HUD-1 A. Settlement Statement		U.S. Department of Housing and Urban Development		OMB No. 2502-0265	
B. Type of Los	an				
O 1, FHA O 4, V.A,	<ul> <li>2. FmH/</li> <li>5. Conv.</li> </ul>		6. File Number RechlerStonegat	7. Loan Number 6016869 ID:	8, Mortg, Ins. Case Num.
C. NOTE: This main	ked "(p.p.c.)" we	re paid outside the closing; I Rechter Holdings, Inc., as to	hey are shown here for Parcels I and III, Rech		included in the totals, nited liability company, as to Parcel II
Address of		241 East Prospect Road, F	ort Lauderdale, Florida	33334, 241 East Prospect Road, Fo	ort Laude
E. NAME OF S Address of					TIN:
F. NAME OF L Address of		Stonegate Bank 400 N Federal Highway, Po	mpanó Beach, Florida	33062	
G. PROPERTY	LOCATION	835 NE 2nd Avenue, Fort L	auderdale, Florida 3330	4-1934, 716-718 NE 2nd Avenue, F	Fort Lauc
H, SETTLEMENT AGENT: Robert Marc Schwartz, P.A Place of Settlement: 4700 NW Boca Raton Bow			Raton, Florida 33431-4860	TIN: 65-0705643 Phone: 561-241-1850	

DISBURSEMENT DATE: 9/20/17

J. Summary of borrowor's transaction		K. Summary of seller's transaction 400. Gross amount due to seller:	
100. Gross amount due from borrower: 101. Contract sales price		401. Contract sales price	
102. Personal property		402. Personal property	
103. Settlement charges to borrower (Line 1400)	462,348,04		
103. Settlement onarges to bonower teme 14607	430,670,25		
105. Payoff of second mongage loan		405	
Adjustments for items paid by seller in advance:		Adjustments for items paid by seller in advance:	
106, City/lown taxes		406. City/town taxes	
107. County faxes		407. Couply taxes	
108, Assessments		408. Assessments	
109.	-	409:	
110.		410.	
111.		411.	
112		412.	
112. 120. Gross amount due from borrower:	893.018.29	420. Gross amount due to seller:	0.0
200, Amounts paid or in behalf of borrower:		500. Reductions in amount due to seller:	
201, Deposit or earnest money		501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)	3,200,000.00	502: Settlement charges to seller (line 1400)	
203. Existing ican(s) taken subject to	1	503. Existing loan(s) taken subject to	
204. Principal amount of second mortgage		504. Payolf of first mortgage loan	
205.		505. Payoff of second mortgage loan	
205.		506. Deposits held by seller	
200, 200, 200, 200, 200, 200, 200, 200,		507, Principal amt of mortgage held by seller	
208.		508.	
209.		509.	
Adjustments for items unpaid by seller:		Adjustments for Items unpaid by seller:	
210. City/town taxes		510. City/town taxes	
211. County taxes		511. County laxes	
212. Assessments		512. Assessments	
213.		513.	
214.		514,	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
	3,200,000,00	520. Total reductions in amount due seller:	0.0
220, Total paid by/for borrower: 300, Cash at settlement from/to borrower:	0,200,000.00	600. Cash at settlement to/from seller:	
001, Gross amount due from borrower (line 120)	893,018,29	601. Gross amount due to seller (line 420)	0.0
(line 120) 302. Less amount paid by/for the borrower (line 220)	(3,200,000.00)	602. Less total reductions in amount dué seller (line 520)	0,0
303. Cash ( ] From [7] To ) Borrower:	2,306,981.71	603. Cash ( To From ) Seller:	0,0

Substitute Form 1099 Soller Statement: The information contained in blocks E, G, H, and I and on line 401 is important tax information and is being furnished to the IRS. If you are required to file a return, a negligence penalty or other sanction will be imposed on you if this item is required to be reported and the IRS detormines that it has not been reported.

Seller Instructions: If this real estate was your principal residence, ille Form 2119, Sale or Exchange of Principal Residence, for any gain, with your tax return; for other transactions, complete the applicable garts of Form 4797, Form 6262 and/or Schedule D (Form 1040).

Borrower's Initial(s):

I. SETTLEMENT DATE:

9/20/17

MR

Seller's initial(s):

-1UD-1	U.S. Oep	artment of Hous	ing and Urban Develop	and the second se		Page
. Settlement charges				Bonower POC Seller POC	Paid from Borrower's	Paid from Seller's
700. Total Sales/Brokers Com. based on p		@	<u>%</u> =		Funds at	Sellers Funds at
701.	% to				Settlement	Settlement
02.	% lo			<u> </u>		
103. Commission paid at settlement						
800, Items payable in connection with loa	to n:			Borrower POC Seller POC		
	00 % to Stonegate Ba	nk			16,000.00	
302. Loan discount	% to					
803. Appraisal lee	to Stonegale Ba	ink		6250.00		
304. Appraisal Review Fee	to Stonegate Ba	ink		1695.00		
305. Wire Fee	to Stonegate Ba	ink			15.00	
306. Tax Service Fee	to Stonegale Ba	ink			395.00	
307. Flood Determination Fee	to Stonegate Ba	ink			60,00	
308, Environmental	to Land Science				3,000.00	
809. Environmental Review Fee	to Stonegate Ba	ink			225.00	·
310, CPM Real Estate Inspectiosn	to Stonegate Ba	ink.		1850.00		
311, Holdbacks	to Stonegate Ba	ink.			367,000.00	
900, items required by lender to be paid t	n advance:			Borrower POCSeller POC		
901. Interest from	lo		/day			
902. Mortgage insurance premium for	months to		<u> </u>			
003, Hazard insurance premium for	years to					
904. Flood Insurance premium for	years to		·			
905.	years lo					
1000. Reserves deposited with lender:	· · · · · ·			Borrower POC Seller POC		
1001, Hazard insurance		months @	per monih			
1002. Mortgage insurance		months @	per month			
1003. Cily properly laxes		months @	per month		28,836.79	
1004. County property taxes		months @	per month			
1005, Annual assessments		months @	per month			
1006. Flood Insurance		months @	per month			
1007.		months @	per month			
1008.		months @	per month			
1009. Aggregate accounting adjustment						
1100. Tille charges:				Borrower POC Seller POC		
1101. Setllement or closing fee	ig Robert Marc	Schwartz, P.A.			10,500.00	
1102. Abstract or litle search	to Attorneys' Til	le Fund Service	s, 1:LC		375,00	
1103. Title examination	10					
1104. Title insurance binder	to					<b>—</b>
1105, Document preparation	10					
1106. Notary fees	lo					
1107 Attorney's Fees	to			<u></u>		
(includes above item numbers:				).		
1108, Tille Insurance to	Old Republic National	Tille Insurance	Company/RMSPA		8,362,50	
(includes above item numbers)				)	in the second	
1109. Lender's coverage (Premium): \$3	,200,000.00 (\$8,362.5	0)				i stal
1110. Owner's coverage (Premium):					testa kari s	+
1111. Endorse: 5-25;8.1-25:F9-836,25					886.25	
1112.	to					
1113.	to					
1200. Government recording and transfe	r charges:					
1201. Recording fees Deer		ortgage(s)	\$214.00 Releases	\$18.50	232.50	
1202, City/county tax/stamps Deer	<u>M</u>	ortgage(s)	\$6,400,00	· · · · · · · · · · · · · · · · · · ·	6,400.00	
1203. State taxistemps Deer		ongage(s)	\$11,200,00		11,200.00	· · · ·
1204, Asm Lease & Rents		Broward County		······	78.00	
1205, Terminate NOC and Contractor's At	fi to E	Broward County	BOCC		18,50	
1300. Additional settlement charges:		d Rimmines 4-		Borrower POCSeller POC	550,00	
1301. Survey of 716 NE 2nd Ave.	to Accurate Lan				181.00	·
1302. Municipal Lien Search 716-718 NE					191.00	
1303, Municipal Lien Search 835 NE 2nd 1304, Municipal Lien Search 913 NE 4th /			·····		191,00	
1305, UCC-1 Recording fee	to Broward Cou				27.00	
					41.00	
1306. UCC-1 filing fee	to FL Dept. of S	/1636-0				
1305, OCC-1 ning ree 1307, Record Subordination Agr	to Broward Cou				52.50	
	and the second se	nty BOCC			7,500.00	
1307, Record Subordination Agr 1308, Lender's Attorney's Fees	to Broward Cou	nty BOCC				A second of the

