare the Note and Liabilities to be due and payable, whereupon the Notes and all Liabilities shall become immediately due and payable, all without presentment, demand, protest or notice of any kind.” *See* Loan Agreement at p. 12.

16. Section 7.1(a) of the Loan Agreement provides that it shall constitute an “Event of Default” if the “Borrower or [Defendant] shall fail to perform any of the Liabilities requiring the payment of money when the payment is due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and such failure shall not be cured within five (5) Business Days of the applicable due date.” *See* Loan Agreement at p. 10.

17. Section 6.2 of the Loan Agreement provides that the “Borrower and the [Defendant] covenant and agree to deliver the documents set forth on Schedule 6.2 to [Plaintiff]... within five days after the Closing Date” of October 22, 2009. Section 6.2 further provides that “[f]ailure to deliver such documents within that time period shall constitute an Event of Default.” *See* Loan Agreement at p. 10.

18. Section 7.1(e) of the Loan Agreement provides that it shall constitute an Event of

Default if “[a]ny representation or warrant now or hereafter made by the Borrower or the [Defendant] in or in connection with this Agreement or any of the Financing Agreements... is untrue or incorrect in any material respect when made, or any schedule, certificate, statement, report, financial statement, notice, or other writing furnished at any time by the Borrower or the [Defendant] to the [Plaintiff] is untrue or incorrect in any material respect on the date as of which the facts are stated or certified; or any representation, warranty, schedule, certificate, statement, report, financial statement, notice or other writing furnished at any time by the Borrower to the Lender omits to state or include a material fact necessary to make the statement or the writing not misleading.” *See* Loan Agreement at p. 11.

19. Section 2 of the Guaranty Agreement provides that in an Event of Default under the Loan Agreement, Defendant shall pay and perform all of the obligations guaranteed thereunder, including the full and prompt payment and performance of the obligations of Borrower. *See* Guaranty Agreement at p. 2.

#### **Defendant’s Breaches of the Financing Agreements**

20. To date, the Term Note, which was due in March 2010, has not been paid.

21. To date, despite the obligations placed on Defendant by Section 6.2 of the Loan Agreement, Defendant has not delivered to Plaintiff the documents set forth on Schedule 6.2, including but not limited to evidence satisfactory to Plaintiff that Bank of America consented to the grant and recordation of the Mortgage used as security for the Term Loan, despite the fact that the Loan Agreement required said documents to be delivered within five days of closing.

22. Defendant provided Plaintiff with false, material representations concerning his ownership interest in at least two assets put forth as security for the Term Loan, in violation of Section 7.1(e) of the Loan Agreement.

23. First, Defendant materially represented the value of his personal residence.

24. Second, Defendant represented that he owned a certain account with the Royal Bank of Canada (the "RBC Account") and, separately, that he owned a certain vessel which was likewise to be used as security for the Loan Agreement.

25. Defendant in fact does not have the interest in the vessel as represented nor does he have a personal interest in the RBC account as represented.

### **COUNT I**

#### **Breach of Contract**

26. Plaintiff repeats and incorporates by reference the allegations contained in Paragraphs 1 through 25 above as though fully set forth herein, and further alleges as follows:

27. On October 22, 2009, Plaintiff, Defendant, and Borrower entered into a valid and enforceable contract in Illinois.

28. Plaintiff fully performed its obligations pursuant to the Loan Agreement when it made a Term Loan of \$4,500,000 to Borrower on October 22, 2009.

29. Despite Plaintiff's performance, the Loan Agreement is presently in Default.

30. No payments have been made by Borrower or Defendant to Plaintiff in accordance with the terms of the Loan Agreement.

31. Defendants has failed or otherwise refused to honor his obligations under the Loan Agreement or the Financing Agreements.

32. Despite Plaintiff's full performance of its obligations under the Loan Agreement, Defendant breached Section(s) 6.2, 7.1(a), and 7.1(e) of the Loan Agreement, among others, and has refused to honor his obligations under the Financing Agreements.

33. As a direct and proximate cause of Defendant's breaches of the Loan Agreement and the Financing Agreements, Plaintiff has suffered, and is entitled to recover, direct, indirect,

consequential and incidental damages, including, but not limited to, the amount of the Term Loan plus interest as provided by the terms of the Loan Agreement.

**WHEREFORE**, Plaintiff respectfully prays that this Court:

1. Award Plaintiff its actual damages sustained as a result of Defendant's breach of the Loan Agreement;
2. Award Plaintiff its costs and expenses, including, but not limited to, its attorneys' fees in bringing and pursuing this action;
3. Award Plaintiff pre-judgment and post-judgment interest; and
4. Award Plaintiff any other and further relief to which it is entitled.

Dated: September 21, 2010

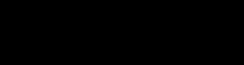
Respectfully Submitted,

Mercata Justa, L.L.C.



By: One of Its Attorneys

Kevin B. Dreher (ARDC No. 6277398)  
Michael F. Derksen (ARDC No. 6296212)  
Morgan, Lewis & Bockius LLP  
77 West Wacker Drive  
Chicago, Illinois 60601

  
Firm ID No.: 40417

**JURY DEMAND**

COMES NOW the Plaintiff and through its attorneys, hereby respectfully requests trial by jury with respect to all triable issues raised in the above Complaint.

Dated: September 21, 2010

Respectfully submitted:

Mercata Justa, L.L.C.

A handwritten signature in black ink, appearing to read 'K. Dreher', is written over a horizontal line.

By: One of Its Attorneys

Kevin B. Dreher (ARDC No. 6277398)  
Michael F. Derksen (ARDC No. 6296212)  
Morgan, Lewis & Bockius LLP  
77 West Wacker Drive  
Chicago, Illinois 60601

Firm ID No.: 40417

## LOAN AGREEMENT

This Loan Agreement ("Agreement") is entered into this \_\_\_ day of October, 2009, by and among Mercata Justa Partners, L.L.C., a Delaware limited liability company (the "Borrower"), Mercata Justa, L.L.C., a Delaware limited liability company (the "Lender"), and Dean Kretschmar an individual and resident of the State of Florida ("Guarantor").

### RECITALS

- A. Guarantor and Lender are members of the Borrower.
- B. The Borrower wishes to obtain a \$4,500,000 loan from the Lender, the proceeds of which, together with \$500,000 in equity from its members, the Borrower will use to purchase \$5,000,000 in Class A membership interests in D3 Capital Club, LLC. Lender is willing to make the loan to Borrower on the terms and conditions described in this Agreement.
- C. The obligations of Borrower to Lender will be (a) guaranteed by Guarantor, and secured by a lien on all assets of Guarantor, now owned or hereafter acquired, and (b) secured by a pledge of Borrower's membership interests in D3 Capital Club, LLC. Capitalized terms used in this Agreement which are not otherwise defined herein shall have the meanings set forth in Article IX.

### AGREEMENTS

In consideration of the terms and conditions contained in this Agreement and of any Term Loan or extensions of credit made to or for the benefit of the Borrower by the Lender, the parties agree as follows:

#### ARTICLE I

##### THE LOAN

1.1 Loan. Subject to the terms and conditions of this Agreement, the Lender agrees to loan to the Borrower the aggregate principal amount of Four Million Five Hundred Thousand and no/100 dollars (\$4,500,000) (the "Term Loan"). The Term Loan is due on the Term Maturity Date. The Term Loan shall be evidenced by a Note in substantially the form of Exhibit A ("Term Note"). Any portion of the Term Loan not borrowed on the Closing Date shall irrevocably expire.

1.2 Use of Proceeds. The Borrower shall use the proceeds of the Term Loan, together with Five Hundred Thousand and no/100 dollars (\$500,000) in equity from its members, solely to purchase Class A Membership Interests in D3 Capital Club, LLC, a Delaware limited liability company.

1.3 Interest Rate

(a) Term Loan Interest. The Borrower shall pay interest on the unpaid principal amount of the Term Loan at the rate of 20% per annum (the "Applicable Rate"), from the date on which the Term Loan is made until paid in full.

(b) Default Interest Rate. Upon the occurrence of an Event of Default and during the continuance thereof, interest shall accrue on all Liabilities at the per annum rate of five (5) percentage points in excess of the Applicable Rate. Any interest payment, charge, or fee not paid when due shall be added to and become a part of the Liabilities.

(c) Interest Computation. All interest shall be computed on the basis of a 360 day year, and actual days elapsed.

(d) Maximum Interest. Notwithstanding anything to the contrary contained in any Financing Agreement, the interest paid or agreed to be paid under the Term Note and any Financing Agreement shall not exceed the maximum rate of interest permitted by Applicable Law ("maximum rate"). If Lender shall receive interest in an amount that exceeds the maximum rate, the excess interest shall be applied to the principal of the Liabilities or, if it exceeds such unpaid principal, refunded to Borrower. In determining whether the interest contracted for, charged or received by Lender exceeds the maximum rate, Lender may, to the extent permitted by Applicable Law, (a) characterize any payment that is not principal as an expense, fee or premium rather than interest; (b) exclude voluntary prepayments and the effects thereof; and (c) amortize, prorate, allocate and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Liabilities hereunder.

#### 1.4 Making Payments.

(a) Repayments from Proceeds. To secure the Liabilities, Borrower has pledged to Lender all of its membership interests in D3, whether now owned or hereafter acquired. All proceeds and distributions received by Borrower from D3 or otherwise arising out of or relating to its membership interests in D3 shall be deposited by Borrower in a Designated Deposit Account (as defined below), and applied and paid as follows:

(i) first, to payment of the Liabilities until all Liabilities have been paid in full;

(ii) second, to the members of Borrower in accordance with Borrower's Operating Agreement.

A "Designated Deposit Account" shall mean a deposit account of Borrower, in which Lender has a first priority perfected security interest, and as to which an account control agreement satisfactory to Lender is in place.

(b) Payment at Maturity. Any amount of principal or accrued interest outstanding and unpaid on the Term Loan Maturity Date will be payable to the Lender on the Maturity Date in immediately available funds without any offset or counterclaim and free and clear of (and without deduction for) any present or future taxes.

(c) Grossup for Taxes. If Borrower shall be required by Applicable Law to withhold or deduct any Taxes from or in respect of any amount payable under this Agreement or any other Financing Agreement, (a) the amount payable to the Lender shall be increased as necessary so that, after making all required withholding or deductions, the Lender receives an amount equal to the sum it would have received had no such withholding or deductions been

made, (b) Borrower shall make such withholding or deductions, and (c) Borrower shall pay the full amount withheld or deducted to the relevant taxation authority or other authority in accordance with Applicable Law. Any sums payable to the Lender pursuant to this Section shall be deemed to constitute Obligations.

1.5 Changes in Current Tax Treatment. If the Lender shall at any time after the date of this Agreement determine in good faith that any change in any applicable law, rule, regulation, or guideline or the administration of any such applicable law, rule, or regulation or guideline promulgated by any governmental authority charged with the administration of such applicable law, rule, or regulation or guideline (whether or not having the force of law) shall in any manner subject the Lender or the Term Loan to any tax not otherwise applicable as of the date of this Agreement, or impose or make applicable any disallowance, tax, or other change in the taxation of the interest on the Term Loan (other than a change in the general income tax rate of the Lender), and the Lender determines in good faith that the result of any of the foregoing will be to reduce the net after-tax yield to the Lender on the Term Loan, then the interest rate on the Term Loan, as applicable, shall be increased to the rate that will compensate the Lender for the reduction. The calculation by the Lender of the appropriate rate shall be conclusive, absent manifest error. If the Lender makes a claim for additional interest under this Agreement, the Lender shall provide to the Borrower a certificate setting forth the claim and the basis for such claim. The rate increase shall be effective as of the date of the applicable event, and any additional unpaid interest shall be paid by the Borrower together with the next regularly-scheduled payment of interest following the giving of the notice of the claim by the Lender.

## ARTICLE II

### COLLATERAL AND SECURITY

2.1 Security Interest; Guaranty. To secure payment and performance of the Liabilities, (a) the Borrower has granted and pledged to the Lender a security interest in all membership interests of D3 now owned or hereafter acquired by Borrower, pursuant to the Pledge Agreement, and (b) the Guarantor has guaranteed the Term Loan and granted Lender a security interest in all of the Borrower's personal property and assets, including pursuant to (i) the Security Agreement, and (ii) the Mortgage. In addition, the Guarantor has guaranteed Borrower's obligation to repurchase, at the Lender's option, all of Lender's membership interests in Borrower, pursuant to the Borrower's Operating Agreement and the Guaranty.

2.2 Set-off. The Borrower agrees that (in addition to the Lender's and each holders' rights with respect to proceeds of Collateral), at any time (i) any amount owing by the Borrower under this Agreement or any of the Financing Agreements is then due to the Lender or any such holder, or (ii) any Event of Default exists, the Lender and each such holder may apply to the payment of the Liabilities any and all balances, credits, deposits (including all account balances, whether provisional or final and whether or not collected or available), accounts or monies of the Borrower then or thereafter with the Lender or such holder up to the extent of such Liabilities.

## ARTICLE III

### AFFIRMATIVE COVENANTS

The Borrower and Guarantor jointly and severally agree and covenant until the indefeasible payment in full of the Liabilities, and the distribution of the Preferred Return to Lender, as follows:

#### 3.1 Information.

(a) Financial Information. The Borrower shall provide to the Lender upon request such financial statements, and all data and documentation with respect to its assets and liabilities, as the Lender may reasonably request. Guarantor shall provide to the Lender upon request his personal financial statements, and all data and documentation with respect to the assets and liabilities on such personal financial statements as the Lender may reasonably request.

(b) Tax Returns. Within fifteen (15) days after filing, Guarantor and Borrower will provide Lender with true and correct copies of all federal and state tax and information returns of the Guarantor and Borrower filed with federal and state taxing authorities.

(c) Default Notices. The Borrower and Guarantor shall notify and fully inform the Lender immediately after the Borrower or Guarantor obtains knowledge of (i) the occurrence of an event or the existence of factual circumstances giving rise to an Event of Default, (ii) an Event of Default under this Agreement, or (iii) any default under any of the other Financing Agreements.

(d) Other Information. With reasonable promptness, other business or financial data as the Lender reasonably may request.

All financial statements delivered to the Lender pursuant to this Section 3.1 shall be certified by the Borrower and Guarantor as being true, complete, and accurate in all material respects as of the date thereof. The Borrower and the Guarantor authorize the Lender to discuss the financial condition of the Borrower and the Guarantor with the Borrower's and Guarantor's accountants and investment advisors.

3.2 Inspection. The Lender and any authorized representatives designated by the Lender in writing shall have the right, from time to time after the date of this Agreement until the indefeasible payment in full of the Liabilities, to: (a) visit and inspect all properties of the Borrower and Guarantor, and inspect, audit, check, and make copies of and extracts from the Borrower's and Guarantor's books, records, journals, orders, receipts, and any correspondence and other data relating to the Collateral or to any of the Transactions; (b) verify any fact concerning the Collateral as the Lender may consider reasonable under the circumstances; and (c) discuss the affairs, finances, and business of the Borrower with the Borrower's accountant or financial or investment advisor. The Borrower shall pay on demand all reasonable out of pocket expenses incurred by the Lender in exercising its rights under this Section 3.2.

3.3 Claims and Taxes. The Guarantor shall indemnify and hold the Lender, and its officers, directors, employees, attorneys, and agents harmless from and against any and all

claims, demands, liabilities, losses, damages, penalties, costs, and expenses (including, without limitation, reasonable attorneys' and consultants' fees) relating to or in any way arising out of the possession, use, operation, or control of any of the Guarantor's assets, except for the indemnified party's gross negligence or intentional misconduct. The Guarantor shall pay or cause to be paid all of its real and personal property taxes, assessments, and charges and all of their franchise, income, unemployment, use, excise, old age benefit, withholding, sales and other taxes, and other governmental charges assessed against the Guarantor, or payable by the Guarantor, at the times and in the manner as to prevent any penalty from accruing or any lien or charge from attaching to its property.

3.4 Insurance. The Guarantor shall maintain, at the Guarantor's expense, public liability and third party property damage insurance policies with respect to the Collateral in amounts and with deductibles as are reasonably acceptable to the Lender, and shall cause the Lender to be named as additional insured on all the policies. The Guarantor shall, at its expense, keep and maintain its real property and personal property assets insured against loss or damage by fire, theft, burglary, pilferage, loss in transit, explosion, spoilage, and all other hazards and risks ordinarily insured against by other owners or users of similar properties in similar businesses in an amount at least equal to the lesser of (a) the outstanding principal balance of the Liabilities, or (b) the full replacement cost of all the property. All the policies of insurance shall be in a form and substance satisfactory to the Lender. The Guarantor shall deliver to the Lender, at closing, certificates of insurance evidencing insurance coverages. The policies of property insurance shall contain endorsements naming the Lender as additional insured and loss payee as its interests may appear, and stating that the policies shall not be terminated or materially changed without at least thirty (30) days prior written notice to the Lender. The Guarantor and the Borrower hereby direct all insurers under the policies of insurance to pay all proceeds of insurance policies naming the Lender or the Borrower as payee to the Lender. All proceeds of property insurance will be used to replace damaged items in like kind so long as no Event of Default shall be existing; provided that whenever an Event of Default shall be existing, the Lender may apply any proceeds of the insurance which may be received by it toward payment of the Liabilities, whether or not due, in such order of application as the Lender may determine. The Borrower and the Guarantor shall notify the Lender of all material insurance claims, and the Lender as an additional insured shall have the right to participate in any settlement negotiations with insurance companies on any material claim settlement, but is not obligated to do so. If the Borrower or the Guarantor, at any time or times after the date of this Agreement, shall fail to obtain or maintain any of the policies of insurance required under the terms of this Agreement or to pay any premium in whole or in part relating to the policies, then the Lender, without waiving or releasing any obligation or Event of Default, may at any time or times after the failure to obtain or maintain the policies, obtain and maintain the policies of insurance and pay the premiums and take any other action with respect to the policies which the Lender deems advisable in its reasonable discretion (but the Lender shall be under no obligation to do so).

3.5 Notices. The Borrower and the Guarantor shall, as soon as possible and in any event within five (5) Business Days after the Borrower or the Guarantor learns of the following, give written notice to the Lender of: (a) any material proceeding (including, without limitation, litigation, investigations, arbitration, or governmental proceedings) being instituted or threatened to be instituted by or against the Borrower, Guarantor or D3, or related to D3 or its assets, in any federal, state, local, or foreign court or before any commission or other regulatory body (federal,

state, local, or foreign); (b) any notice that the Borrower's, Guarantor's, or D3's operations are not in full compliance with requirements of applicable federal, state, or local law, including environmental, health, and safety statutes and regulations; (c) the occurrence of a Material Adverse Effect; or (d) any default under the D3 Operating Agreement or otherwise relating to or with respect to D3 or the Pledged Interests. The Borrower and the Guarantor shall promptly forward to Lender copies of all correspondence and documentation received by Borrower or Guarantor from or with respect to D3 or the Pledged Interests.

3.6 Further Assurances. The Borrower and the Guarantor shall take such actions as are necessary or as the Lender may reasonably request from time to time to ensure that the Liabilities under this Agreement and the other Financing Agreements are secured by a first priority security interest (subject to Permitted Liens) in substantially all of the assets of the Borrower and Guarantor, in each case in such manner as the Lender may reasonably determine, including (a) the execution and delivery of joinders, guaranties, security agreements, pledge agreements, mortgages, deeds of trust, financing statements and other documents, and the filing or recording of any of the foregoing, and (b) the delivery of certificated securities and other Collateral with respect to which perfection is obtained by possession (and the Borrower and Guarantor shall use their best efforts and take all actions reasonably required by the Lender to ensure that all equity interests are treated as certificated securities under Article 8 of the UCC).

## ARTICLE IV

### NEGATIVE COVENANTS

The Borrower and Guarantor jointly and severally covenant and agree until the indefeasible payment in full of the Liabilities, as follows:

4.1 Encumbrances. The Borrower and the Guarantor will not create, incur, assume, or suffer to exist any security interest, mortgage, pledge, lien, or other encumbrance of any nature whatsoever on any of its real or personal property assets, including, without limitation, the Collateral, except for Permitted Liens.

4.2 Indebtedness. Except as listed on the attached Schedule 4.2, the Borrower shall not incur, create, assume, or become or be liable in any manner with respect to, or permit to exist any Indebtedness, except for the Liabilities.

4.3 Investments or Loans. The Borrower shall not make or permit to exist investments or loans in or to any other Person. The Guarantor shall not make or permit to exist investments or loan in or to any other Person, except: (a) investments in cash and short-term direct obligations of the United States Government; (b) investments in negotiable certificates of deposit issued by any bank acceptable to the Lender, in its reasonable discretion, and payable to the order of the Borrower or Guarantor or to bearer and delivered to the Lender as collateral; (c) investments in commercial paper rated A1 or P1; (d) Permitted Investments; (f) existing investments set forth on Schedule 4.3.

4.4 Disposal of Property. Except as otherwise permitted under this Agreement, the Borrower and Guarantor shall not sell, lease, transfer, or otherwise dispose of any of the Collateral, except for reinvestments in the ordinary course.

4.5 Amendment of Documents. The Borrower and Guarantor shall not, without the prior written consent of the Lender, exercise or waive any rights under, or permit any amendment or modification to, the D3 Operating Agreement, the Securities Purchase Agreement, or any other agreements with or relating to D3 or the Transactions.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Lender that:

5.1 Authority. The execution by the Borrower and Guarantor of this Agreement and of all the Financing Agreements, and the performance of their obligations under this Agreement and under the Financing Agreements: (a) are within the Borrower's and the Guarantor's powers; (b) are duly authorized, executed and delivered; (c) are not in contravention of the terms of any material indenture, agreement, or undertaking to which the Borrower or the Guarantor is a party or by which the Borrower, the Guarantor or any of their property is bound; (d) do not, as of the execution of this Agreement, require any governmental or other consent, registration or approval; and (e) will not, except as contemplated in this Agreement, result in the imposition of any lien, charge, security interest, or encumbrance upon any property of the Borrower or Guarantor under any existing indenture, mortgage, deed of trust, loan or credit agreement, or other material agreement or instrument to which the Borrower or the Guarantor is a party or by which the Borrower, the Guarantor or any of their property may be bound or affected.

5.2 Binding Effect. This Agreement and all of the Financing Agreements are the legal, valid, and binding obligations of the Borrower and the Guarantor and are enforceable against the Borrower and Guarantor in accordance with their terms.

5.3 Financial Data. All financial statements and data regarding the financial condition of the Borrower and the Guarantor previously furnished to the Lender or required to be furnished to the Lender as a condition of the Lender executing this Agreement, are true, complete, and accurate in all material respects, as of the dates set forth therein. All information, reports, and other papers and data furnished to the Lender is true, complete, and accurate in all material respects.

5.4 Collateral. The Borrower and Guarantor each has good, indefeasible, and merchantable title to its real and personal properties and assets (including, without limitation, the Collateral), including but not limited to all assets included on its financial statements, free and clear of all liens, claims, or encumbrances of any kind, except for Permitted Liens.

5.5 Solvency. The Borrower and the Guarantor are solvent, are able to pay debts as they become due, have capital sufficient to carry on its current business and all businesses in which it is about to engage, and now owns property having a value both at fair valuation and at present fair salable value greater than the amount required to pay its debts. The Borrower and the

Guarantor will not be rendered insolvent by the execution of this Agreement or of any of the Financing Agreements or by the transactions contemplated under this Agreement or under the Financing Agreements.

5.6 Taxes. The Borrower and Guarantor have filed all federal, state, and local tax reports and returns it is required by any law or regulation to have filed, except for reports not filed pursuant to extensions duly obtained, have either duly paid all taxes, duties, and charges indicated as due on such returns and reports or made adequate provision for the payment of such taxes, duties, and charges, and the assessment of any material amount of additional taxes in excess of those paid and reported is not reasonably expected. The consummation of the Transactions shall not result in the imposition of any tax under 26 USC §5891.

5.7 Litigation and Proceedings. No judgments are outstanding against the Borrower or the Guarantor and no litigation, investigation, contested claim, or governmental proceeding is now pending or, to the Borrower's knowledge, threatened, by or against the Borrower or Guarantor, except judgments and pending or threatened litigation, investigations, contested claims, and governmental proceedings that if resolved in a manner unfavorable to the Borrower would not, in the aggregate, have a Material Adverse Effect. To the Borrower's and Guarantor's knowledge, the Borrower and the Guarantor does not have any contingent liabilities that can reasonably be expected to have, in the aggregate, a Material Adverse Effect.

5.8 Other Agreements. The Borrower and the Guarantor are not in default under any material contract, lease, or commitment to which either is a party or by which either is bound, including but not limited to the first mortgage.

5.9 Compliance with Laws and Regulations. The execution and performance by the Borrower and Guarantor of this Agreement and of the other Transaction Documents, and the consummation of the Transactions, are and will be in compliance with all applicable laws. The Borrower and Guarantor are in compliance with all applicable laws, orders, regulations, and ordinances of all federal, foreign, state, and local governmental authorities relating to their respective business, operations, and assets, except for laws, orders, regulations, and ordinances, the violation of which would not, in the aggregate, have a Material Adverse Effect.

5.10 Consents. Except for consents from the first mortgagee under the mortgage listed on Schedule 5.10, if any, there are no persons, governmental agencies, or other entities from which the Borrower or Guarantor must obtain consent to the consummation of the transactions described in this Agreement.

5.11 Business Loan. The Term Loan, including interest rate, fees and charges as contemplated hereby, is a business purpose loan within the purview of 815 ILCS 205/4(1)(c), as amended from time to time.

5.12 Absolute Reliance on Representations and Warranties. All representations and warranties contained in this Agreement and any financial statements, instruments, certificates, schedules or other documents delivered in connection herewith, shall survive the execution and delivery of this Agreement, regardless of any investigation made by the Lender, or on the Lender's behalf.

## ARTICLE VI

### CONDITIONS OF ADVANCES; DELIVERIES

6.1 Conditions Precedent to Advance of Term Loan on the Closing Date. Notwithstanding any other provisions contained in this Agreement, as a condition precedent to any obligations of the Lender under this Agreement to make the Term Loan on the Closing Date, all of the following shall have occurred on or before the Closing Date:

(a) The Borrower and Guarantor shall have delivered, or caused to be delivered, all of the following documents to the Lender, in form and substance reasonably satisfactory to the Lender:

(i) Original fully completed, dated, and executed originals of all of the following documents:

(1) This Agreement;

(2) The Term Note;

(3) Security Agreement;

(4) Mortgage;

(5) The Pledge Agreement;

(6) Account control agreements in form and substance acceptable to the Lender with respect to each of the deposit and investment accounts of the Guarantor, executed by the Guarantor, the Lender, and the institution at which each such account is maintained and/or the securities intermediary, as applicable;

(7) Pledge agreements with respect to the pledge of all investments held by the Guarantor, in substantially the form of the Pledge Agreement, including the consents of all parties whose consent is required for such pledge;

(8) Original certificates of title for all vehicles and boats owned by Guarantor, together with endorsements and such other documents as shall be necessary to reflect and perfect the Lender's security interest;

(9) The other Financing Agreements, including but not limited to financing statements and other documents to perfect the Lender's security interest in the Collateral;

(ii) Certificates from the Borrower's insurance carriers evidencing that all required insurance is in effect, together with the executed form of the Lender's loss payee endorsement and evidencing that the Lender is an additional insured, all as described in Section 3.5 of this Agreement;

(iii) Copies of the securities purchase agreement, subscription agreement, D3 Operating Agreement, and other documents relating to the Borrower's investment and equity interest in D3, and proof satisfactory to the Lender that the proceeds of the Borrower's investment in D3 has been used for the purchase of settlements in accordance with the terms of the Transaction Documents;

(iv) Original certificates representing the certificated membership interests in D3, to the extent certificates have been prepared and delivered to members of D3;

(v) Evidence that all consents needed in order to consummate the Transactions have been obtained; and

(vi) Other documents, agreements and information as the Lender may reasonably request.

(b) No material adverse change, as determined by the Lender in its sole discretion, in the financial condition or operations of the Borrower or Guarantor shall have occurred and be continuing.

(c) All consents needed in order to consummate the Transactions shall have been obtained.

(d) The Lender shall have received, in form and substance satisfactory to the Lender, all certificates, orders, authorities, consents, affidavits, schedules, instruments, security agreements, financing statements, mortgages, and other documents which are provided for under this Agreement, or which the Lender may at any time reasonably request.

6.2 Subsequent Deliveries. The Borrower and the Guarantor covenant and agree to deliver the documents set forth on Schedule 6.2 to Lender, in form and substance acceptable to Lender, within five days after the Closing Date. Failure to deliver such documents within that time period shall constitute an Event of Default.

## ARTICLE VII

### DEFAULT AND RIGHTS AND REMEDIES OF THE LENDER

7.1 Event of Default. For purposes of this Agreement, the occurrence of any of the following events shall be a "Event of Default":

(a) The Borrower or Guarantor shall fail to perform any of the Liabilities requiring the payment of money when the payment is due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) and such failure shall not be cured within five (5) Business Days of the applicable due date.

(b) The Borrower or Guarantor shall fail or neglect to perform, keep, or observe any of its covenants, conditions, or agreements contained in Sections 3.2, 3.4, Article IV or Article VI of this Agreement, or in Section 4.4 and 4.9 of the Security Agreement.

(c) The Borrower or Guarantor shall fail or neglect to perform, keep or observe any of its covenants, conditions or agreements contained in Sections 3.1, 3.5, 3.6 of this Agreement, and the breach continues for a period of ten (10) days after notice of the breach has been given by the Lender to the Borrower or the Guarantor, as the case may be.

(d) The Borrower or the Guarantor shall fail or neglect to perform, keep, or observe any of its respective covenants, conditions, or agreements contained in this Agreement or in any of the Financing Agreements to which it is a party, other than the covenants, conditions, or agreements as provided in clause (a), (b) or (c) above, and the breach continues for a period of thirty (30) days after notice of the breach has been given by the Lender to the Borrower or the Guarantor.

(e) Any representation or warranty now or hereafter made by the Borrower or the Guarantor in or in connection with this Agreement or any of the Financing Agreements, or made by D3 in connection with the Transactions, is untrue or incorrect in any material respect when made, or any schedule, certificate, statement, report, financial statement, notice, or other writing furnished at any time by the Borrower or the Guarantor to the Lender is untrue or incorrect in any material respect on the date as of which the facts are stated or certified; or any representation, warranty, schedule, certificate, statement, report, financial statement, notice or other writing furnished at any time by the Borrower to the Lender omits to state or include a material fact necessary to make the statement or the writing not misleading.

(f) A judgment or order requiring payment in excess of \$50,000 individually or in the aggregate shall be rendered against the Borrower, and the judgment or order shall remain unsatisfied or undischarged and in effect for 30 consecutive days without a stay of enforcement or execution. However, this Section 7.1(f) shall not apply to any judgment for which the Borrower is fully insured and with respect to which the insurer is not defending under a reservation of rights.

(g) A notice of lien, levy, or assessment is filed or recorded with respect to all or a substantial part of the assets of the Borrower or the Guarantor by the United States of America, or any department, agency, or instrumentality of the United States of America, or by any state, county, municipality, or other governmental agency, or any material taxes or debts owing at any time or times after the date of this Agreement to any one of them becomes a lien upon all or a substantial part of the Collateral, and the lien, levy, or assessment is not discharged or released within thirty (30) days of the notice or attachment of the lien or the Borrower do not contest the validity of a lien, levy, or assessment on reasonable grounds and set aside an adequate reserve to cover the disputed liability. However, this Section 7.1(g) shall not apply to any liens, levies, or assessments that relate to current taxes not yet due and payable or to Permitted Liens.

(h) There shall occur any loss, theft, substantial damage, or destruction of any item or items of Collateral not covered by insurance and with an aggregate value in excess of \$50,000.

(i) All or any material part of the Collateral is attached, seized, subjected to a writ or distress warrant, levied upon, or comes within the possession of any receiver, trustee, custodian, or assignee for the benefit of creditors and on or before the sixtieth (60th) day

thereafter the assets are not returned to the Borrower or the Guarantor or the writ, distress warrant, or levy is not dismissed, stayed, or lifted.

(j) The Borrower or the Guarantor: (1) generally shall not pay, shall be unable to pay, shall admit in writing its inability to pay its debts as the debts become due, or shall become insolvent; (2) shall make an assignment for the benefit of creditors or petition or apply to any court or other governmental agency for the appointment of a custodian or receiver for it or for all or any material part of its properties; (3) shall commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; (4) shall have had any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation petition, application, or proceeding filed or any of these proceedings commenced against it in which an order for relief is entered or an adjudication or appointment is made, and which remains undismissed for a period of sixty (60) days; (5) shall indicate, by act or omission, its consent to, approval of, or acquiescence in any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation petition, application, or proceeding, or any order for relief or the appointment of a custodian, receiver, or trustee for all or any material part of their properties; or (6) shall suffer any custodianship, receivership, or trusteeship to continue undischarged for a period of sixty (60) days.

(k) A breach by the Borrower or the Guarantor shall occur under any agreement, document, or instrument existing between the Borrower or Guarantor and any other Person, which breach gives rise to a Material Adverse Effect.

(l) If any Financing Agreement shall cease to be in full force and effect or the Borrower or Guarantor (or any Person by, through or on behalf of the Borrower) shall contest in any manner the validity, binding nature or enforceability of any material provision of any Financing Agreement.

Without limiting the foregoing, an Event of Default hereunder shall be a default under each of the other Financing Agreements and any and all loan documents, agreements and undertakings evidencing or regarding the Liabilities, and a default under any of the other Financing Agreements and any and all loan documents, agreements and undertakings evidencing or regarding the Liabilities shall be an Event of Default hereunder, subject only to the grace and cure periods, if any, provided herein with respect to the applicable default.

7.2 Effect of Event of Default. If (a) any Event of Default described in Section 7.1(j) shall occur, all Notes and Liabilities shall become immediately due and payable, all without presentment, demand, protest or notice of any kind; and (b) any other Event of Default shall occur, the Lender may declare the Note and Liabilities to be due and payable, whereupon the Notes and all Liabilities shall become immediately due and payable, all without presentment, demand, protest or notice of any kind. The Lender shall promptly advise the Borrower of any such declaration, but failure to do so shall not impair the effect of such declaration.

7.3 Preservation of Rights. No delay or omission of the Lender in exercising any right under this Agreement or any Financing Agreement shall impair such right or be construed to be a waiver of any Event of Default or an acquiescence therein, and the making of a Loan

notwithstanding the existence of an Event of Default or the inability of the Borrower to satisfy the conditions precedent to such Loan shall not constitute any waiver or acquiescence. Any single or partial exercise of any such right shall not preclude other or further exercise thereof or the exercise of any other right, and no waiver, amendment or other variation of the terms, conditions or provisions of this Agreement or any Financing Agreement whatsoever shall be valid unless in writing signed by the Lender and then only to the extent in such writing specifically set forth. All remedies contained in this Agreement or any Financing Agreement or by law afforded shall be cumulative and all shall be available to the Lender until the Liabilities have been paid in full.

7.4 Waiver of Demand. Demand, presentment, protest, and notice of nonpayment, except as provided by this Agreement, are hereby waived by the Borrower and the Guarantor with respect to the Liabilities and with respect to any notes, checks, or other negotiable instruments that may be included in the Collateral or which at any time may be held by the Lender with respect to which the Borrower is an endorser, drawer or other surety, or other party, and the Borrower and the Guarantor hereby consent to any and every renewal or extension of time that may be granted with respect to the instruments. The Borrower and the Guarantor also waive the benefit of all valuation, appraisal, and exemption laws.

## ARTICLE VIII

### MISCELLANEOUS

8.1 Waiver; Amendments. No delay on the part of the Lender in the exercise of any right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise by any of them of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy. No amendment, modification or waiver of, or consent with respect to, any provision of this Agreement or the other Financing Agreements shall in any event be effective unless the same shall be in writing and acknowledged by the Borrower and Lender, and then any such amendment, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

8.2 Costs and Attorneys' Fees. The Guarantor agrees to pay on demand all reasonable out-of-pocket costs and expenses of the Lender (including reasonable attorneys' costs and fees and including attorneys costs and fees in connection with any bankruptcy or similar proceeding or appeal proceeding in any court) in connection with any bankruptcy or similar proceeding or appeal proceeding in any court) incurred by the Lender after an Event of Default, or in connection with the collection of the Liabilities or the enforcement of this Agreement or the other Financing Agreements or any such other documents or during any workout, restructuring or negotiations in respect thereof. All Liabilities provided for in this Section 8.2 shall survive repayment of the Term Loan, cancellation of the Notes and termination of this Agreement.

8.3 Expenditures by Lender. In the event the Borrower or Guarantor shall fail to pay taxes, insurance, assessments, costs, or expenses which the Borrower is, under any of the terms of this Agreement or any of the Financing Agreements, required to pay, or fail to keep the Collateral free from other security interests, liens, or encumbrances, except as permitted in this Agreement and except for Permitted Liens, the Lender may, in its sole discretion, make reasonable, necessary expenditures for any or all of these purposes, and the amount so expended, together with interest at

the Prime Rate plus the Applicable Margin, shall be part of the Liabilities, payable on demand and secured by the Collateral.

8.4 Reliance by Lender. All covenants, agreements, representations, and warranties made in this Agreement by the Borrower or Guarantor shall, notwithstanding any investigation by the Lender, be deemed to be material to and to have been relied upon by Lender.

8.5 Due Date Extension. If any payment of principal or interest with respect to any of the Term Loan, or of any fees, falls due on a day which is not a Business Day, then such due date shall be extended to the immediately following Business Day and, in the case of principal, additional interest shall accrue and be payable for the period of any such extension.

8.6 Parties. Whenever in this Agreement there is reference made to any of the parties to this Agreement, the reference is deemed to include, wherever applicable, a reference to the successors and assigns of the Borrower and the Guarantor and the successors and assigns of the Lender, and the provisions of this Agreement shall be binding upon and shall inure to the benefit of said successors and assigns. Notwithstanding anything in this Agreement to the contrary, neither the Borrower nor the Guarantor may assign or otherwise transfer its rights or obligations under this Agreement without the prior written consent of the Lender.

8.7 Confidential Information. Borrower and Guarantor will comply with the confidentiality provisions of the Operating Agreement of D3. Borrower, Guarantor and their agents and representatives will not disclose any confidential information of Lender, or the existence or terms of this Agreement or the other Financing Agreements, or the names or identities of any owner of or investor in the Lender or the Loan, and shall hold all such information in strict confidence and shall not disclose such confidential information to any other Person unless consented to in writing by the Lender, except that such information may be disclosed to the extent required by applicable laws or regulations or by any subpoena or similar legal process, provided, however, if permitted under such laws, regulations, subpoena or similar legal process, Borrower and Guarantor shall give the Lender prior notice so that the Lender may obtain a protective order in respect of such information. The obligation to maintain the confidentiality of such information shall survive the termination of this Agreement and the full payment of the Liabilities.

8.8 Entire Agreement; Severability. This Agreement, together with the Exhibits to this Agreement and the Financing Agreements, constitutes the entire agreement between the parties to this Agreement with respect to the subject matter of this Agreement, and supersedes and is in full substitution for any and all prior agreements and understandings between them relating to the subject matter of this Agreement. Wherever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, the provision shall be ineffective only to the extent of the prohibition or invalidity, without invalidating the remainder of the provision or the remaining provisions of this Agreement or the validity of the provision in any other jurisdiction. To the extent any terms of the other Financing Agreements conflict with this Agreement, this Agreement shall govern.

8.9 Application of Payments. Notwithstanding any contrary provision contained in this Agreement or in any of the Financing Agreements, the Borrower and Guarantor irrevocably waive

the right to direct the application of any and all payments at any time or times hereafter received by the Lender from the Borrower or Guarantor or with respect to any of the Collateral; and the Borrower and Guarantor irrevocably agree that, the Lender shall have the continuing exclusive right to apply and reapply any and all payments received at any time or times hereafter, whether with respect to the Collateral or otherwise, against the Liabilities in the manner as the Lender may deem advisable, notwithstanding any entry by the Lender upon any of its books and records.

8.10 Marshaling; Payments Set Aside. The Lender shall be under no obligation to marshal any assets in favor of the Borrower or any other party or against or in payment of any or all of the Liabilities. To the extent that the Borrower or Guarantor makes a payment or payments with respect to the Liabilities or the Lender enforces its security interests or exercises its rights of setoff, and the payment or payments or the proceeds of the enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid to a trustee, receiver, or any other party under any bankruptcy law, state or federal law, common law, or equitable cause, then to the extent of the recovery the obligation or part thereof originally intended to be satisfied shall be revived, reinstated, and continued in full force and effect as if the payment had not been made or the enforcement or setoff had not occurred.

8.11 Section Titles. The section titles contained in this Agreement shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties.

8.12 Continuing Effect. This Agreement, the Lender's security interest in the Collateral and all of the other Financing Agreements shall continue in full force and effect until the indefeasible payment in full of the Liabilities and the expiration or termination of any and all commitments hereunder for the Lender to make available loans to the Borrower. All representations and warranties contained in this Agreement or any of the Financing Agreements shall survive the termination of this Agreement.

8.13 Notices. Except as otherwise expressly provided in this Agreement, any notice required or desired to be served, given, or delivered under this Agreement shall be in writing, and shall be deemed to have been validly served, given, or delivered (a) three days after deposit in the United States mails, with proper postage prepaid, (b) when sent after receipt of confirmation or answer back if sent by facsimile transmission, (c) one Business Day after deposited with a reputable overnight courier with all charges prepaid, or (d) when delivered, if hand-delivered by messenger, all of which shall be properly addressed to the party to be notified and sent to the address or number indicated as follows:

(i) If to Lender at:

and a copy to:

Morgan, Lewis & Bockius LLP  
77 West Wacker Drive, 5th Floor  
Chicago, Illinois 60601  
Attention: Elizabeth S. Perdue  
Facsimile: [REDACTED]  
Telephone: [REDACTED]

(ii) If to the Borrower at:

(iii) If to the Guarantor at:

2833 NE 35th Court  
Fort Lauderdale, FL 33308  
[REDACTED]  
Email: [REDACTED]

or to another address or number as each party designates to the other in the manner prescribed in this Agreement.