Borrower's Initial(s): AAR

Seller's initial(s);

# HUD-1 SETTLEMENT STATEMENT ADDENDUM

FILE NUMBER;	RechterStonegal				
NAME OF BORROWER:	Rechter Holdings, Inc., as to Parcels Land III, Rechter Prog	gresso 835, LLC, a Fic	nda limited liat	bility company, a	is to
Address of Borrower:	Parcel II 241 East Prospect Road, Fort Lauderdale, Florida 33334.				
NAME OF SELLER:	2 Last responsional, for Landerand, forda 5504,	Less Eases respect to	oud, i vit Lauu	912019( )	
Address of Seller:					
NAME OF LENDER:	Stonegale Bank				
Address of Lender:	400 N Federal Highway, Pompiano Beach, Florida 33062	718 718 NE 2nd Au	navo Fortinu	مام <i>خ</i> دام ام	
PROPERTY LOCATION; SETTLEMENT AGENT:	835 NE 2nd Avenue, Fort Lauderdale, Florida 33304-1934 Robert Marc Schwartz, P.A.	, 710-718 NE 280 AV	enue, roncau	ueroale,	
Place of Settlement:	4700 NW Boca Raton Boulevard, Suite 104, Boca Raton,	Florida 33431-4860			
SETTLEMENT DATE:	9/20/17 DISBURS	EMENT DATE: 9/20	/17		
	Itemization of Additional HUD Li	ine Items			
escription	Payee	Borrower POC	Seller POC	Borrower	Sell
	<u></u>			<u> </u>	
				0	
iner lees	Federal Express			30.00	
			÷		
	Total HUD Line 1309 Expense	e: 0,00	0.00	30,00	0.0
s addendum is attached	f to a HUD-1 Settlement Statement executed by th	e aforementioned	parties and	is attached t	lo said
s addendum is attached D Statement for the pur	f to a HUD-1 Settlement Statement executed by the pose of itemizing expenses reflected on line 1309	e aforementioned of page 2 thereof	parties and	is attached	to said
s addendum is attached D Statement for the pur	i to a HUD-1 Settlement Statement executed by the pose of itemizing expenses reflected on line 1309	e aforementioned of page 2 thereof	parties and	is attached	lo said
s addendum is attached D Statement for the pur mower's Initial(s);	pose of itemizing expenses reflected on line 1309	e aforementioned of page 2 thereof rs initial(s):	parties and	is attached	to said

**HUD-1 SETTLEMENT STATEMENT ADDENDUM** RechterStonegat File Number: I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement. Borrower(s) Rechter Holdings, Inc. a Plorida corporation . e. e. s - Carl Carl Star By: Michael R. Rechter President (Corporate Seal) Rechter Progresso 835, LLC a Florida limited liability company . C. Mark ie C By : Michael R. Rechter Manager Settlement Agent The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement. Robert Marc Schwartz, P.A. Date: 11. 1. 1 18 . By : WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

#### LENDER'S FEES

BORROWERS:	RECHTER HOLDINGS, INC. RECHTER PROGRESSO 835, LLC
LENDER:	STONEGATE BANK
CLOSING DATE:	SEPTERMBER 20, 2017
LOAN NUMBER:	6016869

	GROSS AMOUNT OF LOAN:	\$3,200,000.00
1.	LENDER FEES AND EXPENSES	
	Lender's Fee Lender's Attorney Fees to Joseph B. Heimovics, P.A. Tax Service Fee Flood Determination Fee Environmental – Land Science Environmental Review Fee Appraisal Review Fee (POC \$1,695.00) Appraisal Review Fee (POC \$1,695.00) CPM Real Estate Inspections (POC \$1,850.00) Wire Fee	\$ 16,000.00 \$ 7,500.00 \$ 395.00 \$ 60.00 \$ 3,000.00 \$ 225.00 \$ \$ \$ \$ \$ \$ \$
2.	LENDER HOLDBACK Escrow holdback for 2017 property taxes (12 months + 2-month cushion) 716-718 NE 2 <sup>nd</sup> Ave, (\$768.58/mo)* 835 NE 2 <sup>nd</sup> Ave, (\$608.19/mo)* 913 NE 4 <sup>th</sup> Ave (\$608.51/mo)* Holdback for CRA per Loan Agreement Holdback for Stabilization per Loan Agreement	\$ 28,836.79 \$ 125,000.00 \$ 242,000.00
	TOTAL FEES, EXPENSES AND HOLDBACK:	\$ 423,031.79
	NET DISBURSEMENT TO BORROWER:	\$2,776,968.21

\*The amounts set forth herein are based on the property tax due for 2016, and the actual amounts due for 2017 will likely cause an adjustment in the amount escrowed going forward.

Joseph B. Heimovics, P.A. 15951 SW 41<sup>st</sup> Street, Suite 800 Davie, FL 33331

#### **CLOSING NOTES**

Borrower is responsible for all costs and expenses of the above-described Loan transaction, including, without limitation, insurances, surveys, appraisals, registration charges, Lender's attorney's fees and other matters required by the Lender. In the event the amounts above are insufficient to cover all costs and expenses, Borrower shall reimburse Lender for any such insufficiency upon demand.

Borrower acknowledges that Lender has retained Joseph B. Heimovics, P.A. ("Law Firm") as Lender's legal counsel in the subject Loan transaction for the exclusive and sole benefit of Lender. Notwithstanding that Law Firm's legal fees and costs are being charged to the Borrower as part of the Loan costs, Borrower acknowledges that Law Firm has only represented the Lender with respect to the Loan transaction. Borrower further acknowledges that Law Firm has made no legal representatives to Borrower with respect to the Loan or any matter connected with the Loan, and that Borrower has not relied upon Law Firm in any way whatsoever with respect to the Loan or any matter in connection with the Loan transaction.

The undersigned Borrower agrees to cooperate promptly with the Lender and its agents in the connection or completion of any of the loan documents after closing, if deemed necessary or desirable by Lender. Borrower understands that this may include the execution of additional or corrected documents consistent with the agreed upon loan terms.

Borrower has received a true copy of the above and hereby approves same and certifies that it is correct and hereby authorize Closing Agent to disburse the aforesaid costs.

BORROWERS:

**RECHTER HOLDINGS, INC.** 

By:

Michael R. Rechter, President

**RECHTER PROGRESSO 835, LLC** 

By:

Michael R. Rechter, Manager

Dated: September 20, 2017

Dated: September 20, 2017

Joseph B. Heimovics, P.A. 15951 SW 41<sup>st</sup> Street, Suite 800 Davie, FL 33331

# Loan Funding Requirements

Before the wire approved and initiated the Bank requires the below listed items be scanned and emailed to me <u>rduch@stonegatebank.com</u>. Should you have any questions please do not hesitate contacting me (954) 377-0928.

Borrower: Rechter Holdings, Inc. & Rechter Progresso 835, LLC (Co-Borrowers) Loan Number: 6016869

- □ Signed Promissory Note
- □ Signed Guaranty (s)
- □ Closing Statement/HUD-1 Settlement Statement (whichever is applicable)
- □ Title Insurance Commitment (MUST BE MARKED UP)

DOCUMENTARY STAMPS AND INTANGIBLE TAXES IN THE AMOUNT REQUIRED BY LAW ARE BEING PAID ON THE FULL FACE AMOUNT OF THIS PROMISSORY NOTE IN CONNECTION WITH THE RECORDING IN THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, OF THAT CERTAIN MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT OF EVEN DATE HEREOF.