8.14 Equitable Relief. The Borrower and Guarantor recognize that in the event either of them fails to perform, observe, or discharge any of its obligations or liabilities under this Agreement, any remedy at law may prove to be inadequate relief to the Lender; therefore, the Borrower and Guarantor agree that the Lender, if the Lender so requests, shall be entitled to temporary and permanent injunctive relief in the case without the necessity of proving actual damages.

8.15 Indemnification. The Guarantor agrees to defend, protect, indemnify, and hold harmless the Lender and its officers, directors, employees, attorneys, consultants, and Lenders (collectively called the "Indemnitees") from and against any and all obligations, liabilities, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses, and reasonable disbursements of any kind or nature whatsoever (other than Excluded Taxes) (including, without limitation, the reasonable out-of-pocket fees and disbursements of counsel for and consultants of the Indemnitees in connection with any investigative, administrative, or judicial proceeding, whether or not the Indemnitees shall be designated a party to the investigative, administrative, or judicial proceeding) (collectively, the "Indemnified Liabilities"), which may be imposed on, incurred by, or asserted against the Indemnitees (whether direct or indirect, (but excluding consequential damages) and whether based on any federal or state laws or other statutory regulations, including, without limitation, securities, environmental and commercial laws and regulations, under common law, or an equitable cause or on contract or otherwise) in any manner

relating to or arising out of this Agreement or the Financing Agreements, or any act, event or transaction related or attendant thereto, the agreements of the Lender contained in this Agreement, the making of the Term Loan under this Agreement, the management of the Term Loan or the Collateral (including any liability under federal, state, or local environmental laws or regulations) or the use or intended use of the proceeds of the Term Loan (collectively, the "Indemnified Matters"). However, the Guarantor shall have no obligation to any Indemnitee under this Agreement with respect to Indemnified Matters caused by or resulting from the willful misconduct or gross negligence of the Indemnitee. To the extent that the undertaking to indemnify, pay, and hold harmless set forth in this Section may be unenforceable because it violates any law or public policy, the Borrower shall contribute the maximum portion which they are permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Matters incurred by the Indemnitees.

8.16 Choice of Law. The Lender, the Guarantor and the Borrower hereby accept this Agreement in Chicago, Illinois by signing and delivering it there. Any dispute between the Lender and the Borrower arising out of, connected with, related to, or incidental to the relationship established between them in connection with this Agreement, and whether arising in contract, tort, equity, or otherwise, shall be resolved in accordance with the internal laws and not the conflicts of law provisions of the State of Illinois.

8.17 PERSONAL JURISDICTION.

(a) EXCLUSIVE JURISDICTION. THE LENDER, GUARANTOR AND THE BORROWER AGREE THAT ALL DISPUTES BETWEEN THEM ARISING OUT OF, CONNECTED WITH, RELATED TO OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED BETWEEN THEM IN CONNECTION WITH THIS AGREEMENT, AND WHETHER ARISING IN CONTRACT, TORT, EQUITY, OR OTHERWISE, SHALL BE RESOLVED ONLY BY STATE OR FEDERAL COURTS LOCATED IN COOK COUNTY, ILLINOIS, BUT LENDER, GUARANTOR AND BORROWER ACKNOWLEDGE THAT ANY APPEALS FROM THOSE COURTS MAY HAVE TO BE HEARD BY A COURT LOCATED OUTSIDE OF COOK COUNTY, ILLINOIS. THE BORROWER AND GUARANTOR WAIVE IN ALL DISPUTES ANY OBJECTION THAT THEY MAY HAVE TO THE LOCATION OF THE COURT CONSIDERING THE DISPUTE.

8.18 WAIVER OF BOND. THE BORROWER AND GUARANTOR WAIVE THE POSTING OF ANY BOND OTHERWISE REQUIRED OF THE LENDER IN CONNECTION WITH ANY JUDICIAL PROCESS OR PROCEEDING TO OBTAIN POSSESSION OF, REPLEVY, ATTACH, OR LEVY UPON COLLATERAL OR ANY OTHER SECURITY FOR THE LIABILITIES, TO ENFORCE ANY JUDGMENT OR OTHER COURT ORDER ENTERED IN FAVOR OF THE LENDER, OR TO ENFORCE BY SPECIFIC PERFORMANCE, TEMPORARY RESTRAINING ORDER, OR PRELIMINARY OR PERMANENT INJUNCTION THIS AGREEMENT OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN THE LENDER AND THE BORROWER.

8.19 WAIVER OF JURY TRIAL. THE BORROWER, GUARANTOR AND THE LENDER EACH WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE,

BETWEEN OR AMONG THE LENDER AND THE BORROWER ARISING OUT OF, CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED BETWEEN THEM IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION THEREWITH OR THE TRANSACTIONS RELATED THERETO. THE BORROWER, GUARANTOR AND THE LENDER HEREBY AGREE AND CONSENT THAT ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT EITHER MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

8.20 Advice of Counsel. The Borrower represents and warrants to the Lender that he has had the advice and counseling of competent legal counsel during the negotiation of the terms and conditions of this Agreement.

8.21 Assignments; Participations.

(a) Assignments. (i) The Lender may at any time assign to one or more Persons (any such Person, an "Assignee") all or any portion of the Term Loan, pursuant to an assignment agreement. Upon the request of the Assignee (and, as applicable, the assigning Lender) pursuant to an effective assignment agreement, the Borrower shall execute and deliver to the Lender for delivery to the Assignee (and, as applicable, the assigning Lender) a Note in the principal amount of the Assignee's share of the Term Loan. Each such Note shall be dated the effective date of such assignment. Upon receipt by the assigning Lender of such Note, the assigning Lender shall return to the Borrower any prior Note held by it.

(ii) Notwithstanding any other provision contained in this Agreement or any other Financing Agreement to the contrary, the Lender may assign or pledge all or any portion of the Term Loan held by it (and Notes evidencing such Term Loan) to the trustee under any indenture to which the Lender is a party in support of its obligations to the trustee for the benefit of the applicable trust beneficiaries, or (iii) pledge all or any portion of the Term Loan held by it (and Notes evidencing such Term Loan) to its lenders for collateral security purposes; provided that any payment in respect of such assigned Term Loan made by the Borrower to or for the account of the assigning or pledging Lender in accordance with the terms of this Agreement shall satisfy the Borrower's obligations hereunder in respect to such assigned or pledged Term Loan to the extent of such payment. No such assignment or pledge shall release the assigning Lender from its obligations hereunder.

(b) Participations. The Lender may at any time sell to one or more Persons participating interests in the Term Loan (any such Person, a "Participant"). In the event of a sale by a Lender of a participating interest to a Participant, (a) the Lender's obligations hereunder shall remain unchanged for all purposes, (b) the Borrower and the Lender shall continue to deal solely and directly with the Lender in connection with the Lender's rights and obligations hereunder and (c) all amounts payable by the Borrower shall be determined as if the Lender had not sold such participation and shall be paid directly to the Lender. No Participant shall have any

direct or indirect voting rights hereunder except with respect to any event described in Section 9.1 expressly requiring the unanimous vote of all Lenders or, as applicable, all affected Lenders.

8.22 Time of Essence. Time is of the essence in making payments of all amounts due the Lender under this Agreement and in the performance and observance by the Borrower of each covenant, agreement, provision, and term of this Agreement.

## ARTICLE IX

### DEFINITIONS; CONSTRUCTION

9.1 General Terms. When used in this Agreement, the following terms shall have the following meanings:

“Affiliate” shall mean, with respect to any Person, a Person: (a) that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, the first-named Person; (b) that directly or beneficially owns or holds ten percent or more of any class of the voting equity interests of the first-named Person; (c) ten percent or more of the voting equity interests of which is owned directly or beneficially by the first-named Person or held by the first-named Person; or (d) is a director, officer, or relative of the first-named Person, or is an Affiliate of a director, officer, or relative of the first-named Person. Without limitation, the Borrower shall be deemed Affiliates of each other.

“Agreement” shall have the meaning given that term in the preamble of this Agreement, as the same may be amended, modified, or supplemented.

“Applicable Margin” shall mean, for any day, the rate per annum set forth under the relevant column heading on Exhibit G.

“Borrower” – see the preamble of this Agreement.

“Borrowing” shall mean the borrowing of the Term Loan.

“Business Day” shall mean any day (a) other than a Saturday, Sunday (or other day on which banks are authorized or required to be closed in Illinois, and (b) which is also a day on which dealings in dollar deposits are carried out in the London Interbank market.

“Claim” shall mean any demand, cause of action, proceeding, or suit for: (a) damages (actual or punitive), injuries to person or property, damages to natural resources, fines, penalties, interest, or losses, whether fixed, absolute, accrued, contingent or otherwise and whether direct, primary or secondary, known or unknown; or (b) the costs of site investigations, feasibility studies, information requests, health assessments, contribution, settlement, or actions to correct, remove, remediate, respond to, clean up, prevent, mitigate, monitor, evaluate, assess, or abate the release of a Hazardous Material, whether or not the costs or expenses are incurred in response to any governmental or third party action, claim, or directive, or to enforce insurance, contribution, or indemnification agreements.

“Closing Date” shall mean October 23, 2009, or such other day as may be agreed upon by the parties.

“Code” shall mean the Uniform Commercial Code of the State of Illinois, as amended from time to time, and any successor statute.

“Collateral” shall mean all real and personal property and interests in real and personal property now owned or hereafter acquired by the Borrower or the Guarantor in or upon which a security interest, lien, or mortgage is granted to the Lender by the Borrower or the Guarantor, whether under this Agreement, the Financing Agreements, or any other documents, instruments, or writings signed and delivered by the Borrower and/or the Guarantor to the Lender.

“D3” means D3 Capital Club, LLC, a Delaware limited liability company, and its successors.

“Event of Default” see Section 7.1.

“Excluded Taxes” means any net income, franchise and other similar taxes imposed on or measured by net income, profit or capital of a Lender or Lender or imposed by any jurisdiction or any political subdivision or taxing authority thereof or therein as a result of a connection between the Lender or Lender and such jurisdiction or political subdivision, unless such connection results solely from the Lender or Lender executing, delivering or performing its obligations or receiving a payment under, or enforcing, this Agreement or any or the other Financing Agreements.

“Financing Agreements” shall mean all agreements, instruments, and documents that evidence the terms and conditions of the Term Loan or implement the terms and conditions of this Agreement, whether heretofore, now, or hereafter signed by or on behalf of the Borrower or Guarantor and delivered to the Lender, or any affiliate thereof in connection with this Agreement, together with all agreements, documents, and instruments referred to in or contemplated by such agreements, instruments and documents, including without limitation, security agreements, collateral agreements, loan agreements, promissory notes, guaranties, mortgages, deeds of trust, subordination agreements, pledges, hypothecations, powers of attorney, consents, assignments, collateral assignments, intercreditor agreements, mortgagee waivers, reimbursement agreements, contracts, notices, leases, financing statements, applications or reimbursement agreements as to any letters of credit, swap or interest rate management agreements, and all other written matter. Without limitation, the Financing Agreements shall include this Agreement, the Security Agreement, the Term Note, the Pledge Agreement, the Guaranty, the Mortgage and all pledge agreements and account control agreements.

“Fixtures” shall mean fixtures as defined in the Code.

“Guaranty” shall mean the Guaranty of even date herewith, by Dean Kretschmar in favor of Lender.

“Indebtedness” of any Person shall mean, without duplication: (a) all indebtedness of the Person for borrowed money or for the deferred purchase price of property or services; (b) all indebtedness created or arising under any conditional sale or other title retention agreement with

respect to property acquired by the Person (even though the rights and remedies of the seller or lender under the agreement in the event of a default are limited to repossession or sale of the property); (c) all guaranteed indebtedness of the Person; and (e) all indebtedness of a type referred to in clause (a), (b), or (c) above secured by (or for which the holder of the indebtedness has an existing right, contingent or otherwise, to be secured by) any lien, security interest, or other charge or encumbrance upon or in property (including, without limitation, accounts and contract rights) owned by the Person, even though the Person has not assumed or become liable for the payment of the indebtedness, and (f) any securities or other equity instrument, whether or not mandatorily redeemable, that under GAAP is characterized as debt, whether pursuant to financial accounting standards board issuance No. 150 or otherwise.

“Indemnified Liabilities” – see Section 8.15.

“Indemnified Matters” - see Section 8.15.

“Indemnitee” – see Section 8.15.

“IRC” shall mean the Internal Revenue Code of 1986, as amended from time to time, and any successor statute.

“IRS” shall mean the Internal Revenue Service.

“Lender” shall have the meaning given that term in the preamble of this Agreement and shall include Lender’s successors and assigns.

“Liabilities” shall mean all of the Borrower’s and Guarantor’s liabilities, obligations, and Indebtedness to the Lender or any of the Lender’s Affiliates of any and every kind and nature, whether heretofore, now, or hereafter owing, arising, due, or payable and howsoever evidenced, created, incurred, acquired, or owing, whether primary, secondary, direct, contingent, fixed, or otherwise (including obligations of performance) pursuant to or evidenced by the Transaction Documents, or by operation of law, including but not limited to all obligations under this Agreement, the Term Note, the Financing Agreements, and under the Borrower’s Operating Agreement (including under Section 8.2(c) thereof).

“Loan” or “Term Loan” means the Term Loan.

“Loan Parties” means the Borrower and the Guarantor.

“Material Adverse Effect” means: (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, or condition (financial or otherwise) of the Borrower, (b) a material impairment of the ability of the Borrower to perform under this Agreement or any of the Financing Agreements or to avoid an Event of Default; or (c) a material adverse effect upon: (i) the legality, validity, binding effect, or enforceability against the Borrower of this Agreement or of any of the Financing Agreements; or (ii) the perfection or priority of any lien granted under any of the Financing Agreements.

“Mortgage” means that certain Mortgage and Assignment of Rents of even date herewith, granted by Guarantor to Lender.

“Note” and “Notes”, as applicable, shall mean the Term Note.

“Permitted Investments” means investments made by the Guarantor in the ordinary course of his investment activities in amounts and in accordance with risk profiles consistent with current practice.

“Permitted Liens” shall mean the liens or encumbrances listed on the attached Schedule 9.1 (Permitted Liens) and any liens or encumbrances: (a) for current taxes not yet due and payable or, if overdue, are being contested in good faith and by appropriate proceeding and for which appropriate reserves have been established by the Borrower; (b) imposed by operation of law securing obligations incurred in the ordinary course of business for sums not past due for more than sixty (60) days or which are being contested in good faith and by appropriate proceedings and for which appropriate reserves have been established by the Borrower, including, without limitation, mechanics’ or materialmen’s liens, landlords’ liens, and carriers’ liens; (c) made in favor of the Lender; (d) which are either purchase money security interests or personal property leases incurred for the acquisition or lease of Equipment in the ordinary course of business which: (i) encumber only the Equipment acquired or leased; (ii) are created simultaneously with the acquisition or lease; and (iii) individually do not exceed fair market value of the Equipment as of the time of its acquisition or lease; (e) arising under workers’ compensation, unemployment insurance, social security, and other similar laws and regulations; (f) arising in connection with deposits or pledges to secure the performance of bids, tender, contracts (other than contracts for the payment of money), public or statutory obligations, surety, stay and appeal bonds or other similar bonds, or other similar obligations arising in the ordinary course of business; (g) software licenses granted in the ordinary course of business; (h) which are judgment liens and other similar liens arising in connection with court proceedings, provided that the execution or other enforcement of the liens effectively is stayed and the claims secured by liens are being contested actively in good faith by appropriate proceedings (i) easements, zoning restrictions and similar encumbrances on real property and minor irregularities in the title thereto that do not (A) secure obligations for the payment of money or (B) materially adversely impair the value of such property or its use by the Borrower in the normal conduct of such Person’s business; or (j) to which Lender consents to in writing.

“Person” shall mean any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, institution, entity, party, or government (whether national, federal, state, provincial, county, city, municipal, or otherwise, including, without limitation, any instrumentality, division, agency, body, or department thereof).

“Pledge Agreement” shall mean the Pledge Agreement dated as of the date of this Agreement given by Borrower in favor of the Lender, with respect to its membership interests in D3.

“Pledged Interests” shall mean the membership interests in D3 and other pledged interests pledged to Lender under the Pledge Agreement.

“Preferred Return” shall mean the Preferred Return of Lender under the Borrower’s Operating Agreement.

“Related Documents” means all documents effecting or related to the Related Transactions, including but not limited to purchase agreements, operating agreements, shareholders agreements, registration rights agreements, articles and plans of merger; conversion plans and agreements; exchange plans and agreements; recapitalization plans and agreements; contribution plans and agreements; and all board, shareholder and member consents relating to the foregoing.

“Related Transactions” means all transactions relating to the issuance and purchase by Borrower of membership interests in D3, and the purchase by D3 of settlements as described in its Operating Agreement and securities purchase agreement.

“Security Agreement” means the Security Agreement of even date herewith, by the Guarantor in favor of the Lender.

“Term Maturity Date” shall mean March \_\_, 2010.

“Term Loan” – See Section 1.1.

“Term Note” – See Section 1.1.

“Transaction Documents” shall mean this Agreement, the other Financing Agreements, the Related Documents, and all other documents, agreements and instruments contemplated by this Agreement or the foregoing.

“Transactions” shall mean the transactions contemplated by the Transaction Documents.

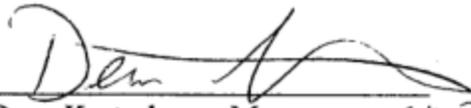
“Unmatured Event of Default” shall mean an event which, with the passage of time or the giving of notice, will (if not cured during such time) become an Event of Default.

9.2 Other Terms; Terms Defined in Uniform Commercial Code. The terms or words set out in the upper case in this Agreement, that are not defined in the context of this Agreement where they are used, shall have the meanings ascribed to them in Annex A of this Agreement. All other words or terms contained in this Agreement (and which are not otherwise specifically defined in this Agreement) shall have the meanings provided in the Code to the extent the same are used or defined in the Code.

IN WITNESS WHEREOF, this Agreement has been duly signed and delivered as of the date and year first above written.

**BORROWER:**

Mercata Justa Partners, L.L.C.

By:   
Dean Kretschmar, Manager 10-22-09

**LENDER**

Mercata Justa, L.L.C.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**GUARANTOR**

  
Dean Kretschmar 10-22-09

## EXHIBIT A

### FORM OF TERM NOTE

\$4,500,000

October \_\_\_\_, 2009

FOR VALUE RECEIVED, Mercata Justa Partners, L.L.C. (the "Borrower"), hereby promises to pay to the order of Mercata Justa, L.L.C. (the "Lender") at such place as the Lender may designate from time to time, in lawful money of the United States of America and in immediately available funds, the principal sum of Four Million Five Hundred Thousand and 00/100 Dollars (\$4,500,000). The Borrower shall make payments of principal in accordance with the provisions of the Loan Agreement, dated as of October \_\_\_\_, 2009, among the Lender and the Borrower (as the same may be amended, restated, supplemented, or otherwise modified from time to time, the "Loan Agreement"). The Borrower further promises to pay to the order of the Lender interest on the principal balance of the Term Loan as provided under the terms of the Loan Agreement. The balance of the outstanding principal of this Term Loan Note (the "Note"), together with all accrued and unpaid interest on the Note, shall be due and payable on March \_\_, 2010. Capitalized terms used in this Note, but not otherwise defined in this Note, have the meanings set forth in the Loan Agreement.

Reference is made to the Loan Agreement for a statement of the terms and provisions under which the Borrower is permitted or required to make prepayments and repayments of principal of the indebtedness and under which the indebtedness may be declared to be immediately due and payable.

This Note was executed pursuant to and evidences the obligation of the Borrower under the Loan Agreement to which reference is made for a statement of the terms and conditions under which the Term Loan evidenced by this Note is made and is to be repaid, and for a statement of the Lender's remedies, upon the occurrence and during the continuance of an Event of Default. The Term Loan made by the Lender to the Borrower pursuant to the Loan Agreement and all payments on account of principal of such Term Loan shall be recorded by the Lender; provided, however, that the failure to so record or any error in any record shall not affect the Borrower's obligations under this Note.

The Borrower promises to pay interest on the outstanding unpaid principal amount of this Note from the date of this Note until payment in full, on the dates and at the rate from time to time applicable to the Term Loan as provided in the Loan Agreement.

The Borrower's obligations under this Note are secured by the Financing Documents, including but not limited to a Security Agreement, Pledge Agreement, and Mortgage.

The Lender shall have the continuing exclusive right to apply and to reapply any and all payments under this Note against the Liabilities in the manner set forth in the Loan Agreement.

The Borrower hereby waives demand, presentment, and protest and notice of demand, presentment, protest, and nonpayment.

The Borrower further agrees, subject only to any limitation imposed by applicable law, to pay all reasonable expenses, including attorneys' fees and legal expenses, incurred by the holder of this Note in endeavoring to collect any amounts payable under this Note which are not paid when due, whether by acceleration or otherwise, in accordance with the provisions of the Loan Agreement.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF ILLINOIS PROVIDED THAT THE LENDER AND THE BORROWER SHALL RETAIN ALL RIGHTS ARISING UNDER FEDERAL LAW.

Whenever possible each provision of this Note shall be interpreted in a manner as to be effective and valid under applicable law, but if any provision of this Note shall be prohibited by or invalid under applicable law, the provision shall be ineffective to the extent of the prohibition or invalidity, without invalidating the remainder of the provision or the remaining provisions of this Note. Whenever in this Note reference is made to the Lender, or to the Borrower, the reference shall be deemed to include, as applicable, a reference to their respective permitted successors and assigns. The provisions of this Note shall be binding upon and shall inure to the benefit of the permitted successors and assigns. The Borrower's successors and assigns shall include, without limitation, a receiver, trustee, or debtor in possession of or for the Borrower.

Mercata Justa Partners, L.L.C.

By: \_\_\_\_\_

## Schedule 6.2

### Post-Closing Deliveries

The following documents shall be delivered by Borrower and Guarantor to the Lender, fully completed, dated, and executed by all parties thereto, within five days after the Closing Date:

(1) Account control agreements in form and substance acceptable to the Lender with respect to each of the deposit and investment accounts of the Guarantor, executed by the Guarantor, the Lender, and the institution at which each such account is maintained and/or the securities intermediary, as applicable;

(2) Pledge agreements with respect to the pledge of all investments held by the Guarantor, in substantially the form of the Pledge Agreement, including the consents of all parties whose consent is required for such pledge;

(3) Original certificates of title for all vehicles and boats owned by Guarantor, together with endorsements and such other documents as shall be necessary to reflect and perfect the Lender's security interest;

(4) Evidence, satisfactory to the Lender, that Bank of America has consented to the grant and recordation of the Mortgage;

(5) Schedules to all documents;

(6) All other documents under Section 6.2 that were not delivered on the Closing Date, in form satisfactory to the Lender

## TERM NOTE

\$4,500,000

October \_\_\_\_, 2009

FOR VALUE RECEIVED, Mercata Justa Partners, L.L.C. (the "Borrower"), hereby promises to pay to the order of Mercata Justa, L.L.C. (the "Lender") at such place as the Lender may designate from time to time, in lawful money of the United States of America and in immediately available funds, the principal sum of Four Million Five Hundred Thousand and 00/100 Dollars (\$4,500,000). The Borrower shall make payments of principal in accordance with the provisions of the Loan Agreement, dated as of October \_\_\_\_, 2009, among the Lender and the Borrower (as the same may be amended, restated, supplemented, or otherwise modified from time to time, the "Loan Agreement"). The Borrower further promises to pay to the order of the Lender interest on the principal balance of the Term Loan as provided under the terms of the Loan Agreement. The balance of the outstanding principal of this Term Loan Note (the "Note"), together with all accrued and unpaid interest on the Note, shall be due and payable on March \_\_, 2010. Capitalized terms used in this Note, but not otherwise defined in this Note, have the meanings set forth in the Loan Agreement.

Reference is made to the Loan Agreement for a statement of the terms and provisions under which the Borrower is permitted or required to make prepayments and repayments of principal of the indebtedness and under which the indebtedness may be declared to be immediately due and payable.

This Note was executed pursuant to and evidences the obligation of the Borrower under the Loan Agreement to which reference is made for a statement of the terms and conditions under which the Term Loan evidenced by this Note is made and is to be repaid, and for a statement of the Lender's remedies, upon the occurrence and during the continuance of an Event of Default. The Term Loan made by the Lender to the Borrower pursuant to the Loan Agreement and all payments on account of principal of such Term Loan shall be recorded by the Lender; provided, however, that the failure to so record or any error in any record shall not affect the Borrower's obligations under this Note.

The Borrower promises to pay interest on the outstanding unpaid principal amount of this Note from the date of this Note until payment in full, on the dates and at the rate from time to time applicable to the Term Loan as provided in the Loan Agreement.

The Borrower's obligations under this Note are secured by the Financing Documents, including but not limited to a Security Agreement, Pledge Agreement, and Mortgage.

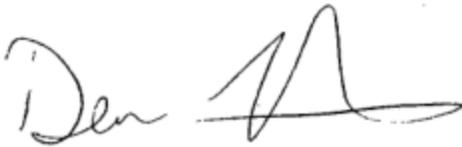
The Lender shall have the continuing exclusive right to apply and to reapply any and all payments under this Note against the Liabilities in the manner set forth in the Loan Agreement.

The Borrower hereby waives demand, presentment, and protest and notice of demand, presentment, protest, and nonpayment.

The Borrower further agrees, subject only to any limitation imposed by applicable law, to pay all reasonable expenses, including attorneys' fees and legal expenses, incurred by the holder of this Note in endeavoring to collect any amounts payable under this Note which are not paid when due, whether by acceleration or otherwise, in accordance with the provisions of the Loan Agreement.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF Florida PROVIDED THAT THE LENDER AND THE BORROWER SHALL RETAIN ALL RIGHTS ARISING UNDER FEDERAL LAW.

Whenever possible each provision of this Note shall be interpreted in a manner as to be effective and valid under applicable law, but if any provision of this Note shall be prohibited by or invalid under applicable law, the provision shall be ineffective to the extent of the prohibition or invalidity, without invalidating the remainder of the provision or the remaining provisions of this Note. Whenever in this Note reference is made to the Lender, or to the Borrower, the reference shall be deemed to include, as applicable, a reference to their respective permitted successors and assigns. The provisions of this Note shall be binding upon and shall inure to the benefit of the permitted successors and assigns. The Borrower's successors and assigns shall include, without limitation, a receiver, trustee, or debtor in possession of or for the Borrower.



10-22-09

Mercata Justa Partners, L.L.C.

By: \_\_\_\_\_

## GUARANTY

THIS GUARANTY ("Guaranty") is made as of the \_\_\_ day of October 2009, by Dean Kretschmar (the "Guarantor"), to and for the benefit of Mercata Justa, L.L.C., a Delaware limited liability company (the "Lender"). All capitalized terms not defined in this Guaranty are used as defined in the Loan Agreement (as defined below).

## RECITALS

A. The Lender is entering into a Loan Agreement, of even date herewith (as modified, amended, supplemented, renewed, or extended from time to time, the "Loan Agreement"), with Mercata Justa, L.L.C., a Delaware limited liability company ("Borrower"), pursuant to which the Lender will be extending credit to the Borrower.

B. The Lender requires, as a condition precedent to executing the Loan Agreement, that the Guarantor guaranty the obligations under the Loan Agreement and certain obligations under the Borrower's Operating Agreement.

C. The Guarantor acknowledges that he is a member of Borrower, and will benefit substantially from the loans under the Loan Agreement. To induce the Lender to enter into the Loan Agreement, which Guarantor acknowledges the Lender is doing in reliance on this Guaranty, the Guarantor desires to enter into this Guaranty.

## AGREEMENTS

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Guarantor agrees as follows:

1. Guaranty. The Guarantor, as primary obligor, and not as surety only, hereby absolutely, unconditionally, irrevocably, and continually guarantees to the Lender, the full, prompt, and faithful payment and performance when due, whether at stated maturity, at the expiration of any extensions or renewals of the stated maturity, upon acceleration or otherwise, and at all times thereafter, of any and all debts, indebtedness, obligations, and the Liabilities (of any and every kind or nature) of the Borrower to the Lender: (a) relating to the Term Loan under the Loan Agreement or the Financing Agreements, including, without limitation, the payment of principal, interest, default interest, and late charges, and all other monies, payments, premiums, fees, charges, costs, expenses or other amounts relating to the Term Loan, and the performance of any and all of the other terms, covenants, conditions, warranties, representations, indemnities, liabilities, and other obligations now or hereafter made or undertaken by the Borrower relating to the Term Loan; and (b) relating to the obligation to repurchase the Lender's membership interest in the Borrower, at Lender's option, pursuant to Section \_\_\_ of the Borrower's Operating Agreement ("Equity Purchase Obligation").

All of the obligations described above in this Section 1 and any other obligations of the Guarantor under this Guaranty hereinafter are referred to as the "Guaranteed Obligations."

2. Lender's Remedies. In the event of any Default under the terms of the Loan Agreement or the failure to comply with the Equity Purchase Obligation (hereinafter referred to as a "Default"), the Guarantor shall, on demand by the Lender, pay and perform all of the Guaranteed Obligations regardless of any defense, right of set-off, or claims which the Guarantor or the Borrower may have against the Lender, other than payment and performance of the Guaranteed Obligations. The Guarantor shall not seek to impair, limit, or defeat in any way its obligations under this Guaranty. The Guarantor hereby waives any right to make a claim in limitation of its obligations under this Guaranty. This is an absolute, irrevocable, present, and continuing guaranty of payment and performance and not of collection. In any action to enforce this Guaranty, the Lender, at its election, may proceed against the Guarantor with or without: (a) joining the Borrower in the action; or (b) commencing any action, asserting any right, or obtaining any judgment against the Borrower or any other indorsers, guarantors, obligors, or other party liable for the payment of the Guaranteed Obligations.

3. Term of Guaranty; No Discharge for Invalidity of Underlying Obligation; Rescinded Payments.

(a) This Guaranty shall remain in full force and effect until the Guaranteed Obligations are paid and performed in full. The invalidity, irregularity, or unenforceability of any or all of the Liabilities, other circumstances which might otherwise constitute a legal or equitable discharge or defense or counterclaim of any kind or nature whatsoever of either the Guarantor or the Borrower, or the existence of any set-off, claim, reduction, or diminution of the Liabilities (including in all cases the Guaranteed Obligations) shall not affect, impair, or be a defense to this Guaranty. This Guaranty shall in every respect be construed as a primary obligation of the Guarantor. The Guarantor waives any and all defenses that may be available to the Guarantor with respect to the Liabilities. The Guarantor shall not assert any defense set forth in this Section 3(a).

(b) The Guarantor agrees that if at any time all or any part of any payment theretofore applied by the Lender to any of the Guaranteed Obligations is or must be rescinded or returned by the Lender for any reason whatsoever (including pursuant to a settlement agreement or compromise effected by the Lender with a claimant, or the insolvency, bankruptcy, liquidation, or reorganization of any party or parties) (each a "Rescission Event"), the Guaranteed Obligations shall, for the purposes of this Guaranty, to the extent that the payment is or must be rescinded or returned, be deemed to have continued in existence, notwithstanding the application by the Lender, and this Guaranty shall continue to be effective or shall be reinstated, as the case may be, as to the Guaranteed Obligations, all as though the application by the Lender had not been made, and the outstanding principal balance of the Term Loan shall be calculated as though the application by the Lender had not been made.

4. Lender Indulgences, Forbearance and Consents Relating to the Borrower. Without incurring responsibility to the Guarantor and without affecting, impairing, discharging, or releasing the obligations of the Guarantor under this Guaranty, the Guarantor agrees that the Lender may, at any time and from time to time, whether before or after the failure of the Borrower to satisfy any of the terms or conditions of the Guaranteed Obligations, and without the consent or knowledge of or notice to the Guarantor, except the notice as may be required by

applicable statute and cannot be waived, take any or all of the following actions (which may or could have the effect of changing the risk hereby undertaken by the Guarantor), upon any terms and conditions, to each of which actions the Guarantor hereby consents:

(a) change the manner, place, or terms of payment of any of the Guaranteed Obligations;

(b) change, extend, or renew for one or more periods of time (whether or not longer than the original period) the original period of time allowed for the payment or performance of the Liabilities;

(c) release, settle, subordinate, compromise, transfer, waive, modify, alter, amend, exchange, or surrender any obligation of other guarantors, of the Guarantor, or of the Borrower with respect to the Loan Agreement, the Notes, or the Financing Agreements or any other Liabilities;

(d) grant any indulgence or forbearance to the Guarantor or the Borrower or consent to any action or failure to act of the Guarantor or the Borrower, which action or failure to act, in the absence of the Lender's consent, violates or may be deemed to violate any agreements of the Guarantor or the Borrower with respect to any or all of the Liabilities;

(e) retain, obtain, add to, or release the primary or secondary obligations of any obligor or obligors or any other party or parties liable or obligated for the Liabilities or any part thereof with respect to any of the Liabilities;

(f) exercise or refrain from exercising any rights against the Borrower or others (including the Guarantor) or otherwise act or refrain from acting;

(g) apply any sums paid or realized from any source to any Liabilities regardless of what Liabilities remain unpaid or the application of the payments to the payment of any obligation of the Guarantor or the Borrower other than the Guaranteed Obligations, even though the Lender might lawfully have elected to apply the payments to any part or all of the Guaranteed Obligations;

(h) act, fail to act, or fail to act diligently or adequately in any manner referred to in this Guaranty, which act of omission may deprive the Guarantor of its right to subrogation against the Borrower, to recover full indemnity for any payments made pursuant to this Guaranty, to exercise any right, power, or remedy regarding the Liabilities, or to enforce or realize upon (or to make the Guarantor or the Borrower a party to the enforcement or realization upon) any of the Lender's security for the Liabilities, except in the instance of the gross negligence of the Lender; and

(i) resort to the Guarantor for payment of any of the Guaranteed Obligations, whether or not the Lender shall have resorted to any property securing any of the Guaranteed Obligations or any obligation under this Guaranty or shall have proceeded against the Borrower or any other obligor primarily or secondarily obligated with respect to any of the Guaranteed Obligations.

5. Application of Payments. Any amounts received by the Lender from whatsoever source on account of the Liabilities may be applied toward the payment of the Liabilities in the order of application as the Lender may from time to time elect.

6. Waiver. The Guarantor hereby expressly waives: (a) notice of the acceptance by the Lender of this Guaranty; (b) notice of the existence, creation, payment, or nonpayment of all or any of the Liabilities; (c) presentment, demand, notice of dishonor, protest, notice of protest, and all other notices whatsoever, either in respect to this Guaranty or any or all of the Liabilities; (d) collection or protection of, or realization upon, the Liabilities, any obligations under this Guaranty, or any security for or guarantee of any of the foregoing; (e) any requirement on the part of the Lender to mitigate the damages resulting from a Default; and (f) any failure by the Lender to inform the Guarantor of any facts the Lender may now or hereafter know about the Borrower, or the Collateral, it being understood and agreed that the Lender has no duty so to inform and that the Guarantor is fully responsible for being and remaining informed by the Borrower of all circumstances bearing on the existence, creation, or the risk of nonpayment of the Liabilities. Credit may be granted or continued from time to time by the Lender to the Borrower without notice to or authorization from the Guarantor, regardless of the financial or other condition of the Borrower at the time of grant or continuation. The Lender shall have no obligation to disclose or discuss its assessment of the financial condition of the Borrower with the Guarantor.

7. Enforcement Costs. If: (a) this Guaranty is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding; (b) an attorney is retained to represent the Lender in any litigation, contest, suit, proceeding, or dispute, or to commence, defend, or intervene or to take any action with respect to any litigation, contest, suit, proceeding or dispute instituted by the Lender or the Guarantor or joined by the Guarantor (whether or not any litigation, suit, contest, or proceeding is actually commenced) in any way relating to this Guaranty, any property subject this Guaranty, or any other of the Liabilities, including to protect or enforce the Loan Agreement or any Financing Agreement or with respect to any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under this Guaranty; or (c) an attorney is retained to negotiate, prepare, execute, deliver, amend, or administer this Guaranty, then the Guarantor shall pay to the Lender upon demand all reasonable attorneys' fees and all costs and expenses, including court costs, filing fees, recording costs, expenses of foreclosure, and all other costs and expenses incurred in connection therewith (all of which are referred to herein as "Enforcement Costs"), in addition to all other amounts due under this Guaranty, which obligation shall not be subject to any of the limitations set forth in Section 1.

8. Guaranty to Inure to Benefit of Assignees of Guaranteed Obligations. The Lender may, from time to time, whether before or after any discontinuance of this Guaranty, without notice to the Guarantor, assign or transfer any or all of the Guaranteed Obligations or any interest in the Guaranteed Obligations. Notwithstanding any assignment or transfer or any subsequent further assignment or transfer of the Guaranteed Obligations, the Guaranteed Obligations shall be and remain Guaranteed Obligations for the purposes of this Guaranty, and each and every immediate and successive assignee or transferee of any of the Guaranteed Obligations shall, to the extent of the interest of assignee or transferee in the Guaranteed Obligations, be entitled to the benefits of this Guaranty to the same extent as if the assignee or transferee were the Lender; provided,

however, that unless the assigning Lender shall otherwise consent in writing, the assigning Lender shall have an unimpaired right, prior and superior to that of any assignee or transferee, to enforce this Guaranty for the benefit of itself as to those of the Guaranteed Obligations which such Lender has not assigned or transferred or which are then owed to the Lender.

9. Governing Law; Interpretation. This Guaranty has been negotiated, signed, and delivered in [Illinois] and this Guaranty and all rights, obligations, and liabilities arising under this Guaranty shall be governed by the internal laws and decisions of the State of [Illinois] without reference to the conflicts of law principles of that or any other State. The headings of sections and paragraphs in this Guaranty are for convenience only and shall not be construed in any way to limit or define the content, scope, or intent of the provisions of this Guaranty or constitute a part of this Guaranty for any other purpose. The necessary grammatical changes required to make the provisions of this Guaranty apply in the singular or plural sense where there is more than one Borrower, guarantor, or lender as the case may be, and to corporations, associations and partnerships, individuals, males, or females shall be in all instances assumed as though in each case it is fully expressed. Unless the context requires otherwise, any reference to the word "including" shall be construed to mean "including but not limited to, whether similar or dissimilar." If any provision of this Guaranty, or any paragraph, sentence, clause, phrase, or word, or the application thereof, in any circumstances, is adjudicated by a court of competent jurisdiction to be invalid, the validity of the remainder of this Guaranty shall be construed as if the invalid part were never included in this Guaranty. Time is of the essence of this Guaranty. All payments to be made hereunder shall be made in currency and coin of the United States of America that is legal tender for public and private debts at the time of payment.

10. Entire Agreement. This Guaranty, together with the Loan Agreement and other Financing Agreements, constitutes the entire agreement between the parties with respect to the subject matter of this Guaranty and supersedes all prior agreements and understanding, both written and oral. No modification, waiver, amendment, discharge, or change of this Guaranty shall be valid unless the same is in writing and signed by the party against which the enforcement of the modification, waiver, amendment, discharge, or change is sought. If this Guaranty is executed in several counterparts, each of those counterparts shall be deemed an original, and all of them together shall constitute one and the same instrument.

11. Subordinated Debt. The Guarantor's right to receive any payments from the Borrower shall at all times be subordinated and inferior to the debts, obligations, and liabilities of the Borrower to the Lender under the Loan Agreement, the Notes, and other Financing Agreements. Any indebtedness or obligations of the Borrower to the Guarantor now or hereafter existing and any right or subrogation or similar right of the Guarantor (collectively the "Subordinated Obligations") is hereby subordinated to the Guaranteed Obligations. The Guarantor agrees that the Guarantor will not seek, accept, or retain for its own account any payment from the Borrower on account of the Subordinated Obligations, until the payment in full of the Guaranteed Obligations. After a Default has occurred under the Loan Agreement any payments to the Guarantor on account of the Subordinated Obligations shall be collected and received by the Guarantor in trust for the Lender and shall be paid over to the Lender on account of the Guaranteed Obligations without impairing or releasing the obligations of the Guarantor.

12. Payment of Guaranteed Obligations. The Lender agrees that the obligations of the Guarantor under this Guaranty shall terminate, subject to the provisions of Section 3(b) of this Guaranty, upon the earlier to occur of the following: when the Lender shall have received payment of all Guaranteed Obligations requiring payment and performance of all Guaranteed Obligations requiring performance other than payment, and the Loan Agreement shall have terminated. Release of this Guaranty, if it occurs, shall not affect in any respect the Notes or any other instrument evidencing or securing the Liabilities.

13. Bankruptcy. In the event of any bankruptcy, reorganization, winding up, or similar proceedings with respect to the Borrower, no limitation on the liability of the Borrower under the Loan Agreement, Notes, or other Financing Agreements that may now or hereafter be imposed by application of any federal, state, or other statute, law, or regulation or any judicial or administrative determination resulting from the proceedings shall in any way limit the obligations of the Guarantor under this Guaranty.

14. Successors and Assigns; Joint and Several Liability. This Guaranty shall bind the Guarantor and the Guarantor's successors and assigns. If this Guaranty is executed by more than one party, it shall be the joint and several undertaking of each of the undersigned. Irrespective of whether this Guaranty is executed by more than one party, it is agreed that the undersigned's liability hereunder is several and independent of any other guaranties or other obligations at any time in effect with respect to the Guaranteed Obligations and that the liability of the Guarantor under this Guaranty may be enforced regardless of the existence, validity, enforcement, or non-enforcement of any other guaranties or other obligations.