#### PROMISSORY NOTE

(Loan Number 6016869)

Date of Note: September 19, 2017

Amount of Note: \$3,200,000.00 (U.S.)

<u>Maturity Date</u>: September 19, 2027, unless accelerated or extended pursuant to and in accordance with the terms and conditions set forth in this Note.

FOR VALUE RECEIVED, the undersigned, RECHTER HOLDINGS, INC., a Florida corporation, and RECHTER PROGRESSO 835, LLC, a Florida limited liability company (collectively "Borrowers"), each having an address of 241 East Prospect Road, Ft. Lauderdale, FL 33332, do hereby, jointly and severally, covenant and promise to pay to the order of STONEGATE BANK, a Florida banking corporation, or its successors or assigns, ("Lender"), at 400 North Federal Highway, Pompano Beach, Florida 33062, or at such other place as Lender may designate to Borrower in writing from time to time, in legal tender of the United States, Three Million Two Hundred Thousand and 00/100 Dollars (\$3,200,000.00), together with all accrued interest, which shall be due and payable upon the following terms and conditions contained in this Note and the Loan Agreement.

#### A. <u>Interest Rate</u>;

The interest rate for the first sixty (60) months shall be fixed at the rate of 4.50% per annum. The rate shall thereafter be adjusted to the then current Five (5) Year United States Treasury Note Rate plus a margin of 2.50%, with a minimum rate of 4.50% per annum, which shall then be a fixed interest rate until the date of maturity. The interest rates stated herein are subject to Borrower's strict compliance with its monetary and non-monetary obligations as set forth herein. Interest shall accrue and be paid on the actual number of calendar days elapsed from the date of each advance based on a 360 day year.

#### B. <u>Term</u>:

The term of this Promissory Note ("Note") shall be ten (10) years commencing from the date of execution of this Note and shall end on September 19, 2027 (the "Maturity Date").

#### C. <u>Payment Terms</u>:

During the entire ten (10) year term of this Note, Borrower shall make monthly principal and interest payments on the Loan based on a twenty-five (25) year amortization period, beginning with the first payment due on October 19, 2017, with all subsequent monthly payments due on the 19<sup>th</sup> day of each month thereafter. The entire remaining principal balance of this Note, plus all accrued but unpaid interest, shall be due and payable in full as a balloon payment on the Maturity Date. All payments made hereunder shall be credited first to accrued interest on the unpaid balance, next to the payment of principal, then to late fees and other fees charged on the account, and lastly to the repayment of any monies paid by Lender for the protection of the collateral securing this Note; however, in the event any default hereunder, Lender may, at its sole discretion, and in such order as it may choose, apply any

payment to interest, principal, protection of the collateral securing this Note and/or lawful charges and expenses then accrued.

#### D. <u>Prepayment</u>:

Borrowers may prepay all or any portion of this Note at any time without penalty.

#### E. <u>Security</u>:

This Note is secured by, among other things, (i) that certain Mortgage, Assignment of Rents and Security Agreement (as the same may be amended or modified from time to time, the "Mortgage") executed of even date herewith by Borrowers, granting Lender a first lien and security interest in and to those certain parcels of real property located in Ft. Lauderdale, Broward County, Florida, as more particularly described in the Mortgage; (ii) that certain Collateral Assignment of Leases, Rents and Contract Rights executed of even date herewith by Borrowers (as the same may be amended or modified from time to time, the "Collateral Assignment of Leases and Rents"); (iii) that certain UCC-1 Financing Statement; (iv) that certain Loan Agreement (as the same may be amended or modified from time to time, the "Loan Agreement") executed of even date herewith; (v) that certain Guaranty of Payments and Performance Agreement executed of even date herewith from Michael R. Rechter, in favor of Lender (the Mortgage, the Collateral Assignment of Leases and Rents, the Loan Agreement, the Guaranty in favor of Lender, and all other instruments and agreements securing, evidencing, or executed in connection with this Note shall collectively be referred to as the "Loan Documents"). The Lender is entitled to the benefit of this security.

#### F. Default and Default Interest Rate:

If any installment of principal or interest is not fully paid within five (5) days after the same become due and payable, or if any other monetary obligation due under this Note is not paid in full within five (5) days after same becomes due and payable; or if any non-monetary term, covenant, agreement or stipulation of this Note, the Mortgage or of any other instrument securing this Note is not promptly and fully performed within thirty (30) days after notice, or upon assigning for the benefit of creditors or the commencement of any bankruptcy, insolvency or reorganization proceedings, the entire indebtedness (including principal and accrued interest) remaining unpaid, shall, at the option of the Lender, become immediately due, payable and collectable, and while in default this Note and any deferred interest shall bear interest at the highest non-usurious rate permitted by the laws of the State of Florida ("Default Rate") irrespective of any declaration of maturity or acceleration.

#### G. Late Charges:

Lender may collect a late charge not to exceed an amount equal to five percent (5%) of any installment which is not paid within five (5) days of the due date thereof (except for the payment due on the Maturity Date for which there is no grace period), to cover the extra expense involved in handling delinquent payments, provided that collection of said late charge shall not be deemed a waiver by Lender of any of its rights under this Note.

#### H. <u>Acceleration</u>:

Should any default occur in the payment as stipulated above of either the interest or principal, then and in that event, the principal of this Note or any unpaid part thereof and all accrued interest thereon shall, in the sole discretion of Lender, at once become due and payable and may be collected forthwith without notice to the undersigned, regardless of the stipulated date of maturity. However, Lender may, in the sole discretion of Lender, accept payments made by Borrowers after any default has occurred, without waiving any of Lender's rights herein.

## I. <u>Costs</u>:

In the event that this Note is collected by law or through attorneys at law, or under advice therefrom (whether such attorneys are employees of Lender or an affiliate of Lender or are outside counsel), Borrowers and any endorser, guarantor or other person primarily or secondarily liable for payment hereof hereby, severally and jointly agree to pay all costs of collection, including reasonable attorneys' fees including charges for paralegals and others working under the direction or supervision of Lender's attorneys, whether or not suit is brought, and whether incurred in connection with collection, trial, appeal, bankruptcy or other creditors' proceedings or otherwise.

#### J. Loan Charges:

Nothing herein contained, nor any transaction related thereto, shall be construed or so operate as to require Borrowers or any person liable for the repayment of same, to pay interest in an amount or at a rate greater than the maximum allowed by applicable law. Should any interest or other charges paid by Borrowers, or any parties liable for the payment of the loan made pursuant to this Note, result in the computation or earning of interest in excess of the maximum legal rate of interest permitted under the law in effect while said interest is being earned, then any and all of that excess shall be and is waived by Lender, and all that excess shall be automatically credited against and in reduction of the principal balance, and any portion of the excess that exceeds the principal balance shall be paid by Lender to Borrowers or any parties liable for the payment of the loan made pursuant to this Note so that under no circumstances shall the Borrowers, or any parties liable for the payment of the payment of the loan hereunder, be required to pay interest in excess of the maximum rate allowed by applicable law.

#### K. Jurisdiction and Venue:

The laws of the State of Florida shall govern the interpretation and enforcement of this Note. In the event that legal action is instituted to collect any amounts due under, or to enforce any provision of, this instrument, Borrowers and any endorser, guarantor or other person primarily or secondarily liable for payment hereof consent to, and by execution hereof submit themselves to, the jurisdiction of the courts of the State of Florida, and, notwithstanding the place of residence of any of them or the place of execution of this instrument, such litigation may be brought in or transferred to a court of competent jurisdiction in and for Broward County, Florida.

## L. Right of Setoff:

To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrowers hold jointly with someone else and all accounts Borrowers may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrowers authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts.

#### M. <u>Miscellaneous</u>:

1. <u>TIME IS OF THE ESSENCE OF THIS NOTE</u>.