15. Notices. Any notice, demand, or other communication which either party may desire or may be required to give to the other party shall be in writing, and shall be deemed given if and when personally delivered, if sent by a national courier, the day after being sent via overnight delivery, or, if mailed, on the second business day after being deposited in United States registered or certified mail, postage prepaid, addressed to the proper party at the address set forth below, or to another address as the party may have designated to the other in writing at the other's address set forth below:

If to the Lender:

with a copy to: Morgan Lewis & Bockius LLP  
77 West Wacker Drive  
Chicago, IL 60601  
Attention: Elizabeth S. Perdue

If to the Guarantor:

with a copy to:

Except as otherwise specifically required in this Guaranty, notice of the exercise of any right, option, or power granted to the Lender by this Guaranty is not required to be given.

16. Place of Payment. Unless otherwise directed by the Lender, payment under this Guaranty shall in each case be made at the place of payment of the Guaranteed Obligations in respect to which the payment under this Guaranty is made.

17. Loan Documents. The Guarantor acknowledges that copies of the Loan Agreement, Notes, and Financing Agreements have been made available to him and that he is familiar with their contents.

18. Waiver of Jury Trial. THE GUARANTOR HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHTS HE MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS GUARANTY OR THE LOAN AGREEMENT, NOTES, OR FINANCING AGREEMENTS OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS, WHETHER VERBAL OR WRITTEN, OR ACTIONS OF LENDER, BORROWER OR GUARANTOR. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE LENDER ENTERING INTO THE TRANSACTION EVIDENCED BY THE LOAN AGREEMENT, NOTES, OR FINANCING AGREEMENTS.

19. Submission to Jurisdiction. The Guarantor hereby irrevocably submits to the non-exclusive jurisdiction of any Illinois state or federal court sitting in Cook County, Illinois over any action or proceeding arising out of or relating to this Guaranty, the Loan Agreement, the Notes, or the Financing Agreements, and hereby irrevocably agrees that all claims in respect of the action or proceeding may be heard and determined in such Illinois state or federal court. The Guarantor hereby irrevocably waives, to the fullest extent permitted by law, any objection he may now or hereafter have to the laying of venue in the action or proceeding in the court as well as any right he may now or hereafter have, to remove the action or proceeding, once commenced, to another court on the grounds of forum non conveniens or otherwise. The Guarantor agrees that a final nonappealable judgment in the action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. The Guarantor agrees not to institute any legal action or proceeding against the Lender, or its directors, officers, employees, agents or property, arising out of or relating to this Guaranty, in any court other than the ones hereinabove specified in this Section 20. Nothing in this Section 20 shall affect the right of the Lender to bring any action or proceeding against the Guarantor or its properties in the courts of any other jurisdictions.

[signatures appear on the following page]

THIS GUARANTY has been SIGNED AND DELIVERED by the Guarantor on the date set forth above.

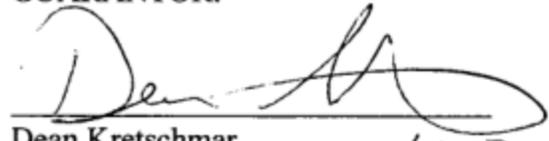
GUARANTOR:

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Dean Kretschmar

THIS GUARANTY has been SIGNED AND DELIVERED by the Guarantor on the date set forth above.

GUARANTOR:

A handwritten signature in black ink, appearing to read "Dean Kretschmar", written over a horizontal line.

Dean Kretschmar

10-22-09

## SECURITY AGREEMENT

THIS SECURITY AGREEMENT dated as of October \_\_\_\_, 2009 (this "Agreement") is entered into by and between Dean Kretschmar (the "Grantor") in favor of Mercata Justa, L.L.C. ("Secured Party").

The Secured Party is extending credit to Mercata Justa Partners, L.L.C. (the "Borrower"), pursuant to the Loan Agreement (as defined below), and the Grantor has guaranteed all obligations of the Borrower under the Loan Agreement.

In consideration of the premises and to induce the Secured Party to enter into the Loan Agreement and to extend credit thereunder, the Grantor hereby agrees with the Secured Party as follows:

### SECTION 1 DEFINITIONS.

1.1 Unless otherwise defined herein, terms defined in the Loan Agreement and used herein shall have the meanings given to them in the Loan Agreement, and the following terms are used herein as defined in the UCC: Accounts, Certificated Security, Commercial Tort Claims, Deposit Accounts, Documents, Electronic Chattel Paper, Equipment, Goods, Health Care Insurance Receivables, Instruments, Inventory, Leases, Letter-of-Credit Rights, Money, Payment Intangibles, Supporting Obligations, Tangible Chattel Paper.

1.2 When used herein the following terms shall have the following meanings:

Assigned Agreements means all agreements with respect to the purchase of interests in D3, including the Securities Purchase Agreement.

Agreement has the meaning set forth in the preamble hereto.

Chattel Paper means all "chattel paper" as such term is defined in Section 9-102(a)(11) of the UCC and, in any event, including with respect to Grantor, all Electronic Chattel Paper and Tangible Chattel Paper.

Collateral means (a) all of the personal property now owned or at any time hereafter acquired by Grantor or in which Grantor now has or at any time in the future may acquire any right, title or interest, including all of Grantor's Accounts, Chattel Paper, Commercial Tort Claims, Deposit Accounts, Documents, Equipment, Fixtures, General Intangibles, Health Care Insurance Receivables, Goods, Instruments, Intellectual Property, Inventory, Investment Property, Leases, Letter-of-Credit Rights, Money, Supporting Obligations and Identified Claims, (b) all books and records pertaining to any of the foregoing, (c) all Proceeds and products of any of the foregoing, and (d) all collateral security and guaranties given by any Person with respect to any of the foregoing.

Contract Rights means all of the Grantor's rights and remedies with respect to the Assigned Agreements.

Copyrights means all copyrights arising under the laws of the United States, any other country or any political subdivision thereof, whether registered or unregistered and whether published or unpublished, all registrations and recordings thereof, and all applications in connection therewith, including all registrations, recordings and applications in the United States Copyright Office, and the right to obtain all renewals of any of the foregoing.

Copyright Licenses means all written agreements naming Grantor as licensor or licensee, granting any right under any Copyright, including the grant of rights to manufacture, distribute, exploit and sell materials derived from any Copyright.

"D3" means D3 Capital Club, LLC, a Delaware limited liability company.

Fixtures means all of the following, whether now owned or hereafter acquired by Grantor: plant fixtures; business fixtures; other fixtures and storage facilities, wherever located; and all additions and accessories thereto and replacements therefor.

General Intangibles means all "general intangibles" as such term is defined in Section 9-102(a)(42) of the UCC and, in any event, including with respect to Grantor, all Payment Intangibles, all contracts and Contract Rights (including all Assigned Agreements and Seller Undertakings), agreements, instruments and indentures in any form, and portions thereof, to which Grantor is a party or under which Grantor has any right, title or interest or to which Grantor or any property of Grantor is subject, as the same from time to time may be amended, supplemented or otherwise modified, including, without limitation, (a) all rights of Grantor to receive moneys due and to become due to it thereunder or in connection therewith, (b) all rights of Grantor to damages arising thereunder and (c) all rights of Grantor to perform and to exercise all remedies thereunder; provided, that the foregoing limitation shall not affect, limit, restrict or impair the grant by Grantor of a security interest pursuant to this Agreement in any Receivable or any money or other amounts due or to become due under any such Payment Intangible, contract, agreement, instrument or indenture.

Identified Claims means the Commercial Tort Claims described on Schedule 7 as such schedule shall be supplemented from time to time.

Intellectual Property means the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including the Copyrights, the Copyright Licenses, the Patents, the Patent Licenses, the Trademarks and the Trademark Licenses, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

Investment Property means the collective reference to (a) all "investment property" as such term is defined in Section 9-102(a)(49) of the UCC, and (b) all "financial assets" as such term is defined in Section 8-102(a)(9) of the UCC.

Issuers means the collective reference to each issuer of any Investment Property.

Loan Agreement means the Loan Agreement of even date herewith among Grantor, Borrower and Secured Party, as amended, supplemented, restated or otherwise modified from time to time.

Paid in Full means (a) the payment in full in cash and performance of all Secured Obligations, (b) the termination of all commitments of the Secured Party under the Loan Agreement and the Financing Documents, and (c) either (i) the cancellation and return to the Secured Party of all Letters of Credit or (ii) the cash collateralization of all Letters of Credit in accordance with the Loan Agreement.

Pledged Notes means all promissory notes issued to or held by Grantor (other than promissory notes issued in connection with extensions of trade credit by Grantor in the ordinary course of business).

Proceeds means all "proceeds" as such term is defined in Section 9-102(a)(64) of the UCC and, in any event, shall include all dividends or other income from the Investment Property, collections thereon or distributions or payments with respect thereto.

Receivable means any right to payment for goods sold or leased or for services rendered, whether or not such right is evidenced by an Instrument or Chattel Paper and whether or not it has been earned by performance (including any Accounts).

Secured Obligations means all Liabilities of the Borrower or the Grantor to the Lender, including but not limited to all liabilities under the Term Note, the Loan Agreement, this Security Agreement, the Guaranty and the other Financing Agreements.

Securities Act means the Securities Act of 1933, as amended.

Seller Undertakings means, collectively, all representations, warranties, covenants and agreements in favor of Grantor, and all indemnifications for the benefit of Grantor relating thereto, pursuant to the Assigned Agreements.

Trademarks means (a) all trademarks, trade names, corporate names, business names, fictitious business names, trade styles, service marks, logos and other source or business identifiers, and all goodwill associated therewith, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, whether in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof, or otherwise, and all common-law rights related thereto, including any of the foregoing referred to in Schedule 4, and (b) the right to obtain all renewals thereof.

Trademark Licenses means, collectively, each agreement, whether written or oral, providing for the grant by or to Grantor of any right to use any Trademark.

UCC means the Uniform Commercial Code as in effect on the date hereof and from time to time in the State of Illinois, provided that if by reason of mandatory provisions of law, the perfection or the effect of perfection or non-perfection of the security interests in any Collateral or the availability of any remedy hereunder is governed by the Uniform Commercial Code as in

effect on or after the date hereof in any other jurisdiction, "UCC" means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or availability of such remedy.

## SECTION 2 GRANT OF SECURITY INTEREST.

2.1 Grant. Grantor hereby grants to the Secured Party a continuing security interest in all of his Collateral, as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Secured Obligations.

2.2 Collateral Assignment of Rights under the Assigned Agreements. Grantor hereby irrevocably authorizes and empowers Secured Party or its Secured Party, in their sole discretion, to assert, either directly or on behalf of Grantor, at any time that an Event of Default is in existence, any claims Grantor may from time to time have against the sellers or any of their affiliates with respect to any and all of the Contract Rights or with respect to any and all payments or other obligations due from the sellers or any of their affiliates to the Borrower under or pursuant to the Assigned Agreements ("Payments"), and to receive and collect any damages, awards and other monies resulting therefrom and to apply the same on account of the Secured Obligations. After the occurrence of any Event of Default, the Secured Party may provide notice to the sellers or any of their affiliates under any Assigned Agreement that all Payments shall be made to or at the direction of the Secured Party for so long as such Event of Default shall be continuing. Following the delivery of any such notice, the Secured Party shall promptly notify the sellers under the Assigned Agreement upon the termination or waiver of any such Event of Default. Grantor hereby irrevocably makes, constitutes and appoints the Secured Party (and all officers, employees, or Secured Party designated by the Secured Party) as Grantor's true and lawful attorney (and Secured Party-in-fact) for the purpose of enabling the Secured Party or its Secured Party to assert and collect such claims and to apply such monies in the manner set forth hereinabove.

## SECTION 3 REPRESENTATIONS AND WARRANTIES.

To induce the Secured Party to enter into the Loan Agreement and to induce the Secured Party to make the extensions of credit to the Borrower thereunder, Grantor hereby represents and warrants to the Secured Party that:

3.1 Title; No Other Liens. Grantor has good, indefeasible, and merchantable title to his real and personal properties and assets (including, without limitation, the Collateral). Upon the giving of value, the Secured Party's security interest in the Collateral will be valid and enforceable, and upon the filing of financing statements describing the Collateral in the State of Delaware, the Secured Party's security interest in the Collateral will be perfected in all Collateral. Except in connection with Permitted Liens, no financing statement, mortgage, notice of judgment, or any similar instrument covering any of the Collateral is on file in any public office.

3.2 Grantor Information. Schedule 1 sets forth (a) the address of Grantor's principal residence and any additional residences, (b) Grantor's exact legal name and (d) Grantor's tax identification. Except as set forth on Schedule 1, Grantor has not used or been known by any other name.

3.3 Collateral Locations. Schedule 2 sets forth (a) all locations where all Collateral is kept, and (b) whether each such Collateral location and place of business is owned or leased (and if leased, specifies the complete name and notice address of each lessor) (the "Collateral Locations"). No Collateral is located outside the United States or in the possession of any lessor, bailee, warehouseman or consignee, except as indicated on Schedule 2.

3.4 Certain Property. Except as set forth on Schedule 3, none of the Collateral constitutes, or is the Proceeds of, (a) Farm Products, (b) Health Care Insurance Receivables or (c) vessels, aircraft or any other property subject to any certificate of title or other registration statute of the United States, any State or other jurisdiction.

3.5 Investment Property. Schedule 3 lists all Investment Property owned by Grantor. Grantor is the record and beneficial owner of, and has good and marketable title to, the Investment Property pledged by it hereunder, free of any and all liens or options in favor of, or claims of, any other Person, except Permitted Liens.

3.6 Intellectual Property. (a) Schedule 4 lists all Intellectual Property owned by Grantor in his own name on the date hereof which is registered or for which applications for registration are pending. On the date hereof, all material Intellectual Property owned by Grantor is valid, subsisting, unexpired and enforceable and has not been abandoned. Except as set forth in Schedule 4, none of the material Intellectual Property is the subject of any licensing or franchise agreement pursuant to which Grantor is the licensor or franchisor. Grantor owns and possesses or has a license or other right to use all Intellectual Property as is necessary for the conduct of the businesses of Grantor, without any infringement upon rights of others which could reasonably be expected to have a Material Adverse Effect.

3.7 Depository and Other Accounts. All depository and other accounts maintained by Grantor are described on Schedule 5 hereto, which description includes for each such account the name of the Grantor account, the name, address, telephone and fax numbers of the financial institution at which such account is maintained, the account number and the account officer, if any, of such account.

#### SECTION 4 COVENANTS.

Grantor covenants and agrees with the Secured Party that, from and after the date of this Agreement until the Secured Obligations shall have been Paid in Full:

4.1 Delivery of Instruments, Certificated Securities and Chattel Paper. The Grantor shall deliver or cause to be delivered to the Secured Party all chattel paper and instruments that the Grantor now owns or may acquire at any time or times after the date of this Agreement, with an appropriate endorsement and assignment to perfect Secured Party's security interest therein, with full recourse to the Grantor, and possession in the Secured Party for the benefit of the Secured Party..

4.2 Maintenance of Perfected Security Interest; Further Documentation. (a) Grantor shall maintain the security interest created by this Agreement as a first priority perfected security interest and shall defend such security interest against the claims and demands of all Persons whomsoever, subject only to Permitted Liens.

(b) Grantor will furnish to the Secured Party from time to time statements and schedules further identifying and describing the assets and property of Grantor and such other reports in connection therewith as the Secured Party may reasonably request, all in reasonable detail.

(c) At any time and from time to time, upon the written request of the Secured Party, and at the sole expense of Grantor, Grantor will promptly and duly execute and deliver, and have recorded, such further instruments and documents and take such further actions as the Secured Party may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including (i) filing any financing or continuation statements under the UCC (or other similar laws) in effect in any jurisdiction with respect to the security interests created hereby and (ii) in the case of Investment Property and any other relevant Collateral, taking any actions necessary to enable the Secured Party to obtain "control" (within the meaning of the applicable UCC) with respect thereto.

4.3 Changes in Name, etc. The Grantor shall not change his place of residence from the one disclosed in Section 3.2 or shall change his name unless, prior to the effective date of the change, the Grantor (x) gives thirty days prior written notice to the Secured Party of the new location or name, and (y) delivers any other documents and instruments as Secured Party may reasonably request in connection with the change in name or location within ten (10) days of the effectiveness of the change or of the Secured Party's request for the documents or instruments.

4.4 Collateral Locations. The Grantor shall keep the tangible Collateral at the Collateral Locations at all times, except: (a) as may otherwise be agreed by the Secured Party in writing; (b) for vehicles and rolling stock; (c) for Goods sold in the ordinary course of business; and (d) for Collateral used and consumed that is normally held by Borrowers for such purpose including cash.

4.5 Notices. Grantor will advise the Secured Party promptly, in reasonable detail, of:

(a) any Lien (other than Permitted Liens) on any of the Collateral which would adversely affect the ability of the Secured Party to exercise any of its remedies hereunder;

(b) any material loss of the Collateral; and

(c) the occurrence of any other event which could reasonably be expected to have a material adverse effect on the aggregate value of the Collateral or on the liens created hereby.

4.6 Investment Property. (a) Upon the occurrence and during the continuance of an Event of Default, (i) any sums paid upon or in respect of the Investment Property upon the

liquidation or dissolution of any Issuer shall be paid over to the Secured Party to be held by it hereunder as additional Collateral for the Secured Obligations, and (ii) in case any distribution of capital shall be made on or in respect of the Investment Property or any property shall be distributed upon or with respect to the Investment Property pursuant to the recapitalization or reclassification of the capital of any Issuer or pursuant to the reorganization thereof, the property so distributed shall, unless otherwise subject to a perfected Lien in favor of the Secured Party, be delivered to the Secured Party to be held by it hereunder as additional Collateral for the Secured Obligations. Upon the occurrence and during the continuance of an Event of Default, if any sums of money or property so paid or distributed in respect of the Investment Property shall be received by Grantor, Grantor shall, until such money or property is paid or delivered to the Secured Party, hold such money or property in trust for the Secured Party, segregated from other funds of Grantor, as additional Collateral for the Secured Obligations.

(b) Without the prior written consent of the Secured Party, no Grantor will (i) vote to enable, or take any other action to permit, any Issuer to issue any equity interests of any nature or to issue any other securities or interests convertible into or granting the right to purchase or exchange for any equity interests of any nature of any Issuer, except, in each case, as permitted by the Loan Agreement, (ii) sell, assign, transfer, exchange, or otherwise dispose of, or grant any option with respect to, the Investment Property or Proceeds thereof (except pursuant to a transaction expressly permitted by the Loan Agreement) other than any such action which is not prohibited by the Loan Agreement, (iii) create, incur or permit to exist any Lien or option in favor of, or any claim of any Person (other than the Secured Party) with respect to, any of the Investment Property or Proceeds thereof, or any interest therein, except for Permitted Liens, or (iv) enter into any agreement or undertaking restricting the right or ability of Grantor or the Secured Party to sell, assign or transfer any of the Investment Property or Proceeds thereof.

4.7 Account Covenants. Other than in the ordinary course of business consistent with his past practice and in amounts which are not material to Grantor, Grantor will not (i) grant any extension of the time of payment of any Receivable, (ii) compromise or settle any Receivable for less than the full amount thereof, (iii) release, wholly or partially, any Person liable for the payment of any Receivable, (iv) allow any credit or discount whatsoever on any Receivable or (v) amend, supplement or modify any Receivable in any manner that could adversely affect the value thereof.

4.8 Assigned Agreements.

(a) Grantor shall keep the Secured Party informed of all circumstances bearing upon any potential claim under or with respect to the Assigned Agreements and the Seller Undertakings and Grantor shall not, without the prior written consent of the Secured Party, (i) waive any of his rights or remedies under any Assigned Agreement with respect to any of the Seller Undertakings, (ii) settle, compromise or offset any amount payable by the sellers to Grantor under any Assigned Agreement, or (iii) amend or otherwise modify any Assigned Agreement in any manner which is adverse to the interests of the Secured Party.

(b) Grantor shall perform and observe in all material respects the terms and conditions of each Assigned Agreement to be performed by it, maintain each Assigned Agreement in full force and effect, enforce each Assigned Agreement in accordance with its

terms and take all such action to such end as may from time to time be reasonably requested by the Secured Party.