- 2. It is agreed that the granting to Borrowers or any other party of an extension or extensions of time for the payment of any sum or sums due under this Note or under the Mortgage or for the performance of any covenant or stipulation thereof or the taking of other or additional security shall not in any way release or affect the liability of Borrower under this Note or any of the Loan Documents.
- 3. This Note may not be changed orally, but only by an agreement in writing, signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.
- 4. All parties to this Note, whether Borrowers, principal, surely, guarantor or endorser, hereby waive presentment for payment, demand, notice, protest, notice of protest and notice of dishonor.
- 5. Anything herein to the contrary notwithstanding, the obligations of Borrowers under this Note shall be subject to the limitation that payments of interest shall not be required to the extent that receipt of any such payment by Lender would be contrary to provisions of law applicable to Lender limiting the maximum rate of interest which may be charged or collected by Lender.
- 6. Borrowers acknowledge that Lender shall have no obligation whatsoever to renew, modify or extend this Note or to refinance the indebtedness under this Note upon the maturity thereof, except as specifically provided herein.
- 7. Lender shall have the right to accept and apply to the outstanding balance of this Note any and all payments or partial payments received from Borrowers after the due date therefor, whether this Note has been accelerated or not, without waiver of any of Lender's rights to continue to enforce the terms of this Note and to seek any and all remedies provided for herein or in any instrument securing the same, including, but not limited to, the right to foreclose on such security.
- 8. The term "Borrower" as used herein, in every instance shall include the Borrowers of this Note, and its heirs, executors, administrators, successors, legal representatives and assigns, and shall denote the singular and/or plural, the masculine and/or feminine, and natural and/or artificial persons whenever and wherever the context so requires or admits.
- 9. If more than one party executes this Note, all such parties shall be jointly and severally liable for the payment of this Note.

## N. <u>Waiver of Jury Trial</u>:

BORROWERS HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER TO EXTEND THE LOAN TO BORROWERS AS EVIDENCED BY THIS NOTE. IN WITNESS WHEREOF, Borrowers has duly executed this Promissory Note in the original principal sum of \$3,200,000 on the 19<sup>th</sup> day of September, 2017.

#### BORROWERS:

**RECHTER HOLDINGS, INC.** 

a Florida corporation

By:

Michael R. Rechter, President

**RECHTER PROGRESSO 835, LLC** a Florida limited liability company

Michael R. Rechter, Manager

STATE OF FLORIDA COUNTY OF BROWARD PALM BEACH

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgements, the foregoing instrument was acknowledged before me by Michael R. Rechter, as President of Rechter Holdings, Inc., a Florida corporation, and as Manager of Rechter Progresso 835, LLC, a Florida limited liability company, who does so freely and voluntarily under authority duly vested in him by said companies. He is personally known to me or produced \_\_\_\_\_\_ as identification. The notary hereunder is not an obligor.

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WITNESS by hand and official seal in the County and State last aforesaid this  $20^{4}$  day of September, 2017.



NOTARY PUBLIC Print Name: <u>Christine Procte</u>r My Commission Expires 8/16/2020

#### GUARANTY OF PAYMENT AND PERFORMANCE [MICHAEL R. RECHTER] Loan Number 6016869

This Guaranty Agreement (this "<u>Guaranty</u>") is made as of the 19<sup>th</sup> day of September, 2017, by MICHAEL R. RECHTER, an individual, having an address of 182 Royal Palm Drive, Ft. Lauderdale, FL 33301 ("<u>Guarantor</u>"), in favor of STONEGATE BANK, a Florida banking corporation, together with its successors and assigns ("<u>Lender</u>").

#### Recitals

**RECHTER HOLDINGS, INC.**, a Florida corporation, and **RECHTER PROGRESSO 835, LLC**, a Florida limited liability company (collectively "Borrower"), have requested that Lender make a loan (the "Loan") to Borrower evidenced by that certain Promissory Note of even date herewith in the principal amount of Three Million Two Hundred Thousand and 00/100 Dollars (\$3,200,000.00) made by Borrower to the order of Lender (as the same may from time to time be amended, supplemented, restated or otherwise modified, hereafter collectively referred to as the "Note"). Certain terms and conditions of the Loan are set forth in the Loan Agreement dated of even date herewith between Borrower and Lender (as the same may from time to time be amended, supplemented, restated or otherwise modified, the "Loan Agreement"). As a condition precedent to making the Loan, Lender has required that Guarantor execute and deliver this Guaranty to Lender. Any capitalized term used and not defined in this Guaranty shall have the meaning given to such term in the Loan Agreement.

#### Agreements

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and in order to induce Lender to make the Loan to Borrower, Guarantor hereby guarantees to Lender the prompt and full payment and performance of the indebtedness and obligations described below in this Guaranty (collectively called the "Guaranteed Obligations"), this Guaranty being upon the following terms and conditions:

Section 1 Guaranty of Payment,

Guarantor hereby unconditionally and irrevocably guarantees to Lender the punctual payment when due, whether by lapse of time, by acceleration of maturity, or otherwise, of all principal, interest (including interest accruing after maturity and after the commencement of any bankruptcy or insolvency proceeding by or against Borrower, whether or not allowed in such proceeding), prepayment premiums, fees, late charges, costs, expenses, indemnification indebtedness, and other sums of money now or hereafter due and owing, or which Borrower is obligated to pay, pursuant to the terms of the Note, the Loan Agreement, that certain Mortgage, Assignment of Rents and Security Agreement dated as of even date herewith from Borrower in favor of Lender (as the same may be amended or modified from time to time, the "Mortgage") (including, without limitation, the prompt and timely payment and discharge of all Impositions (as defined in the Mortgage) and the timely payment of insurance premiums), that certain Environmental Indemnification Agreement dated as of even date herewith (as the same may be amended or modified, the "Environmental Agreement"), any application, agreement, note or other document executed and delivered by Borrower in connection with any Letter of Credit, any of the other Loan Documents, as the same may from time to time be amended, supplemented, restated or otherwise modified (collectively, the "Indebtedness"). The Indebtedness includes all reasonable costs and expenses incurred by Lender in seeking to enforce Lender's rights and remedies with respect to the Indebtedness and to protect, defend, maintain or enforce Lender's liens or security interests, including, without limitation, collection costs, default rates of interest, reasonable attorneys' fees and costs at trial and appellate levels and related costs, and costs of alternative dispute resolution, whether or not suit is filed or other proceedings are initiated thereon. This Guaranty covers the indebtedness presently outstanding and the indebtedness arising subsequent to the date hereof, including all amounts advanced by Lender, in stages or installments. The guaranty of Guarantor as set forth in this Section 1 is a continuing guaranty of payment and not a guaranty of collection.

The foregoing obligations guaranteed under this <u>Section 1</u> are defined as the "<u>Guaranteed Payment Obligations</u>." The Guaranteed Payment Obligations are included as part of the Guaranteed Obligations for all purposes of this Guaranty.

#### Section 2 Guaranty of Performance.

(a) Guarantor hereby unconditionally and irrevocably guarantees to Lender the complete performance when due of all other Obligations of Borrower under all of the Loan Documents, including, without limiting the generality of the foregoing, all such Obligations of Borrower to duly and punctually perform and observe all terms, covenants and conditions of the Note, the Mortgage, the Loan Agreement, the Environmental Agreement, all other Loan Documents. The foregoing obligations guaranteed under this Section 2(a) are defined as the "Guaranteed Performance Obligations." The Guaranteed Performance Obligations are included as part of the Guaranteed Obligations for all purposes of this Guaranty.

(b) The liability and obligations under this <u>Section 2</u> shall not be limited or restricted by the existence of, or any terms of, the guaranty of payment under <u>Section 1</u>.

#### Section 3 Primary Liability of Guarantor; Environmental Obligations.

(a) This Guaranty is an absolute, irrevocable and unconditional guaranty of payment and performance, and Guarantor shall be liable for the payment and performance of the Guaranteed Obligations as a primary obligor. This Guaranty shall be effective as a waiver of, and Guarantor hereby expressly waives, any right to which Guarantor may otherwise have been entitled, whether existing under statute, at Law or in equity, to require Lender to take prior recourse or proceedings against any collateral, security or Person. It shall not be necessary for Lender, in order to enforce such payment or performance by Guarantor, first to institute suit or pursue or exhaust any rights or remedies against Borrower or other Person liable on such indebtedness or for such performance, or to enforce any rights against any security given to secure such indebtedness or performance of the Guaranteed Obligations or any part thereof in any action to enforce this Guaranty, or to resort to any other means of obtaining payment or performance of the Guaranteed Obligations; provided, however, that nothing herein contained shall prevent Lender from suing on the Note or foreclosing the Mortgage or exercising any other right under the Loan Documents.

(b) Suit may be brought or demand may be made against Borrower or against any or all parties who have signed this Guaranty or any other guaranty covering all or any part of the Guaranteed Obligations, or against any one or more of them, separately or together, without impairing the rights of Lender against any party hereto. Any time that Lender is entitled to exercise its rights or remedies hereunder, it may in its discretion elect to demand payment and/or performance. If Lender elects to demand performance, it shall at all times thereafter have the right to demand payment until all of the Guaranteed Obligations have been paid and performed in full. If Lender elects to demand payment, it shall at all times thereafter have the right to demand performance until all of the Guaranteed Obligations have been paid and performed in full.

(c) The liability of Guarantor or any other Person hereunder for Guaranteed Obligations arising out of or related to the Environmental Agreement shall not be limited or affected in any way by any provision in this Guaranty, the other Loan Documents or applicable Law limiting the liability of Borrower, Guarantor or such other Person, or Lender's recourse or rights to a deficiency judgment.

## Section 4 Certain Agreements and Waivers by Guarantor.

(a) Guarantor agrees that neither Lender's rights or remedies nor Guarantor's obligations under the terms of this Guaranty shall be released, diminished, impaired, reduced or affected by any one or more of the following events, actions, facts, or circumstances, and the liability of Guarantor under this Guaranty shall be absolute, unconditional and irrevocable irrespective of:

(i) any limitation on the liability of, or recourse against, any other Person in any Loan Document or arising under any Law;

(ii) any claim or defense that this Guaranty was made without consideration or is not supported by adequate consideration or that the obligations of Guarantor hereunder exceed or are more burdensome than those of Borrower under the other Loan Documents;

(iii) the taking or accepting of any other security or guaranty for, or right of recourse with respect to, any or all of the Guaranteed Obligations;

(iv) the operation of any Laws (other than statutes of limitation) regarding the limitation of actions, all of which are hereby waived as a defense to any action or proceeding brought by Lender against Guarantor, to the fullest extent permitted by Law;

(v) any homestead exemption or any other exemption under applicable Law;

(vi) any release, surrender, abandonment, exchange, alteration, sale or other disposition, subordination, deterioration, waste, failure to protect or preserve, impairment, or loss of, or any failure to create or perfect any lien or security interest with respect to, or any other dealings with, any collateral or security at any time existing or purported, believed or expected to exist in connection with any or all of the Guaranteed Obligations, or any impairment of Guarantor's recourse against any Person or collateral;

(vii) whether express or by operation of Law, any partial release of the liability of Guarantor hereunder (except to the extent paid, performed or expressly so released) or any complete or partial release of Borrower or any other Person liable, directly or indirectly, for the payment or performance of any or all of the Guaranteed Obligations;

(viii) the death, insolvency, bankruptcy, disability, dissolution, liquidation, termination, receivership, reorganization, merger, consolidation, change of form, structure or ownership, sale of all assets, or lack of corporate, partnership or other power of Borrower or any other Person at any time liable for the payment or performance of any or all of the Guaranteed Obligations;

(ix) either with or without notice to or consent of Guarantor, any renewal, extension, modification, supplement, subordination or rearrangement of the terms of any or all of the Guaranteed Obligations and/or any of the Loan Documents, including material alterations of the terms of payment (including changes in maturity date(s) and interest rate(s)) or performance (including changes with respect to the construction of the Improvements) or any other terms thereof, or any waiver, termination, or release of, or consent to departure from, any of the Loan Documents or any other guaranty of any or all of the Guaranteed Obligations, or any adjustment, indulgence, forbearance, or compromise that may be granted from time to time by Lender to Borrower or any other Person at any time liable for the payment or performance of any or all of the Guaranteed Obligations;

(x) any neglect, lack of diligence, delay, omission, failure, or refusal of Lender to take or prosecute (or in taking or prosecuting) any action for the collection or enforcement of any of the Guaranteed Obligations, or to foreclose or take or prosecute any action to foreclose (or in foreclosing or taking or prosecuting any action to foreclose) upon any security therefor, or to exercise (or in exercising) any other right or power with respect to any security therefor, or to take or prosecute (or in taking or prosecuting) any action in connection with any Loan Document, or any failure to sell or otherwise dispose of in a commercially reasonable manner any collateral securing any or all of the Guaranteed Obligations;

(xi) any failure of Lender to notify Guarantor of any creation, renewal, extension, rearrangement, modification, supplement, subordination, or assignment of the Guaranteed Obligations or any part thereof, or of any Loan Document, or of any release of or change in any security, or of the occurrence or existence of any Default or Event of Default, or of any other action taken or refrained from being taken by Lender against Borrower or any security or other recourse, or of any new agreement between Lender and Borrower, it being understood that Lender shall not be required to give Guarantor any notice of any kind under any circumstances with respect to or in connection with the Guaranteed Obligations, any and all rights to notice Guarantor may have otherwise had being hereby waived by Guarantor, and Guarantor shall be responsible for obtaining for itself information regarding Borrower, including any changes in the business or financial condition of Borrower, and Guarantor acknowledges and agrees that Lender shall have no duty to notify Guarantor of any information which Lender may have concerning Borrower;

(xii) the existence of any claim, counterclaim, set-off or other right that Guarantor may at any time have against Borrower, Lender, or any other Person, whether or not arising in connection with this Guaranty, the Note, the Loan Agreement, the Environmental Agreement or any other Loan Document;

(xiii) the unenforceability of all or any part of the Guaranteed Obligations against Borrower, whether because the Guaranteed Obligations exceed the amount permitted by Law or violate any usury law, or because the Persons creating the Guaranteed Obligations acted in excess of their authority, or because of a lack of validity or enforceability of or defect or deficiency in any of the Loan Documents, or because Borrower has any valid defense, claim or offset with respect thereto, or because Borrower's obligation ceases to exist by operation of Law, or because of any other reason or circumstance, it being agreed that Guarantor shall remain liable hereon regardless of whether Borrower or any other Person be found not liable on the Guaranteed Obligations, or any part thereof, for any reason (and regardless of any joinder of Borrower or any other party in any action to obtain payment or performance of any or all of the Guaranteed Obligations);

(xiv) any order, ruling or plan of reorganization emanating from proceedings under Title 11 of the United States Code with respect to Borrower or any other Person, including any extension, reduction, composition, or other alteration of the Guaranteed Obligations, whether or not consented to by Lender, or any action taken or omitted by Lender in any such proceedings, including any election to have Lender's claim allowed as being secured, partially secured or unsecured, any extension of credit by Lender in any such proceedings or the taking and holding by Lender of any security for any such extension of credit;

(xv) any other condition, event, omission, or action that would in the absence of this paragraph result in the release or discharge of the Guarantor from the performance or observance of any obligation, covenant or agreement contained in this Guaranty or any other agreement;

(xvi) any early termination of any of the Guaranteed Obligations; or

(xvii) Lender's enforcement or forbearance from enforcement of the Guaranteed Obligations on a net or gross basis.