(c) Anything herein to the contrary notwithstanding, (i) Grantor shall remain liable under each Assigned Agreement to the extent set forth therein to perform all of his duties and obligations thereunder to the same extent as if this Agreement had not been executed, (ii) the exercise by the Secured Party of any of its rights hereunder shall not release Grantor from any of his duties or obligations under any Assigned Agreement and (iii) neither the Secured Party nor any other Secured Party shall have any obligation or liability under any Assigned Agreement by reason of this Agreement, nor shall the Secured Party or any other Secured Party be obligated to perform any of the obligations or duties of Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

4.9 Depository and Other Accounts. The Grantor will not establish, acquire, open or maintain any depository or investment accounts other than (a) those set forth on Schedule 5, and (b) other accounts approved by the Secured Party, which shall be conditioned upon the execution and delivery of appropriate account control agreements in favor of the Secured Party. Grantor hereby authorizes the financial institutions at which Grantor maintains a deposit account to provide the Secured Party with such information with respect to such deposit account as the Secured Party may from time to time reasonably request, and Grantor hereby consents to such information being provided to the Secured Party. At all times, each depository or investment account in which Grantor has an interest must be subject to a valid and binding account control agreement or similar agreement between the depository or other third party institution, the Secured Party and Grantor, in form and substance satisfactory to the Secured Party, in order to give the Secured Party "control" (as defined in the UCC) of such account ("Account Control Agreement"). If Grantor or any other Person acting for or in concert with Grantor, shall receive any monies, checks, notes, drafts or other payments relating to or as proceeds of any Collateral, Grantor and each such Person shall receive all such items in trust for, and as the sole and exclusive property of, the Secured Party and, immediately upon receipt thereof, shall remit the same (or cause the same to be remitted) in kind to the Secured Party or an account that is subject to an Account Control Agreement. The Grantor agrees to pay all fees, costs and expenses which the Secured Party incurs in connection with opening and maintaining any account and depositing for collection by the Secured Party any check or other item of payment received by the Secured Party on account of the Obligations. All of such fees, costs and expenses shall constitute Secured Obligations hereunder and shall be payable to the Secured Party by the Grantor upon demand. All checks, drafts, instruments and other items of payment or proceeds of Collateral shall be endorsed by the Grantor to the Secured Party, and, if that endorsement of any such item shall not be made for any reason, the Secured Party is hereby irrevocably authorized to endorse the same on Grantor's behalf.

4.10 Appointment of Secured Party as Attorney-in-Fact. The Grantor hereby irrevocably (until the Secured Obligations are Paid in Full) designate, make, constitute, and appoint the Secured Party as the Grantor's true and lawful attorney-in-fact for the specific purposes set forth in this Section 4.11. The Grantor authorizes the Secured Party, in the Grantor's or the Secured Party's name, upon the occurrence of an Event of Default and during the continuation thereof, to: (a) demand payment of Accounts that are otherwise due; (b) enforce payment of Accounts by legal proceedings or otherwise; (c) exercise all of the Borrowers' rights

and remedies with respect to proceedings brought to collect an Account; (d) sell or assign any Account upon terms, for an amount, and at times as the Secured Party deems reasonably advisable; (e) reasonably and in good faith settle, adjust, compromise, extend, or renew an Account; (f) reasonably and in good faith discharge and release any Account; (g) prepare, file, and sign the Grantor's name on any proof of claim in bankruptcy or other similar document against an Account Debtor; (h) notify the post office authorities to change the address for delivery of the Grantor's mail to an address designated by the Secured Party, and open and deal with all mail addressed to the Grantor; or (i) take control in any manner of any item of payment or proceeds of the item of payment; (j) have access to any lockbox or postal box into which the Grantor's mail is deposited; (k) endorse the Grantor's names upon any items of payment or proceeds of the item and deposit the payment or proceeds in the Secured Party's account on account of the Liabilities; (l) endorse the Grantor's name upon any chattel paper, document, instrument, invoice, or similar document or agreement relating to any Account or any goods pertaining to the document or agreement; (m) sign the Grantor's name on any verification of Accounts and notices of verification sent to Account Debtors; and (n) do all reasonable acts and things which are necessary, in the Secured Party's sole discretion, to fulfill the Grantor's obligations under this Agreement. The power of attorney granted hereunder shall terminate upon the Secured Obligations being Paid in Full.

#### 4.11 Other Matters.

(a) Grantor authorizes the Secured Party to, at any time and from time to time, file financing statements, continuation statements, and amendments thereto that describe the Collateral as "all assets" of Grantor, or words of similar effect, and which contain any other information required pursuant to the UCC for the sufficiency of filing office acceptance of any financing statement, continuation statement, or amendment, and Grantor agrees to furnish any such information to the Secured Party promptly upon request. Any such financing statement, continuation statement, or amendment may be signed by the Secured Party on behalf of Grantor and may be filed at any time in any jurisdiction.

(b) Grantor shall, at any time and from time and to time, take such steps as the Secured Party may reasonably request for the Secured Party (i) to obtain an acknowledgement, in form and substance reasonably satisfactory to the Secured Party, of any bailee having possession of any of the Collateral, stating that the bailee holds such Collateral for the Secured Party, (ii) to obtain "control" of any letter-of-credit rights, or electronic chattel paper (as such terms are defined by the UCC with corresponding provisions thereof defining what constitutes "control" for such items of Collateral), with any agreements establishing control to be in form and substance reasonably satisfactory to the Secured Party, and (iii) otherwise to insure the continued perfection and priority of the Secured Party's security interest in any of the Collateral and of the preservation of its rights therein. If Grantor shall at any time, acquire a "commercial tort claim" (as such term is defined in the UCC), Grantor shall promptly notify the Secured Party thereof in writing and supplement Schedule 7, therein providing a reasonable description and summary thereof, and upon delivery thereof to the Secured Party, Grantor shall be deemed to thereby grant to the Secured Party (and Grantor hereby grants to the Secured Party) a security interest and lien in and to such commercial tort claim and all proceeds thereof, all upon the terms of and governed by this Agreement.

(c) Without limiting the generality of the foregoing, if Grantor at any time holds or acquires an interest in any electronic chattel paper or any "transferable record", as that term is defined in Section 201 of the federal Electronic Signatures in Global and National Commerce Act, or in §16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction, Grantor shall promptly notify the Secured Party thereof and, at the request of the Secured Party, shall take such action as the Secured Party may reasonably request to vest in the Secured Party "control" under Section 9-105 of the UCC of such electronic chattel paper or control under Section 201 of the federal Electronic Signatures in Global and National Commerce Act or, as the case may be, §16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record.

## SECTION 5 REMEDIAL PROVISIONS.

5.1 Certain Matters Relating to Receivables. (a) The Secured Party shall have the right, at any time or times after the date of this Agreement, in the Secured Party's name or in the name of a nominee of the Secured Party, to verify the validity, amount, or any other matter relating to any Accounts by mail, telephone, telegraph, or otherwise to the Grantor and, upon the occurrence of an Event of Default and during the continuation thereof, to sign the Grantor's name on any verification of Accounts and notices sent to Account Debtors. Upon the occurrence of an Event of Default and during the continuation thereof, the Secured Party may, in its sole discretion, at any time or times, and without prior notice to the Grantor, notify any or all Account Debtors that the Accounts have been assigned to the Secured Party and that the Secured Party has a security interest in the Accounts. The Secured Party may direct any or all Account Debtors to make all payments upon the Accounts directly to the Secured Party. The Secured Party shall furnish the Grantor with a copy of the notice.

(b) The Secured Party hereby authorizes Grantor to collect Grantor's Receivables, and the Secured Party may curtail or terminate such authority at any time after the occurrence and during the continuance of an Event of Default. If required by the Secured Party at any time after the occurrence and during the continuance of an Event of Default, any payments of Receivables, when collected by Grantor, (i) shall be forthwith (and, in any event, within 2 business days) deposited by Grantor in the exact form received, duly indorsed by Grantor to the Secured Party if required, in a collateral account maintained under the sole dominion and control of the Secured Party, subject to withdrawal by the Secured Party for the account of the Secured Party as provided herein or in the Lockbox Agreement, and (ii) until so turned over, shall be held by Grantor in trust for the Secured Party, segregated from other funds of Grantor. Each such deposit of Proceeds of Receivables shall be accompanied by a report identifying in reasonable detail the nature and source of the payments included in the deposit.

(c) At any time and from time to time after the occurrence and during the continuance of an Event of Default, at the Secured Party's request, Grantor shall deliver to the Secured Party all original and other documents evidencing, and relating to, the agreements and transactions which gave rise to the Receivables, including all original orders, invoices and shipping receipts.

(d) Grantor hereby irrevocably authorizes and empowers the Secured Party, in the Secured Party's sole discretion, at any time that after the occurrence and during the

continuance of an Event of Default, to assert, either directly or on behalf of Grantor, any claim Grantor may from time to time have against the sellers under or with respect to the Assigned Agreements and to receive and collect any and all damages, awards and other monies resulting therefrom and to apply the same to the Obligations. Grantor hereby irrevocably makes, constitutes and appoints the Secured Party as his true and lawful attorney in fact for the purpose of enabling the Secured Party to assert and collect such claims and to apply such monies in the manner set forth above, which appointment, being coupled with an interest, is irrevocable until the Secured Obligations have been Paid in Full at which time such Power of Attorney shall terminate.

(e) Anything herein to the contrary notwithstanding, Grantor shall remain liable in respect of each of the Receivables to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise thereto. Neither the Secured Party nor any Secured Party shall have any obligation or liability under any Receivable (or any agreement giving rise thereto) by reason of or arising out of this Agreement or the receipt by the Secured Party of any payment relating thereto, nor shall the Secured Party be obligated in any manner to perform any of the obligations of Grantor under or pursuant to any Receivable (or any agreement giving rise thereto), to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party thereunder, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

5.2 Investment Property. (a) Unless an Event of Default shall have occurred and be continuing and the Secured Party shall have given notice to the relevant Grantor of the Secured Party's intent to exercise its corresponding rights pursuant to Section 5.2(b), Grantor shall be permitted to exercise all voting and other rights with respect to the Investment Property; provided, that no vote shall be cast or other right exercised or action taken which could impair the Collateral or which would be inconsistent with or result in any violation of any provision of the Loan Agreement, this Agreement or any other Loan Document.

(b) If an Event of Default shall occur and be continuing and the Secured Party shall give notice of its intent to exercise such rights to the Grantor, (i) the Secured Party shall have the right to receive any and all cash dividends and distributions, payments or other Proceeds paid in respect of the Investment Property and make application thereof to the Obligations in such order as the Secured Party may determine, and (ii) any or all of the Investment Property shall be registered in the name of the Secured Party or its nominee, and the Secured Party or its nominee may thereafter exercise (x) all voting and other rights pertaining to such Investment Property at any meeting of holders of the equity interests of the relevant Issuer or Issuers or otherwise and (y) any and all rights of conversion, exchange and subscription and any other rights, privileges or options pertaining to such Investment Property as if it were the absolute owner thereof (including the right to exchange at its discretion any and all of the Investment Property upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the corporate or other structure of any Issuer, or upon the exercise by Grantor or the Secured Party of any right, privilege or option pertaining to such Investment Property, and in connection therewith, the right to deposit and deliver any and all of the Investment Property with any committee, depositary, transfer Secured Party, registrar or other designated agency upon

such terms and conditions as the Secured Party may determine), all without liability except to account for property actually received by it, but the Secured Party shall have no duty to Grantor to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing.

(c) Grantor hereby authorizes and instructs each Issuer of any Investment Property pledged by Grantor hereunder to (i) comply with any instruction received by it from the Secured Party in writing that (x) states that an Event of Default has occurred and is continuing and (y) is otherwise in accordance with the terms of this Agreement, without any other or further instructions from Grantor, and Grantor agrees that each Issuer shall be fully protected in so complying and (ii) unless otherwise expressly permitted hereby, pay any dividends, distributions or other payments with respect to the Investment Property directly to the Secured Party.

5.3 Proceeds to be Turned Over to Secured Party. In addition to the rights of the Secured Party specified in Section 5.1 with respect to payments of Receivables, if an Event of Default shall occur and be continuing, all Proceeds received by Grantor consisting of cash, checks and other cash equivalent items shall be held by Grantor in trust for the Secured Party, segregated from other funds of Grantor, and shall, forthwith upon receipt by Grantor, be turned over to the Secured Party in the exact form received by Grantor (duly indorsed by Grantor to the Secured Party, if required). All Proceeds received by the Secured Party hereunder shall be held by the Secured Party in a collateral account maintained under its sole dominion and control. All Proceeds, while held by the Secured Party in any collateral account (or by Grantor in trust for the Secured Party) established pursuant hereto, shall continue to be held as collateral security for the Secured Obligations and shall not constitute payment thereof until applied as provided in Section 5.5.

5.4 Application of Proceeds. At such intervals as may be agreed upon by the Grantor and the Secured Party, or, if an Event of Default shall have occurred and be continuing, at any time at the Secured Party's election, the Secured Party may apply all or any part of Proceeds from the sale of, or other realization upon, all or any part of the Collateral in payment of the Secured Obligations in such order as the Secured Party shall determine in its discretion. Any part of such funds which the Secured Party elects not so to apply and deems not required as collateral security for the Secured Obligations shall be paid over from time to time by the Secured Party to the applicable Grantor or to whomsoever may be lawfully entitled to receive the same. Any balance of such Proceeds remaining after the Secured Obligations shall have been Paid in Full shall be paid over to the applicable Grantor or to whomsoever may be lawfully entitled to receive the same.

5.5 Code and Other Remedies. If an Event of Default shall occur and be continuing, the Secured Party, on behalf of the Secured Party, may exercise, in addition to all other rights and remedies granted to them in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Secured Obligations, all rights and remedies of a Secured Party under the UCC or any other applicable law. Without limiting the generality of the foregoing, the Secured Party, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon Grantor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), may in such circumstances forthwith collect, receive,

appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, give options to purchase, or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of the Secured Party or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery with assumption of any credit risk. The Secured Party shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in Grantor, which right or equity is hereby waived and released. Grantor further agrees, at the Secured Party's request, to assemble the Collateral and make it available to the Secured Party at places which the Secured Party shall reasonably select, whether at Grantor's premises or elsewhere. The Secured Party shall apply the net proceeds of any action taken by it pursuant to this Section 5.6, after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of the Secured Party hereunder, including reasonable outside attorney costs to the payment in whole or in part of the Secured Obligations, in such order as the Secured Party may elect, and only after such application and after the payment by the Secured Party of any other amount required by any provision of law, need the Secured Party account for the surplus, if any, to Grantor. To the extent permitted by applicable law, Grantor waives all claims, damages and demands it may acquire against the Secured Party arising out of the exercise by them of any rights hereunder, except with respect to the Secured Party's or any Secured Party's gross negligence and willful misconduct. If any notice of a proposed sale or other disposition of Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least 10 days before such sale or other disposition.

5.6 Waiver; Deficiency. Grantor waives and agrees not to assert any rights or privileges which it may acquire under Section 9-626 of the UCC. Grantor shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient to pay the Secured Obligations in full and the reasonable fees and disbursements of any outside attorneys employed by the Secured Party to collect such deficiency.

## SECTION 6 THE SECURED PARTY.

6.1 Duty of Secured Party. The Secured Party's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession shall be to deal with it in the same manner as the Secured Party deals with similar property for its own account. Neither the Secured Party nor any of their respective officers, directors, employees or Secured Party shall be liable for any failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of Grantor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on the Secured Party hereunder are solely to protect the Secured Party's and the Secured Party' interests in the Collateral and shall not impose any duty upon the Secured Party to exercise any such powers. The Secured Party shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or Secured Party shall be responsible to Grantor for any act or failure to act hereunder.

6.2 Authority of Secured Party. Grantor acknowledges that the rights and responsibilities of the Secured Party under this Agreement with respect to any action taken by the Secured Party or the exercise or non-exercise by the Secured Party of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between the Secured Party, be governed by the Loan Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Secured Party and the Grantor, the Secured Party shall be conclusively presumed to be acting as Secured Party for the Secured Party with full and valid authority so to act or refrain from acting, and Grantor shall not be under any obligation, or entitlement, to make any inquiry respecting such authority.

## SECTION 7 MISCELLANEOUS.

7.1 Amendments in Writing. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in writing by the Secured Party and the Grantor.

7.2 Notices. All notices, requests and demands to or upon the Secured Party or Grantor hereunder shall be addressed to the Borrower and effected in the manner provided for in Section 9.21 of the Loan Agreement and Grantor hereby appoints the Borrower as its Secured Party to receive notices hereunder.

7.3 Indemnification by Grantor. **THE GRANTOR HEREBY AGREES TO INDEMNIFY, EXONERATE AND HOLD EACH SECURED PARTY FREE AND HARMLESS FROM AND AGAINST ANY AND ALL INDEMNIFIED LIABILITIES, INCURRED BY THE SECURED PARTY OR ANY OF THEM AS A RESULT OF, OR ARISING OUT OF, OR RELATING TO (A) ANY TENDER OFFER, MERGER, PURCHASE OF EQUITY INTERESTS, PURCHASE OF ASSETS (INCLUDING THE RELATED TRANSACTIONS) OR OTHER SIMILAR TRANSACTION FINANCED OR PROPOSED TO BE FINANCED IN WHOLE OR IN PART, DIRECTLY OR INDIRECTLY, WITH THE PROCEEDS OF ANY OF THE LOANS, (B) THE USE, HANDLING, RELEASE, EMISSION, DISCHARGE, TRANSPORTATION, STORAGE, TREATMENT OR DISPOSAL OF ANY HAZARDOUS SUBSTANCE AT ANY PROPERTY OWNED OR LEASED BY GRANTOR, (C) ANY VIOLATION OF ANY ENVIRONMENTAL LAWS WITH RESPECT TO CONDITIONS AT ANY PROPERTY OWNED OR LEASED BY GRANTOR OR THE OPERATIONS CONDUCTED THEREON, (D) THE INVESTIGATION, CLEANUP OR REMEDIATION OF OFFSITE LOCATIONS AT WHICH ANY LOAN PARTY OR THEIR RESPECTIVE PREDECESSORS ARE ALLEGED TO HAVE DIRECTLY OR INDIRECTLY DISPOSED OF HAZARDOUS SUBSTANCES OR (E) THE EXECUTION, DELIVERY, PERFORMANCE OR ENFORCEMENT OF THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT BY ANY OF THE SECURED PARTY PARTIES, EXCEPT FOR ANY SUCH INDEMNIFIED LIABILITIES ARISING ON ACCOUNT OF THE APPLICABLE SECURED PARTY PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AS DETERMINED BY A FINAL, NONAPPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION. IF AND TO THE EXTENT THAT THE FOREGOING UNDERTAKING MAY BE UNENFORCEABLE FOR ANY REASON,**

GRANTOR HEREBY AGREES TO MAKE THE MAXIMUM CONTRIBUTION TO THE PAYMENT AND SATISFACTION OF EACH OF THE INDEMNIFIED LIABILITIES WHICH IS PERMISSIBLE UNDER APPLICABLE LAW. ALL OBLIGATIONS PROVIDED FOR IN THIS SECTION 7.3 SHALL SURVIVE REPAYMENT OF ALL (AND SHALL BE) SECURED OBLIGATIONS (AND TERMINATION OF ALL COMMITMENTS UNDER THE LOAN AGREEMENT), ANY FORECLOSURE UNDER, OR ANY MODIFICATION, RELEASE OR DISCHARGE OF, ANY OR ALL OF THE COLLATERAL DOCUMENTS AND TERMINATION OF THIS AGREEMENT.

7.4 Enforcement Expenses. (a) Grantor agrees to pay or reimburse on demand each Secured Party for all reasonable out-of-pocket costs and expenses (including attorney costs) incurred in enforcing or preserving any rights under this Agreement and the other Loan Documents.

(b) Grantor agrees to pay, and to save the Secured Party harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes which may be payable or determined to be payable with respect to any of the Collateral or in connection with any of the transactions contemplated by this Agreement.

(c) The agreements in this Section 7.4 shall survive repayment of all (and shall be) Secured Obligations (and termination of all commitments under the Loan Agreement), any foreclosure under, or any modification, release or discharge of, any or all of the Collateral Documents and termination of this Agreement.

7.5 Captions. Section captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

7.6 Nature of Remedies. All Secured Obligations of Grantor and rights of the Secured Party expressed herein or in any other Loan Document shall be in addition to and not in limitation of those provided by applicable law. No failure to exercise and no delay in exercising, on the part of the Secured Party, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

7.7 Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement. Receipt by telecopy of any executed signature page to this Agreement or any other Loan Document shall constitute effective delivery of such signature page.

7.8 Severability. The illegality or unenforceability of any provision of this Agreement or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder.

7.9 Entire Agreement. This Agreement, together with the other Loan Documents, embodies the entire agreement and understanding among the parties hereto and supersedes all prior or contemporaneous agreements and understandings of such Persons, verbal or written, relating to the subject matter hereof and thereof and any prior arrangements made with respect to the payment by Grantor of (or any indemnification for) any fees, costs or expenses payable to or incurred (or to be incurred) by or on behalf of the Secured Party or the Secured Party.

7.10 Successors; Assigns. This Agreement shall be binding upon Grantor, the Secured Party and their respective successors and permitted assigns, and shall inure to the benefit of Grantor and the Secured Party and the successors and permitted assigns of the Secured Party and the Secured Party. No other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Loan Documents. Grantor may not assign or transfer any of his rights or obligations under this Agreement without the prior written consent of the Secured Party. The Secured Party may not assign or transfer any of its rights or obligations under this Agreement other than in accordance with Section 9.29 of the Loan Agreement.