(b) In the event any payment by Borrower or any other Person to Lender is held to constitute a preference, fraudulent transfer or other voidable payment under any bankruptcy, insolvency or similar Law, or if for any other reason Lender is required to refund such payment or pay the amount thereof to any other party, such payment by Borrower or any other party to Lender shall not constitute a release of Guarantor from any liability hereunder, and this Guaranty shall continue to be effective or shall be reinstated (notwithstanding any prior release, surrender or discharge by Lender of this Guaranty or of Guarantor), as the case may be, with respect to, and this Guaranty shall apply to, any and all amounts so refunded by Lender or paid by Lender to another Person (which amounts shall constitute part of the Guaranteed Obligations), and any interest paid by Lender and any attorneys' fees, costs and expenses paid or incurred by Lender in connection with any such event.

(c) It is the intent of Guarantor and Lender that the obligations and liabilities of Guarantor hereunder are absolute, irrevocable and unconditional under any and all circumstances and that until the Guaranteed Obligations are fully and finally paid and performed, and not subject to refund or disgorgement, the obligations and liabilities of Guarantor hereunder shall not be discharged or released, in whole or in part, by any act or occurrence that might, but for the provisions of this Guaranty, be deemed a legal or equitable discharge or release of a guarantor.

(d) Guarantor's obligations shall not be affected, impaired, lessened or released by loans, credits or other financial accommodations now existing or hereafter advanced by Lender to Borrower in excess of the Guaranteed Obligations. All payments, repayments and prepayments of the Loan, whether voluntary or involuntary, received by Lender from Borrower, any other Person or any other source (other than from Guarantor pursuant to a demand by Lender hereunder), and any amounts realized from any collateral for the Loan, shall be deemed to be applied first to any portion of the Loan which is not covered by this Guaranty, and last to the Guaranteed Obligations, and this Guaranty shall bind Guarantor to the extent of any Guaranteed Obligations that may remain owing to Lender. Lender shall have the right to apply any sums paid by Guarantor to any portion of the Loan in Lender's sole and absolute discretion.

(c) If acceleration of the time for payment of any amount payable by Borrower under the Note, the Loan Agreement, any other Loan Document is stayed or delayed by any Law or tribunal, all such amounts shall nonetheless be payable by Guarantor on demand by Lender.

Guarantor hereby waives and agrees not to assert or take advantage of (i) any right or claim of right to cause a (f)marshalling of any of Borrower's assets or the assets of any other party now or hereafter held as security for the Indebtedness; (ii) the defense of the statute of limitations in any action hereunder or for the payment of the Indebtedness and performance of any obligation hereby guaranteed; (iii) any defense that may arise by reason of the incapacity, lack of authority, death or disability of Guarantor, any other guarantor of the Loan, or Borrower or any other person or entity, or the voluntary or involuntary dissolution of Borrower or Guarantor, or the failure of Lender to file or enforce a claim against the estate (either in administration, bankruptcy, or any other proceeding) or Borrower or any other person or entity; (iv) any defense based on the failure of Lender to give notice of the existence, creation, or incurring of any new or additional indebtedness or obligation, or of any action or nonaction on the part of any other person whomsoever, or any modification of the terms of the Loan Documents, or the Indebtedness, in connection with any obligation hereby guaranteed; (v) any defense based upon an election of remedies by Lender which destroys or otherwise impairs any subrogation rights of Guarantor or any other guarantor of the Loan or the right of Guarantor to proceed against Borrower or any other guarantor for reimbursement, or both; (vi) any defense based upon failure of Lender to commence an action against Borrower; (vii) any defense based upon acceptance of this Guaranty by Lender; (viii) any defense based upon the invalidity or unenforceability of any of the Loan Documents; (ix) any defense based upon any complete or partial release of liability contained in any of the Loan Documents; (x) any defense based upon any transfer by Borrower of all or any part of the collateral for the Loan; and (xi) any defense based upon the failure of Lender to perfect any security or to extend or renew the perfection of any security; (xii) and any other legal or equitable defenses whatsoever to which Guarantor might otherwise be entitled.

(g) Guarantor hereby consents and agrees that Lender may, at any time and from time to time, before or after any Event of Default by Borrower, without affecting the liability of Guarantor hereunder and with or without further notice to or assent from Guarantor, attach or garnish Guarantor's property in any amounts as required to satisfy Guarantor's obligations under this Guaranty, and attach or garnish Guarantor's earnings subject to the exemption for disposable earnings of a head of family of \$500.00 per week as set forth in Section 222.11 of the Florida Statues, is such Section 222.11 is applicable to Guarantor and only for so long as such exemption may be statutorily effective, and further subject to the limitations prescribed under the Consumer Credit Protection Act, 15 U.S.C. 1673. The term earnings as used in this subsection includes but is not limited to, compensation for personal services for labor whether denominated as wages, salary, commission, or bonus.

#### Section 5 Subordination.

If, for any reason whatsoever, Borrower is now or hereafter becomes indebted to Guarantor:

(a) such indebtedness and all interest thereon and all liens, security interests and rights now or hereafter existing with respect to property of Borrower securing such indebtedness shall, at all times, be subordinate in all respects to the Guaranteed Obligations and to all liens, security interests and rights now or hereafter existing to secure the Guaranteed Obligations;

(b) Guarantor shall not be entitled to enforce or receive payment, directly or indirectly, of any such indebtedness of Borrower to Guarantor until the Guaranteed Obligations have been fully and finally paid and performed; provided, however, that so long as no Event of Default shall have occurred and be continuing, Guarantor shall not be prohibited from receiving such (i) reasonable management fees or reasonable salary from Borrower as Lender may find acceptable from time to time in its sole and absolute discretion, and (ii) distributions from Borrower in an amount equal to any income taxes imposed on Guarantor which are attributable to Borrower's income from the Property;

(c) Guarantor hereby assigns and grants to Lender a security interest in all such indebtedness and security therefor, if any, of Borrower to Guarantor now existing or hereafter arising, including any dividends and payments pursuant to debtor relief or insolvency proceedings referred to below. In the event of receivership, bankruptcy, reorganization, arrangement or other debtor relief or insolvency proceedings involving Borrower as debtor, Lender shall have the right to prove its claim in any

such proceeding so as to establish its rights hereunder and shall have the right to receive directly from the receiver, trustee or other custodian (whether or not an Event of Default shall have occurred or be continuing under any of the Loan Documents), dividends and payments that are payable upon any obligation of Borrower to Guarantor now existing or hereafter arising, and to have all benefits of any security therefor, until the Guaranteed Obligations have been fully and finally paid and performed. If, notwithstanding the foregoing provisions, Guarantor should receive any payment, claim or distribution that is prohibited as provided above in this Section 5, Guarantor shall pay the same to Lender immediately, Guarantor hereby agreeing that it shall receive the payment, claim or distribution in trust for Lender and shall have absolutely no dominion over the same except to pay it immediately to Lender; and

(d) Guarantor shall promptly upon request of Lender from time to time execute such documents and perform such acts as Lender may require to evidence and perfect its interest and to permit or facilitate exercise of its rights under this <u>Section</u> 5, including execution and delivery of proofs of claim, further assignments and security agreements, and delivery to Lender of any promissory notes or other instruments evidencing indebtedness of Borrower to Guarantor. All promissory notes, accounts receivable ledgers or other evidences, now or hereafter held by Guarantor, of obligations of Borrower to Guarantor shall contain a specific written notice thereon that the indebtedness evidenced thereby is subordinated under and is subject to the terms of this Guaranty.

#### Section 6 Other Liability of Guarantor or Borrower.

If Guarantor is or becomes liable, by endorsement or otherwise, for any indebtedness owing by Borrower to Lender other than under this Guaranty, such liability shall not be in any manner impaired or affected hereby, and the rights of Lender hereunder shall be cumulative of any and all other rights that Lender may have against Guarantor. If Borrower is or becomes indebted to Lender for any indebtedness other than or in excess of the Guaranteed Obligations, any payment received or recovery realized upon such other indebtedness of Borrower to Lender may be applied to such other indebtedness. This Guaranty is independent of (and shall not be limited by) any other guaranty now existing or hereafter given. Further, Guarantor's liability under this Guaranty is in addition to any and all other liability Guarantor may have in any other capacity, including, if applicable, its capacity as a general partner.