7.11 Governing Law. THIS AGREEMENT SHALL BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF ILLINOIS APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES.

7.12 Forum Selection; Consent to Jurisdiction. ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF ILLINOIS OR IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS; PROVIDED THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE THE SECURED PARTY FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION. GRANTOR HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF ILLINOIS AND OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. GRANTOR FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF ILLINOIS. GRANTOR HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

7.13 Waiver of Jury Trial. GRANTOR, THE SECURED PARTY AND EACH SECURED PARTY HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT AND ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT

DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

7.14 Set-off. Grantor agrees that the Secured Party shall have all rights of set-off and bankers' lien provided by applicable law, and in addition thereto, Grantor agrees that at any time any Event of Default exists, the Secured Party may apply to the payment of any Secured Obligations, whether or not then due, any and all balances, credits, deposits, accounts or moneys of Grantor then or thereafter with the Secured Party or such Secured Party.

7.15 Acknowledgements. Grantor hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents to which it is a party;

(b) the Secured Party has no fiduciary relationship with or duty to Grantor arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Grantor, on the one hand, and the Secured Party, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Secured Party or among the Grantor and the Secured Party.

7.16 Releases. (a) At such time as the Secured Obligations have been Paid in Full, the Collateral shall be released from the liens created hereby, and this Agreement and all obligations (other than those expressly stated to survive such termination) of the Secured Party and Grantor hereunder shall terminate, all without delivery of any instrument or performance of any act by any party, and all rights to the Collateral shall revert to the Grantor. At the request and sole expense of Grantor following any such termination, the Secured Party shall deliver to the Grantor any Collateral held by the Secured Party hereunder, and execute and deliver to the Grantor such documents as the Grantor shall reasonably request to evidence such termination.

(b) If any of the Collateral shall be sold, transferred or otherwise disposed of by Grantor in a transaction permitted by the Loan Agreement, then the Secured Party, at the request and sole expense of Grantor, shall execute and deliver to Grantor all releases or other documents reasonably necessary or desirable for the release of the liens created hereby on such Collateral. At the request and sole expense of the Borrower, Grantor shall be released from its obligations hereunder in the event that all the equity interests of Grantor shall be sold, transferred or otherwise disposed of in a transaction permitted by the Loan Agreement; provided that the Borrower shall have delivered to the Secured Party, with reasonable notice prior to the date of the proposed release, a written request for release identifying the relevant Grantor and the terms of the sale or other disposition in reasonable detail, including the price thereof and any expenses in connection therewith, together with a certification by the Borrower stating that such transaction is in compliance with the Loan Agreement and the other Loan Documents.

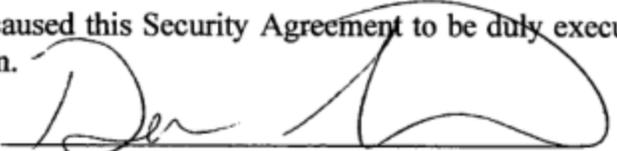
7.17 Obligations and Liens Absolute and Unconditional. Grantor understands and agrees that the obligations of Grantor under this Agreement shall be construed as a

continuing, absolute and unconditional without regard to (a) the validity or enforceability of any Loan Document, any of the Secured Obligations or any other collateral security therefor or guaranty or right of offset with respect thereto at any time or from time to time held by the Secured Party, (b) any defense, set-off or counterclaim (other than a defense of payment or performance) which may at any time be available to or be asserted by Grantor or any other Person against the Secured Party, or (c) any other circumstance whatsoever (with or without notice to or knowledge of Grantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of Grantor for the Secured Obligations, in bankruptcy or in any other instance. When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against Grantor, the Secured Party may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against any other Grantor or any other Person or against any collateral security or guaranty for the Secured Obligations or any right of offset with respect thereto, and any failure by the Secured Party to make any such demand, to pursue such other rights or remedies or to collect any payments from any other Grantor or any other Person or to realize upon any such collateral security or guaranty or to exercise any such right of offset, or any release of any other Grantor or any other Person or any such collateral security, guaranty or right of offset, shall not relieve Grantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of the Secured Party against Grantor. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings.

7.18 Reinstatement. This Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against Grantor or any Issuer for liquidation or reorganization, should Grantor or any Issuer become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of Grantor's or and Issuer's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Secured Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Secured Obligations, whether as a "voidable preference", "fraudulent conveyance", or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

[signature page[s] follow[s]]

Each of the undersigned has caused this Security Agreement to be duly executed and delivered as of the date first above written.

  
Dean Kretschmar

10-22-09

Mercata Justa, L.L.C.

By: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE 1**

**GRANTOR INFORMATION**

<b>GRANTOR (exact legal name)</b>		<b>FEDERAL SOCIAL SECURITY NUMBER</b>	<b>PRINCIPAL RESIDENCE</b>

**SCHEDULE 2**

**A. COLLATERAL LOCATIONS**

<b>GRANTOR</b>	<b>COLLATERAL</b>	<b>COLLATERAL LOCATION</b>	<b>OWNER/LESSOR (IF LEASED)</b>

**B. COLLATERAL IN POSSESSION OF LESSOR, BAILEE, CONSIGNEE OR WAREHOUSEMAN**

<b>GRANTOR</b>	<b>COLLATERAL</b>	<b>LESSOR/BAILEE/CONSIGNEE/ WAREHOUSEMAN</b>

**SCHEDULE 3**

**INVESTMENT PROPERTY**

<b>Grantor</b>	<b>Investment Property Description</b>

**SCHEDULE 5**

**DEPOSITARY AND OTHER DEPOSIT ACCOUNTS**

<b>GRANTOR</b>	<b>FINANCIAL INSTITUTION</b>	<b>ACCOUNT NUMBER</b>	<b>CONTACT INFORMATION</b>

**SCHEDULE 7**

**COMMERCIAL TORT CLAIMS**


This instrument was prepared by  
and after recording return to:

Anthony P. Vernace, Esq.  
Morgan, Lewis & Bockius LLP  
5300 Wachovia Financial Center  
200 S. Biscayne Boulevard  
Miami, Florida 33131-2339

CFN # 109031618  
OR BK 46737 Pages 459 - 473  
RECORDED 12/16/09 16:46:31  
BROWARD COUNTY COMMISSION  
DOC-M: \$5250.00 INT. TAX \$3000.00  
DEPUTY CLERK 3305  
#1, 15 Pages

**MORTGAGE,  
ASSIGNMENT OF LEASES AND RENTS  
AND SECURITY AGREEMENT**

THIS MORTGAGE SECURES THE PRINCIPAL AMOUNT OF \$1,500,000. PURSUANT TO SECTION 201.08 OF THE FLORIDA STATUTES, DOCUMENTARY STAMP TAX IN THE AMOUNT OF \$5,250.00 IS BEING PAID UPON RECORDING THIS MORTGAGE.

THIS MORTGAGE SECURES THE PRINCIPAL AMOUNT OF \$1,500,000. PURSUANT TO SECTION 199.133(1) OF THE FLORIDA STATUTES, NONRECURRING INTANGIBLE TAX IN THE AMOUNT OF \$3,000.00 IS BEING PAID UPON RECORDING THIS MORTGAGE.

**THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT** (this "Mortgage") is made this 22nd day of October, 2009 between Dean R. Kretschmar ("Grantor"), whose address is 2833 [REDACTED] 35th Court, Fort Lauderdale, FL 33308 and Mercata Justa, L.L.C., a Delaware limited liability company ("Lender"), whose address is Morgan, Lewis & Bockius LLP, 77 West Wacker Drive, Chicago, IL 60601-5094, Attn: Matt McKim.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor agrees that to secure:

(a) the last \$1,500,000.00 outstanding under that certain Term Loan Note dated as of the date hereof made by Mercata Justa Partners, L.L.C., a Delaware limited liability company ("Borrower") payable to the order of Lender in the principal amount of \$4,500,000.00 (as the same may be amended, supplemented, extended, restated, replaced or otherwise modified from time to time, the "Note"), and/or this Mortgage, (collectively, the "Indebtedness"); and

(b) the performance of all other covenants, agreements, obligations and liabilities of Grantor and/or Borrower (the "Obligations") under or pursuant to the provisions of this Mortgage, the Note and/or any of the other documents executed in connection therewith, as the same may be amended, supplemented, extended, restated, replaced or otherwise modified from time to time, (the "Loan Documents"), all of which Obligations have been guaranteed by Grantor pursuant to a Guaranty of even date herewith ("Guaranty");

GRANTOR HEREBY GRANTS TO LENDER A LIEN UPON AND A SECURITY INTEREST IN, AND HEREBY MORTGAGES, GRANTS, ASSIGNS, TRANSFERS AND SETS OVER TO LENDER:

The real property located in Broward County, Florida which is commonly known by the street address of 2833 N.E. 35th Court, Fort Lauderdale, FL 33308 and is legally described on Exhibit A attached hereto, together with all of the buildings, improvements, structures and fixtures now or subsequently erected or located thereon (collectively, the "Real Property"); and

**TOGETHER** with all easements, licenses, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock now or hereafter related to the Real Property, and all fixtures now or hereafter attached to the Real Property, including all replacements and additions thereto and substitutions thereof; and

**TOGETHER** with all of the furniture, furnishings, appliances, equipment and articles of personal property of every kind and nature whatsoever, and all appurtenances and additions thereto and substitutions or replacements thereof currently owned or subsequently acquired by Borrower and now or subsequently attached to, or contained in or used or usable in any way in connection with the Real Property (the "Personal Property").

All of the foregoing property, rights and interests are collectively referred to as the "Mortgaged Property".

NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE AMOUNT OF RECOVERY UNDER THIS MORTGAGE IS LIMITED TO THE PRINCIPAL AMOUNT OF ONE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS(\$1,500,000) PLUS INTEREST THEREON, AND ADVANCES TO PRESERVE OR PROTECT THE PROPERTY AND/OR ENFORCE THE LIEN OF THIS MORTGAGE AND ANY FUTURE ADVANCES ON WHICH APPLICABLE FLORIDA DOCUMENTARY STAMP TAX AND NON-RECURRING INTANGIBLE TAX ARE PAID, PLUS INTEREST ON SUCH ADVANCES.

**TO HAVE AND TO HOLD**, the said Mortgaged Property and the rights and privileges hereby mortgaged unto Lender, its successors and assigns for the uses and purposes set forth, until the Indebtedness is fully paid and the Obligations fully performed.

**AND Grantor** does hereby fully warrant the title to the said Mortgaged Property and will defend the same against lawful claims of all persons whomsoever, subject to that certain Mortgage made by Grantor in favor of Bank of America, N.A., dated August 21, 2007 and recorded September 10, 2007 in Official Records Book 44588, at Page 382 of the Public Records of Broward County, Florida, securing the original principal amount of \$2,000,000 (the "Senior Mortgage"), and those matters, if any, that are set forth in Schedule B – Part I of the loan policy of title insurance issued by Westcor Land Title Insurance Company and delivered to Lender (the "Permitted Exceptions").

**AND Grantor** further warrants and represents as follows to Lender and to any title insurance company and title agent issuing a policy of title insurance insuring the lien of this Mortgage:

A. That the Real Property is in the exclusive possession of Borrower and there is no other person or entity with a claim of possession to the Real Property.

B. That there are no judgments or other matters pending against Borrower that could give rise to a lien that would attach to the Real Property.

C. That no improvements have been made to the Real Property within ninety (90) days prior to the date hereof for which payment has not been made in full, there are no unpaid bills or claims outstanding for labor or materials incident to any construction, repair, renovation, or improvement upon the Real Property furnished within ninety (90) days prior to the date hereof which have not been paid in full and there are no construction liens, contractor's liens, materialman's liens or other liens under Chapter 713, Florida Statutes, filed against the Real Property.

D. That, except for this Mortgage, Grantor has taken no action, including the execution of any instrument, within sixty (60) days prior to the date hereof that would affect title to or encumber the Real Property nor will Grantor take any action that would affect title to or encumber the Real Property at any time from and after the date of execution of this Mortgage until this Mortgage has been recorded in the Public Records of the County in which the Real Property is located.

**AND Grantor** further covenants with Lender as follows:

1. Payment of Indebtedness. Grantor shall pay when due all sums provided in the Loan Documents.

2. Payment of Taxes and Other Impositions. Grantor shall pay when due, and without requiring any notice from Lender, all taxes and assessments of any type or nature, all charges for any easement or agreement maintained for the benefit of any of the Mortgaged Property, all permit, inspection and license fees, all water and sewer rents and charges and all other charges even if unforeseen or extraordinary, imposed upon or assessed against or which may become a lien on any of the Mortgaged Property or any interest of Lender therein (collectively, the "Impositions"), and Grantor shall produce receipts therefore upon demand. Grantor shall immediately pay and discharge any claim, lien or encumbrance against the Mortgaged Property which may be or become superior to this Mortgage (unless herein above specifically excepted) and to permit no default or delinquency on any other lien, encumbrance or charge against the Mortgaged Property.

3. Insurance. Grantor shall keep the Mortgaged Property insured against all loss and damage by fire, lightning, windstorm, water damage, flood and by such other further risks and hazards as now are or subsequently may be covered by an "all risk" or "extended coverage" policy and such other hazards, in such amounts as may be required by Lender. Grantor shall keep all such insurance in effect at all times until the Indebtedness is paid in full and this Mortgage is satisfied of record. Each policy and renewal of said insurance shall name Lender as loss payee, shall contain a non-contributory mortgage clause in favor of and acceptable to Lender, shall provide that it shall not be cancelled, non-renewed or materially amended without 30-days' prior written notice to Lender, and shall otherwise be in form and substance satisfactory to Lender. Grantor shall deliver to Lender, and Lender shall have the right to hold, the original of each policy and renewal of insurance required hereunder. Grantor shall pay promptly when due all premiums of such insurance and not later than 15 days prior to the expiration of each policy and renewal of such insurance, Grantor shall cause to be delivered to Lender a renewed original policy or policies, marked by the insurance agent as "premium paid," or accompanied by such other evidence of payment satisfactory to Lender. If Grantor fails to do or if for any reason, any of the insurance coverage required hereunder ceases to be in full force and effect, then Lender, at its option and without notice, may effect such insurance from year to year, and pay the premium or premiums therefor, and Grantor shall pay to Lender on demand such premium or premiums so paid by Lender with interest from the time of payment at the default rate set forth in the Loan Documents and the same shall be secured by this Mortgage and shall be collectible in the same manner as the Indebtedness secured by this Mortgage.

4. Casualty. In the event that the Mortgaged Property is damaged by fire or other casualty, Grantor hereby authorizes and empowers Lender, at its option and in its sole discretion, as attorney-in-fact for Grantor, to make proof of loss, to adjust and compromise any claim under any insurance policy, to appear in and prosecute any action arising from any policy, to collect and receive insurance proceeds and to deduct therefrom Lender's expenses incurred in the collection process. The insurance proceeds or any part thereof received by Lender may be applied by Lender toward reimbursement of all costs and expenses of Lender in collecting such

proceeds, and the balance, at the option of Lender in its sole and absolute discretion, may be applied to the principal (to the installments in inverse order of maturity, if payable in installments) and interest due or to become due under the Loan Documents, to fulfill any other Obligation of Grantor, or to the restoration or repair of the property damaged in accordance with such condition as Lender may require.

5. Escrow Payments. Lender shall be entitled to require Grantor to pay, and upon written demand to Grantor, Grantor shall pay to Lender, on the day that monthly payments are due under the Loan Documents, or if the Loan Documents do not provide for monthly payments, then on the first day of each month, an amount equal to 1/12th of the estimated annual premiums due on the insurance required hereunder plus 1/12th of the estimated annual amount of the Impositions. Grantor shall not be entitled to interest thereon. To the extent permitted by applicable law, Lender may apply such payments to any past due Indebtedness and then to the payment of the insurance premiums and Impositions when due.

6. Maintenance; No Alterations; Inspections. Grantor shall maintain the Mortgaged Property in good condition, and repair, including but not limited to the making of such repairs as Lender may from time to time determine to be necessary, for the preservation of the same. Grantor shall not commit, suffer or permit any waste of all or any portion of the Mortgaged Property. Grantor shall not cause or permit any portion of the Mortgaged Property to be demolished or materially altered, nor any material additions built, without the prior written consent of Lender. Lender and any persons authorized by Lender shall have the right to enter and inspect the Mortgaged Property upon one day's advance notice to Grantor, except that such notice shall not be required in the case of emergency.

7. Compliance with Requirements. Grantor shall promptly comply with, or cause to be complied with, and conform to all present and future laws, statutes, codes, ordinances, orders, judgments, decrees, rules, regulations and requirements of each of the United States of America, any State and any municipality, local government or other political subdivision thereof and any agency, department, bureau, board, commission or other instrumentality of any of them, now existing or subsequently created which has jurisdiction over the Mortgaged Property and all covenants, restrictions and conditions now or later of record which may be applicable to any of the Mortgaged Property, or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of any of the Mortgaged Property, irrespective of the nature of the work required to be done by any of the foregoing.

8. Environmental Restrictions. Grantor represents, warrants and covenants to Lender that no Hazardous Materials (defined below) are located on or under the Mortgaged Property and that Grantor shall not cause or permit any Hazardous Materials to be brought onto or under the Mortgaged Property, except for small quantities of Hazardous Materials that are generally recognized to be appropriate to residential uses and that are kept in compliance with all applicable Environmental Laws. Grantor shall at all times comply with all Environmental Laws affecting the Property and shall not permit or suffer any other person to violate any Environmental Laws with respect to the Mortgaged Property. Grantor shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Mortgaged Property and any

Hazardous Material or Environmental Law. Grantor agrees to defend, indemnify and hold Lender and its successors and assigns free and harmless from and against all claims, losses, damages, liabilities, fines, penalties, costs and expenses (including, without limitation, attorneys' fees and disbursements) that Lender may sustain by reason of any breach of the representations, warranties and covenants made in this paragraph. The foregoing indemnification shall survive the full payment of all of the Indebtedness, performance of the other Obligations and foreclosure. For the purposes of this Mortgage, "Hazardous Materials" means and includes any hazardous, toxic or dangerous waste, substance or material defined as such in (or for purposes of) any Environmental Law and includes, without limitation, gasoline, kerosene, other flammable or toxic petroleum products, pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde and radioactive materials. For the purposes of this Mortgage, "Environmental Laws" means and includes the federal Comprehensive Environmental Response Compensation and Liability Act, any so-called "Superfund" or "Superlien" law, and any other federal, state or local law, ordinance or other legal requirement regulating, relating to, or imposing liability or standards of conduct concerning, health, safety and/or the environment (including, but limited to, hazardous, toxic or dangerous substance and materials), as now or at any time in effect.

9. Restrictions on Liens and Encumbrances. Except for the lien created by the Senior Mortgage, the lien of this Mortgage and the Permitted Exceptions, Grantor shall not further mortgage, nor otherwise encumber the Mortgaged Property nor create or suffer to exist any lien, charge or encumbrance on the Mortgaged Property, or any part thereof, whether superior or subordinate to the lien of this Mortgage and whether recourse or non-recourse.

10. Due on Sale; No Assumption. If all or any part of the Mortgaged Property or any interest in it is sold or transferred (or if Grantor is not a natural person, if an ownership or other beneficial interest in Grantor is sold or transferred) without Lender's prior written consent, then Lender, at Lender's option, and without notice to Grantor (unless and to the extent such notice is required by applicable law), may declare all the sums secured by this Mortgage to be immediately due and payable and exercise all remedies provided for herein or available at law or in equity, including, without limitation, foreclosure. However, this option shall not be exercised by Lender if exercise is prohibited by Federal law as of the date of this Mortgage. This Mortgage may not be assumed by any purchaser of the Mortgaged Property without Lender's consent. If an assumption is allowed, Lender may charge an assumption fee and require the person(s) assuming the loan to pay additional charges as authorized by law.

11. Condemnation. Grantor hereby assigns to Lender all awards and claims for damages in connection with any condemnation or other taking of any part of the Mortgaged Property, and all proceeds therefrom, and hereby authorizes Lender, at its option and in its sole discretion, to commence, appear in and prosecute any action or proceeding relating to any such taking and to settle or compromise any claim in connection with such taking. Immediately upon obtaining knowledge of any proposed or actual condemnation or other taking of any part of the Mortgaged Property, Grantor will give Lender written notice thereof. All awards and proceeds of such a taking may be applied by Lender in the same manner as insurance proceeds, as provided above.

12. Leases and Rents. Without the prior written consent of Lender, which Lender may withhold in its sole and absolute discretion, Grantor shall not enter into any written or oral lease, license or other occupancy and/or use agreement (hereinafter, a "Lease") with respect to the Mortgaged Property or any part thereof. Grantor hereby assigns to Lender as further security for the payment of the Indebtedness and performance of the Obligations, all Leases (whether or not entered into in violation of this Mortgage) and all rents, security deposits and other revenues, income and profits arising from any and all Leases and/or other uses of the Mortgaged Property (collectively, the "Rents"). Grantor grants to Lender the right to collect the Rents and to apply the Rents on account of the Indebtedness. The foregoing assignment and grant is present and absolute and shall continue in effect until the Indebtedness is paid in full, but Lender hereby waives the right to collect and apply the Rents until the occurrence of an Event of Default under this Mortgage.