#### Section 7 Lender Assigns; Disclosure of Information.

This Guaranty is for the benefit of Lender and Lender's successors and assigns, and in the event of an assignment of the Guaranteed Obligations, or any part thereof, the rights and benefits hereunder, to the extent applicable to the Guaranteed Obligations so assigned, may be transferred with such Guaranteed Obligations. Guarantor waives notice of any transfer or assignment of the Guaranteed Obligations or any part thereof. Lender may sell or offer to sell the Loan or interests therein to one or more assignees or participants. Guarantor shall execute, acknowledge and deliver any and all instruments reasonably requested by Lender in connection therewith, and to the extent, if any, specified in any such assignment or participation, such assignee(s) or participant(s) shall have the same rights and benefits with respect to the Loan Documents as such Person(s) would have if such Person(s) were Lender hereunder. Lender may disclose to any such assignee or participant or prospective assignee or participant, to Lender's affiliates, to any regulatory body having jurisdiction over Lender and to any other parties as necessary or appropriate in Lender's reasonable judgment, any information Lender now has or hereafter obtains pertaining to the Guaranteed Obligations, this Guaranty, or Guarantor, including information regarding any security for the Guaranteed Obligations or for this Guaranty, and/or credit or other information on Guarantor and/or any other Person liable, directly or indirectly, for any part of the Guaranteed Obligations.

#### Section 8 Binding Effect: Joint and Several Liability.

This Guaranty is binding not only on Guarantor, but also on Guarantor's heirs, personal representatives, successors and assigns. Upon the death of Guarantor, if Guarantor is a natural person, this Guaranty shall continue against Guarantor's estate as to all of the Guaranteed Obligations, including that portion incurred or arising after the death of Guarantor and shall be provable in full against Guarantor's estate, whether or not the Guaranteed Obligations are then due and payable. If this Guaranty is signed by more than one Person, then all of the obligations of Guarantor arising hereunder shall be jointly and severally binding on each of the undersigned, and their respective heirs, personal representatives, successors and assigns, and the term "Guarantor" shall mean all of such Persons and each of them individually.

#### Section 9 <u>Governing Law</u>.

The validity, enforcement, and interpretation of this Guaranty, shall for all purposes be governed by and construed in accordance with the laws of the State of Florida and applicable United States federal law, and is intended to be performed in accordance with, and only to the extent permitted by, such laws. All obligations of Guarantor hereunder are payable and performable at the place or places where the Guaranteed Obligations are payable and performable. This Guaranty is an agreement executed under seal. If any Guarantor is a corporation, the designation "(SEAL)" on this Guaranty shall be effective as the affixing of such Guarantor's corporate seal physically to this Guaranty.

#### Section 10 Invalidity of Certain Provisions.

If any provision of this Guaranty or the application thereof to any Person or circumstance shall, for any reason and to any extent, be declared to be invalid or unenforceable, neither the remaining provisions of this Guaranty nor the application of such provision to any other Person or circumstance shall be affected thereby, and the remaining provisions of this Guaranty, or the applicability of such provision to other Persons or circumstances, as applicable, shall remain in effect and be enforceable to the maximum extent permitted by applicable Law.

#### Section 11 Costs and Expenses of Enforcement.

Upon the occurrence of an Event of Default, Guarantor agrees to pay to Lender on demand all costs and expenses incurred by Lender in seeking to enforce Lender's rights and remedies under this Guaranty, including court costs, costs of alternative dispute resolution and attorneys' fees and costs, whether or not suit is filed or other proceedings are initiated hereon. All such costs and expenses incurred by Lender shall constitute a portion of the Guaranteed Obligations hereunder, shall be subject to the provisions hereof with respect to the Guaranteed Obligations and shall be payable by Guarantor on demand by Lender.

#### Section 12 <u>No Usury</u>.

It is not the intention of Lender or Guarantor to obligate Guarantor to pay interest in excess of that lawfully permitted to be paid by Guarantor under applicable Law. Should it be determined that any portion of the Guaranteed Obligations or any other amount payable by Guarantor under this Guaranty constitutes interest in excess of the maximum amount of interest that Guarantor, in Guarantor's capacity as guarantor, may lawfully be required to pay under applicable Law, the obligation of Guarantor to pay such interest shall automatically be limited to the payment thereof in the maximum amount so permitted under applicable Law. The provisions of this Section shall override and control all other provisions of this Guaranty and of any other agreement between Guarantor and Lender.

#### Section 13 Representations, Warranties, and Covenants of Guarantor.

Until the Guaranteed Obligations are paid and performed in full and each and every term, covenant and condition of this Guaranty is fully performed, Guarantor hereby represents, warrants, and covenants that: (a) Guarantor has a financial interest in Borrower and will derive a material and substantial benefit, directly or indirectly, from the making of the Loan to Borrower and from the making of this Guaranty by Guarantor; (b) this Guaranty is duly authorized and valid, and is binding upon and enforceable against Guarantor; (c) Guarantor is not, and the execution, delivery and performance by Guarantor of this Guaranty will not cause Guarantor to be, in violation of or in default with respect to any law or in default (or at risk of acceleration of indebtedness) under any agreement or restriction by which Guarantor is bound or affected; (d) unless Guarantor is a natural person, Guarantor is duly organized, validly existing, and in good standing under the laws of the state of its organization and has full power and authority to enter into and perform this Guaranty; (e) there is no litigation pending or, to the knowledge of Guarantor, threatened by or before any tribunal against or affecting Guarantor; (f) all financial statements and information hereofore furnished to Lender by Guarantor do, and all financial or otherwise) of Guarantor as of their dates and the results of Guarantor will, fully and accurately, present the condition (financial or otherwise) of Guarantor as of their dates and the results of Guarantor heretofore furnished to Lender, no material adverse change has occurred in the financial condition of Guarantor, nor, except as heretofore disclosed in writing to Lender, has Guarantor incurred any material liability, direct or indirect, fixed or

contingent; (g) after giving effect to this Guaranty, Guarantor is solvent, is not engaged or about to engage in business or a transaction for which the property of Guarantor is an unreasonably small capital, and does not intend to incur or believe that it will incur debts that will be beyond its ability to pay as such debts mature; and (h) Guarantor has read and fully understands the provisions contained in the Note, the Loan Agreement, the Mortgage, the Environmental Agreement and the other Loan Documents.

#### Section 14 Notices.

All notices, requests, consents, demands and other communications required or which any party desires to give hereunder or under any other Loan Document shall be in writing and, unless otherwise specifically provided in such other Loan Document, shall be deemed sufficiently given or furnished if delivered by personal delivery, or by nationally recognized overnight courier service, or by certified United States mail, postage prepaid, addressed to the party to whom directed at the addresses specified in this Guaranty (unless changed by similar notice in writing given by the particular party whose address is to be changed):

To the Guarantor:	Michael R. Rechter 182 Royal Palm Dr. Ft. Lauderdale, FL 33301
To the Lender:	Stonegate Bank Attn: Heather Zatik, Vice President 2400 North Commerce Parkway, Suite 200 Weston, Florida 33326

Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein; provided that service of a notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon actual receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Guaranty or in any other Loan Document or to require giving of notice or demand to or upon any Person in any situation or for any reason.