13. Lender's Right to Perform. If Grantor fails to perform any of its obligations under this Mortgage or the other Loan Documents, or if Grantor fails to pay any claim, lien or encumbrance which is superior to, in parity with or subordinate to this Mortgage, or if any other event occurs that may adversely affect Lender's rights in the Mortgaged Property (such as a legal proceeding in bankruptcy or for forfeiture or for enforcement of laws or other claims or liens against or with respect to the Mortgaged Property), then Lender may do and pay for whatever is necessary to perform Grantor's obligations and/or to protect the value of the Mortgaged Property and Lender's rights therein. Lender's actions may include, without limitation, appearing in court, paying attorneys' fees and disbursements, paying taxes and insurance premiums and paying for periodic inspections of the Mortgaged Property. In addition, Lender or its agents may enter the Mortgaged Property to make repairs, change locks, eliminate violations of law or dangerous conditions, turn utilities on or off and take whatever other actions are necessary to perform Grantor's unperformed obligations under the Loan Documents and/or to protect the value of the Mortgaged Property and Lender's rights therein. Although Lender may take action under this paragraph, Lender does not have to do so. Neither the advancement of monies nor the taking of any other action under this paragraph shall be deemed to cure any default of Grantor or in any way waive or affect Lender's right of foreclosure or any other right or remedy hereunder. Grantor shall pay to Lender on demand all amounts spent by Lender under this Mortgage (including, without limitation, all costs and reasonable attorneys fees, whether or not legal action has actually been filed), with interest from the time of payment at the default rate set forth in the Loan Documents and the same shall be a lien on the Mortgaged Property secured by this Mortgage and shall be collectible in the same manner as the Indebtedness secured by this Mortgage.

14. Legal Proceedings and Expenses. If any action or proceeding shall be commenced by Lender (including but not limited to any action to foreclose this Mortgage or to collect the Indebtedness), or any action or proceeding is commenced with respect to this Mortgage, the Mortgaged Property or Grantor to which Lender is made a party, or in which it becomes necessary to defend or uphold the lien of this Mortgage (including, without limitation, any bankruptcy or similar proceeding), or in which Lender is served with any legal process, discovery notice or subpoena, then Grantor shall pay to Lender upon demand all of the expenses which have been or may be incurred by Lender with respect to the foregoing (including reasonable attorneys fees and disbursements), together with interest from the time of payment at

the default rate set forth in the Loan Documents and the same shall be a lien on the Mortgaged Property secured by this Mortgage and shall be collectible in the same manner as the Indebtedness secured by this Mortgage.

15. Events of Default. As used herein, the term "Event of Default" means the occurrence of any of the following events: (1) if Borrower or Grantor fails to make any payment when due under any of the Loan Documents; (2) if Borrower or Grantor fails to perform any of their other obligations, covenants or agreements under the Loan Documents; (3) if a petition is filed or other proceeding started under the federal Bankruptcy Code or any other existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to Borrower or Grantor, or seeking to adjudicate Borrower or Grantor a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to Borrower or Grantor or their debts, or if a receiver is appointed or writ or order of attachment, levy or judgment is issued against Borrower, Grantor or the Mortgaged Property or other property, assets or income that affects Borrower's or Grantor's ability to make payments under the Loan Documents or that adversely affects Lender's interests in the Mortgaged Property or if Borrower or Grantor makes a general assignment for the benefit of Borrower's or Grantor's creditors (collectively, a "Bankruptcy Default"); (4) if any other lienholder gains or appears to gain priority over Lender with respect to the Mortgaged Property, except as may be expressly permitted in writing by Lender; (5) if the Mortgaged Property is condemned or is totally or partially destroyed by fire or other hazards or any proceeding is commenced which materially affects Lender's interest in the Mortgaged Property; (6) if any of the obligations secured by any prior mortgage or lien on the Mortgaged Property is in default; (7) if a foreclosure proceeding or collection action has been commenced with respect to any of the Mortgaged Property; (8) if Borrower or Grantor commits fraud or misrepresents any information in any loan application submitted to Lender or in any of the Loan Documents at any time; or (9) if without Lender's consent, Grantor transfers title to Mortgaged Property or there occurs any of the other events described in the "Due on Sale" paragraph of this Mortgage.

16. Remedies. Upon the occurrence of any Event of Default, in addition to any other rights and remedies Lender may have pursuant to this Mortgage or the other Loan Documents, or at law or in equity (all of which are hereby reserved), and without limitation, (a) if such event is a Bankruptcy Default, then automatically the Indebtedness (including all accrued interest thereon) immediately shall become due and payable (provided that Lender may negate such acceleration by notice to Borrower and Grantor), and (b) if such event is any other Event of Default, by notice to Borrower and Grantor, Lender may declare the Indebtedness (including all accrued interest thereon) to be immediately due and payable. Except as expressly provided above in this paragraph, presentment, demand, protest and all other notices of any kind are hereby expressly waived. If an Event of Default shall have occurred and be continuing, Lender as a matter of right and without notice to Borrower or Grantor, unless otherwise required by applicable law, and without regard to the adequacy or inadequacy of the Mortgaged Property or any other collateral as security for the Indebtedness and Obligations or the interest of Grantor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers or other manager of the Mortgaged Property. No remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedy provided or permitted under

the Loan Documents, or at law or in equity, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

17. Security Agreement under Uniform Commercial Code. (a) It is the intention of the parties hereto that this Mortgage shall constitute a Security Agreement within the meaning of the Uniform Commercial Code (the "Code") of the State of Florida with respect to the Personal Property. If an Event of Default shall occur under this Mortgage, then in addition to having any other right or remedy available at law or in equity, Lender shall have the option of either (i) proceeding under the Code and exercising such rights and remedies as may be provided to a secured party by the Code with respect to all or any portion of the Personal Property or (ii) treating such property as real property and proceeding with respect to both the real and personal property constituting the Mortgaged Property in accordance with Lender's rights, powers and remedies with respect to the real property (in which event the default provisions of the Code shall not apply). If Lender shall elect to proceed under the Code, then ten days' notice of sale of the personal property shall be deemed reasonable notice and the reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by Lender shall include, but not be limited to, attorneys' fees and legal expenses. Grantor, upon request by Lender from time to time, shall execute and deliver to Lender, at Grantor's cost and expense, any financing statement or other document as Lender may request in order to perfect, preserve, maintain or continue the security interest under and the priority of this Mortgage. Pursuant to the provisions of the Code, Grantor hereby authorizes Lender, without the signature of Grantor, to execute and file any such financing and continuation statements.

18. Extension, Release, Etc... Without affecting the liability of any person (other than any person released pursuant to the provisions of this paragraph) for payment of any indebtedness secured hereby and without affecting the priority or extent of the lien hereof upon any property not specifically released pursuant hereto, Lender may at any time and from time to time without notice and without limitation as to any legal right or privilege of Lender: (a) release any person liable for payment of any of the Indebtedness, (b) extend the time or agree to alter the terms of payment of any of the Indebtedness, (c) accept additional security of any kind, (d) release any property securing the indebtedness or (e) consent to the creation of any easement on or over the Mortgaged Property or any covenants restricting use or occupancy thereof.

19. Senior Mortgage. (a) This Mortgage is subject and subordinate to the Senior Mortgage. Grantor and Lender acknowledge that all right, title and interest of Lender hereunder is and shall be subject and subordinate to the right, title and interest of the holder or holders of the Senior Mortgage.

(b) With respect to the Senior Mortgage, Grantor covenants and agrees as follows: (i) promptly and faithfully to observe, perform and comply with all of the terms, covenants and provisions of the Senior Mortgage, on its part to be observed, performed and complied with, at the applicable time set forth in the Senior Mortgage, as the case may be, in accordance with the terms thereof; (ii) to refrain from doing anything, as a result of which, there could be a default or breach of any of the terms of the Senior Mortgage; (iii) not to do, permit or suffer any event of omission as a result of which there could occur a default or breach under the Senior Mortgage; (iv) not to modify, amend or in any way alter or permit the alteration of any of the terms of the

Senior Mortgage or grant any consents or waivers under the Senior Mortgage; (v) to give Lender immediate notice of any default by any party under the Senior Mortgage and promptly to deliver to Lender a copy of each notice of default and all other notices, communications, plans, specifications and other statements (including financial statements), responses, similar instruments received or delivered by Grantor in connection with the Senior Mortgage; and (vi) to furnish to Lender copies of such information and evidence as Lender may reasonably require concerning Grantor's due observance, performance and compliance with the terms, covenants and provisions of the Senior Mortgage.

(c) With respect to the Senior Mortgage, Grantor hereby warrants and represents as follows: (i) the Senior Mortgage is in full force and effect, unmodified by any writing or otherwise; (ii) all payments payable under the Senior Mortgage have been paid to the extent that they are payable to the date hereof; (iii) Grantor is not in default under any of the terms of the Senior Mortgage and there are no circumstances which, with the passage of time or the giving of notice or both would constitute such default; and (iv) Grantor has delivered to Lender a true, accurate and complete copy of the Senior Mortgage.

(d) The occurrence of any default under the Senior Mortgage or under any note secured thereby which remains uncured after any applicable notice and cure periods provided for therein shall, likewise constitute an Event of Default under this Mortgage. In the event the Senior Mortgage is hereafter foreclosed, Grantor hereby assigns to Lender any proceeds from the foreclosure sale (or transfer in lieu thereof) in excess of the amount necessary to pay off the indebtedness then validly secured by the Senior Mortgage thus foreclosed, which excess proceeds shall be applied by Lender to reduce the indebtedness secured by this Mortgage in whatever order Lender shall determine.

(e) In addition to all other rights and remedies provided hereunder or by law to Lender, and not in substitution therefor, Lender may, but shall not be obligated to, take any action or advance any funds deemed by Lender to be necessary or desirable to prevent, cure or undertake to cure any default by Grantor under the Senior Mortgage or to protect the priority of the lien of this Mortgage, and any funds expended or expenses incurred by Lender in so doing shall be immediately due and payable by Grantor and shall be secured by the lien of this Mortgage as part of the Indebtedness. Lender shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of any funds thus advanced by Lender.

(f) In addition to all other rights or remedies provided hereunder or by law to Lender, but not in substitution therefor, Lender may, but shall not be obligated to, prepay, in whole or in part, the indebtedness secured by the Senior Mortgage or purchase and obtain an assignment of the Senior Mortgage in the event of any default under the Senior Mortgage or under this Mortgage which remains uncured after any applicable notice and cure periods provided for therein or herein. In any such event the amounts thus expended by Lender (including the amount of any prepayment premium or penalty) shall be added to the indebtedness secured hereunder as part of the Indebtedness, and at the option of Lender shall be immediately due and payable by Grantor.

20. Grantor's Waiver of Rights. To the fullest extent permitted by law, Grantor waives the benefit of all laws now existing or that may subsequently be enacted providing for (a) any appraisal before sale of any portion of the Mortgaged Property, (b) any extension of the time for the enforcement of the collection of the Indebtedness or the creation or extension of a period of redemption from any sale made in collecting such debt and (c) exemption of the Mortgaged Property from attachment, levy or sale under execution or exemption from civil process.

21. No Oral Modifications; Forbearance by Lender Not a Waiver. No amendment, modification, waiver or discharge of this Mortgage or any provision hereof (including, without limitation, this sentence) shall be valid or effective unless in writing and signed by the party against whom enforcement of such amendment, modification, waiver or discharge is sought and then only to the extent set forth in such writing. No delay or omission of or forbearance by Lender in exercising any right, power or remedy accruing under or pursuant to this Mortgage, at law, in equity, or otherwise, shall waive, exhaust or impair any right, power or remedy of Lender. No waiver by Lender of any default or Event of Default shall constitute a waiver of or consent to subsequent defaults.

22. Priority of Subsequent Agreements. Any modification or other agreement made by Grantor and Lender after the date of this Mortgage relating to this Mortgage shall be superior to the rights of the holder of any intervening or subordinate lien or encumbrance.

23. Notices. All notices, requests, demands and other communications hereunder and under the other Loan Documents ("Notices") shall be deemed to have been sufficiently given or served when presented personally, when delivered to an overnight courier service with guaranteed next business day delivery or when deposited in the mail by certified or registered mail, postage prepaid, addressed as follows: (a) if to Grantor, at the address of Grantor given on the first page of this Mortgage, marked to the attention of Dean R. Kretschmar; and (b) if to Lender, at the address of Lender given on the first page of this Mortgage, marked to the attention of [Matt McKim], with a copy to Elizabeth S. Perdue, Esq., Morgan, Lewis & Bockius LLP, 77 West Wacker Drive, Chicago, IL 60601. All Notices shall be deemed to have been received upon the earlier of actual receipt thereof or the third calendar day after such mailing. Either party may change its address by notice to the other party.

24. Designation of Jurisdiction. Grantor hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the courts of the State of Florida and of the United States of America located in the County in which the Real Property is located for any actions, suits or proceedings arising out of or relating to this Mortgage and the other Loan Documents, and further agrees that service of any process, summons, notice or document by any of the means set forth above in the notice paragraph of this Mortgage to Grantor's address set forth above shall be effective service of process for any action, suit or proceeding brought against Grantor in any such court.

25. Interpretation. The captions used in this Mortgage are for convenience of reference only and shall not be construed to extend, limit or modify the scope or meaning of the respective paragraphs to which they relate. This Mortgage shall not be construed more strictly against one party than against the other merely by virtue of the fact that this Mortgage may have been

physically prepared by one of the parties, or such party's counsel, it being agreed that all parties and their respective counsel have mutually participated in the negotiation and preparation of this Mortgage.

26. Successors and Assigns; Entire Agreement. This Mortgage shall be binding upon and inure to the benefit of Grantor and Lender and their respective successors and assigns. This Mortgage contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior and contemporaneous negotiations, representations, understandings and agreements, whether written or oral, all of which are merged into this Mortgage.

27. Joint and Several Liability. If Grantor consists of two or more parties, each such party shall be jointly and severally liable for the representations, warranties, covenants and other obligations of Grantor hereunder.

28. Future Advances. In addition to all other Indebtedness secured by this Mortgage, this Mortgage shall secure also such future advances, whether such advances are obligatory or to be made at the option of Lender, or otherwise, as are made by Lender to Grantor for any purpose within twenty (20) years from the date of this Mortgage to the same extent as if such advances were made on the date of the execution of this Mortgage, although there may be no indebtedness outstanding at the time any advance is made. It is understood and agreed that as of the date hereof, Lender has no obligation to make any such future advance and Grantor has no obligation to borrow any such future advance and that neither Lender nor Grantor shall have any such obligation unless the same is expressly set forth in a written instrument executed by Lender and Grantor. The total amount of the Indebtedness, including future advances, that is secured by this Mortgage, may increase or decrease from time to time, but shall not exceed a maximum principal amount of \$10,000,000.00 at any one time, plus interest thereon and any disbursement made by Lender for the payment of taxes, levies or insurance on the property encumbered by this Mortgage, with interest on such disbursement. It shall be an Event of Default hereunder if Grantor shall file for record a notice limiting the maximum principal amount which may be secured by this Mortgage.

29. Senior Mortgage Provisions. Pursuant to Section 697.04(1)(b), Florida Statutes, Grantor hereby gives notice that the maximum principal amount secured by the Senior Mortgage shall hereafter be limited to the principal balance thereof outstanding as of the date of this notice, which Grantor certifies to be in an amount not greater than ONE MILLION NINE HUNDRED FIFTY THOUSAND SEVEN HUNDRED NINETY-TWO and 25/100 DOLLARS (\$1,950,792.25). Grantor further certifies that a copy of this notice has been furnished to the holder of the Senior Mortgage on or prior to this date by certified mail as required in the above-referenced statute and by any other form of notice as may be required under the provisions of such Senior Mortgage. If the Senior Mortgage secures revolving or open end credit Grantor hereby certifies that all credit cards, checks and other devices used to obtain future advances under said Senior Mortgage have this date been surrendered to the holder of such Senior Mortgage.

30. Further Assurances. Grantor agrees that, within five business days after Lender's demand, Grantor will do any act or execute any additional documents (including, but not limited to, security agreements and financing statements covering any personalty included or to be included in the Mortgaged Property) as may be required by Lender to confirm the lien of this Mortgage and all other rights or benefits conferred or intended to be conferred by the Loan Documents and to correct any errors or ambiguities therein.

31. Business Purpose. Grantor hereby represents and certifies to Lender that all of the Indebtedness is an extension of credit made for business or commercial purposes of Grantor other than agricultural purposes and that the proceeds of the Indebtedness have not and will not be used for personal, family, household or agricultural purposes. Grantor understands that Lender has relied on this representation and certification in determining that the Indebtedness secured by this Mortgage is exempt from all provisions of the Federal Consumers Credit Protection Act (Truth-in-Lending Act) and Regulation "Z" of the Board of Governors of the Federal Reserve System.

**32. WAIVER OF JURY TRIAL. GRANTOR AND LENDER EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION OR PROCEEDING (INCLUDING COUNTERCLAIMS) BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MORTGAGE AND ANY DOCUMENT EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF GRANTOR, LENDER AND/OR ANY GUARANTORS. ACCORDINGLY, GRANTOR AND LENDER EACH HEREBY AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A JUDGE AND NOT BEFORE A JURY. FURTHER, GRANTOR AND LENDER EACH HEREBY CERTIFIES THAT NONE OF THE REPRESENTATIVES, AGENTS OR ATTORNEYS OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT IT WOULD NOT, IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION. GRANTOR ACKNOWLEDGES THAT THE PROVISIONS OF THIS PARAGRAPH ARE A MATERIAL INDUCEMENT FOR LENDER'S MAKING THE LOAN SECURED HEREBY.**

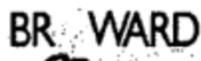
[end of page; signature page follows]



**EXHIBIT A**

Legal Description of the Real Property

Lot 22, Block B, CORAL RIDGE COUNTRY CLUB SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 36, Page 30, of the Public Records of Broward County, Florida.



FLORIDA  
 (954) 831-4000  
 Broward County  
 Governmental Center  
 115 S. Andrews Ave, Room  
 114  
 Fort Lauderdale, FL 33301  
 www.broward.org/records



Print Date:  
 12/16/2009 4:48:32 PM

Transaction #: 3954116  
 Receipt #: 3377614  
 Cashier Date: 12/16/2009 4:46:35 PM (3305)

Customer Information	Transaction Information	Payment Summary
( ) MORGAN LEWIS AND BOCKIUS LLP 5300 WACHOVIA FINANCIAL CENTER 200 S BISCAYNE BLVD MIAMI, FL	Date Received: 12/16/2009 Source Code: Over the Counter Q Code: Over the Counter Return Code: Over the Counter Trans Type: Recording Agent Ref Num:	Total Fees \$8379.00 Total Payments \$8379.00

1 Payments
CHECK 46899 <span style="float: right;">\$8379.00</span>

1 Recorded Items												
<div style="display: flex; justify-content: space-between;"> <div> (M) Mortgage/ Modifications &amp; Assumptions</div> <div>                             BK/PG: 46737/459 <span style="background-color: black; color: black;">[REDACTED]</span>                              4:46:31 PM                              From: KRETSCHMAR, DEAN R To: MERCATA JUSTA L L C                         </div> <div>Date: 12/16/2009</div> </div>												
<table border="1" style="width: 100%;"> <tr> <td>Recording @ 1st=\$10 Add'l=\$8.50 ea.</td> <td style="text-align: center;">15</td> <td style="text-align: right;">\$129.00</td> </tr> <tr> <td>Indexing @ 1st 4 Names Free, Add'l=\$1 ea.</td> <td style="text-align: center;">2</td> <td style="text-align: right;">\$0.00</td> </tr> <tr> <td>Mortgage Doc Stamps @ \$0.35 per \$100</td> <td style="text-align: center;">1500000</td> <td style="text-align: right;">\$5250.00</td> </tr> <tr> <td>Intangible Tax @ \$2 per \$1000</td> <td style="text-align: center;">1500000</td> <td style="text-align: right;">\$3000.00</td> </tr> </table>	Recording @ 1st=\$10 Add'l=\$8.50 ea.	15	\$129.00	Indexing @ 1st 4 Names Free, Add'l=\$1 ea.	2	\$0.00	Mortgage Doc Stamps @ \$0.35 per \$100	1500000	\$5250.00	Intangible Tax @ \$2 per \$1000	1500000	\$3000.00
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Indexing @ 1st 4 Names Free, Add'l=\$1 ea.	2	\$0.00										
Mortgage Doc Stamps @ \$0.35 per \$100	1500000	\$5250.00										
Intangible Tax @ \$2 per \$1000	1500000	\$3000.00										

0 Search Items
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0 Miscellaneous Items
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