#### Section 15 Cumulative Rights.

All of the rights and remedies of Lender under this Guaranty and the other Loan Documents are cumulative of each other and of any and all other rights at law or in equity, and the exercise by Lender of any one or more of such rights and remedies shall not preclude the simultaneous or later exercise by Lender of any or all such other rights and remedies. No single or partial exercise of any right or remedy shall exhaust it or preclude any other or further exercise thereof, and every right and remedy may be exercised at any time and from time to time. No failure by Lender to exercise, nor delay in exercising, any right or remedy shall operate as a waiver of such right or remedy or as a waiver of any Event of Default. No notice to or demand on Guarantor in any case shall of itself entitle Guarantor to any other or further notice or demand in similar or other circumstances. No provision of this Guaranty or any right or remedy of Lender with respect hereto, or any default or breach, can be waived, nor can this Guaranty or Guarantor be released or discharged in any way or to any extent, except specifically in each case by a writing intended for that purpose (and which refers specifically to this Guaranty) executed and delivered by Lender to Guarantor.

#### Section 16 Term of Guaranty.

This Guaranty shall continue in effect until all the Guaranteed Obligations and all of the obligations of Guarantor to Lender under this Guaranty are fully and finally paid, performed and discharged and are not subject to any bankruptcy preference period or any other disgorgement.

#### Section 17 Financial Statements: Tax Returns: Account Statements.

Guarantor shall deliver to Lender, within 90 days after the close of Borrower's fiscal year, his personal financial statements in such form and substance acceptable to Lender in its reasonable discretion. Guarantor shall also deliver to Lender, within 15 days of filing, complete copies of federal and state tax returns, as applicable, together with all schedules thereto, each of which shall be signed and certified by Guarantor to be true and complete copies of such returns. In the event an extension is filed, Guarantor shall deliver a copy of the extension within 15 days of filing. Further, Guarantor shall provide Lender, from time to time, upon Lender's request, copies of brokerage and other account statements as are required by Lender to calculate Guarantor's Liquid Assets (as defined below).

#### Section 18 Subrogation.

Guarantor shall not have any right of subrogation under any of the Loan Documents or any right to participate in any security for the Guaranteed Obligations or any right to reimbursement, exoneration, contribution, indemnification or any similar rights, until the Guaranteed Obligations have been fully and finally paid, performed and discharged in accordance with <u>Section</u> <u>16</u> above, and Guarantor hereby waives all of such rights.

#### Section 19 <u>Time of Essence</u>.

Time shall be of the essence in this Guaranty with respect to all of Guarantor's obligations hereunder.

#### Section 20 Entire Agreement; Counterparts; Construction.

This Guaranty embodies the entire agreement between Lender and Guarantor with respect to the guaranty by Guarantor of the Guaranteed Obligations. This Guaranty supersedes all prior agreements and understandings, if any, with respect to the guaranty by Guarantor of the Guaranteed Obligations. This Guaranty supersedes all prior agreements and understandings, if any, with respect to the guaranty by Guarantor of the Guaranteed Obligations. This Guaranty shall be effective upon execution by Guarantor and delivery to Lender. This Guaranty may not be modified, amended or superseded except in a writing signed by Lender and Guarantor referencing this Guaranty by its date and specifically identifying the portions hereof that are to be modified, amended or superseded. This Guaranty has been executed in a number of identical counterparts, each of which shall be deemed an original for all purposes and all of which constitute, collectively, one agreement. As used herein, the words "include" and "including" shall be interpreted as if followed by the words "without limitation."

#### Section 21 Forum.

Guarantor hereby irrevocably submits generally and unconditionally for itself and in respect of its property to the jurisdiction of any state court or any United States federal court sitting in Broward County, Florida. Guarantor hereby irrevocably waives, to the fullest extent permitted by Law, any objection that Guarantor may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Guarantor hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any state court or any United States federal court sitting in the state specified in the governing law section of this Guaranty may be made by certified or registered mail, return receipt requested, directed to Guarantor at its address for notice set forth in this Guaranty, or at a subsequent address of which Lender received actual notice from Guarantor in accordance with the notice section of this Guaranty, and service so made shall be complete five (5) days after the same shall have been so mailed. Nothing herein shall affect the right of Lender to serve process in any manner permitted by Law or limit the right of Lender to bring proceedings against Guarantor in any other court or jurisdiction.

#### Section 22 WAIVER OF JURY TRIAL.

GUARANTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING,

#### STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER PROVIDING THE LOAN TO THE BORROWER.

IN WITNESS WHEREOF, Guarantor has duly executed this Guaranty under seal as of the date first written above.

Guarantor:

Michael R. Rechter

## STATE OF FLORIDA COUNTY OF BROWARD PALM BEACH

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgements, the foregoing instrument was acknowledged before me by Michael R. Rechter, who does freely and voluntarily under authority duly vested in him. He is personally known to me or produced as identification.

WITNESS by hand and official seal in the County and State last aforesaid this  $\frac{204}{20}$  day of August, 2017.

RY PUBLO CHRISTINE PROCTER WY COMMISSION # FF 983338 лá EXPIRES: August 16, 2020 Bonded Thru Budget Notary Services

<u>NOTARY PUBLIC</u> Print Name: <u>Christine Procter</u> My Commission Expires 8/16/2020 My Commission Expires

# **Old Republic National Title Insurance Company**

AMERICAN LAND TITLE ASSOCIATION COMMITMENT

## Schedule A

Transaction Identification Data for reference only:

Commitment Number: 489119		Revision Number: None	Issuing Office File Number: RechterStonegat	Issuing Office: 4608	
716	berty Address: 718 NE 2nd Avenuc, t Lauderdalc, FL 33304 d File #489119 Sep Commitment Date: August	Loan ID Number: None tember 13, Ə	ALTA Universal ID: None -017	Issuing Agent: Robert Marc Schwartz, P.A.	
١.	Commitment Date: Augus	st 14, 2017 @ 11:00 PI	M V		
2,	Policy to be issued:			Proposed Policy Amount:	
	OWNER'S: ALTA Owner	's Policy (6/17/06) (Wi	ith Florida Modifications)	\$	
	Proposed Insured:				
	MORTGAGEE: ALTA LO	oan Policy (6/17/06) (V	Vith Florida Modifications)	\$3,200,000.00	
	Proposed Insured: Stor	negate Bank, a Florida	corporation		
3.	The estate or interest in covered, i.e., fee, leasehold		r referred to in this Commitme	nt is FEE SIMPLE. (Identify estate	

4. Title to the estate or interest in the Land is at the Commitment Date vested in:

Rechter Holdings, Inc., a Florida corporation, as to Parcels I and III, Rechter Progresso 835, LLC, a Florida limited liability company, as to Parcel II

5. The Land is described as follows:

See attached Exhibit "A"

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

400 Second Avenue South, Miûneapolis, Minnesota 55401, (612) 371-1111 AUTHORIZED SIGNATORY Robert M. Schwartz President

This page is only a part of a 2016 ALTA Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I ~ Requirements; and Schedule B, Part II ~ Exceptions.

Page 1 of 7 DoubleTime® 7.0.6 CAM # 17-1390 Exhibit 5 Page 23 of 135

# Old Republic National Title Insurance Company AMERICAN LAND TITLE ASSOCIATION COMMITMENT Schedule A (Continued)

Issuing Office File Number: RechterStonegat Fund File #489119

EXHIBIT "A"

Parcel I: 913 NE 4th Avenue, Ft. Lauderdale, F:4 33304; Property Control Number 4942 34 05 7050

Lots 17-21, LESS the East 10 feet thereof, of Block 214 of PROGRESSO, and all that part of Block 214 of PROGRESSO lying South of said Lot 21 and East of the alley running North and South through said Block 214, according to the Plat thereof, as recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida; said lands situated lying, and being in Broward County, Florida, all LESS that portion of land dedicated to Broward County as described in Instrument Number 113500871.

and

Parcel II: 835 NE 2nd Avenue, Ft. Lauderdale, FL 33304-1934; Property Control Number 4942 34 06 2510

Lots 4, 5, and 6, Block 257 of PROGRESSO, according to the Plat thereof, recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida; said land situate, lying, and being in Broward County, Florida.

and

Parcel III: 716-718 NE 2nd Avenue, Ft. Lauderdale, FL 33304; Parcel Control Number 4942 34 07 1770

Lots 33 and 34, Block 289, PROGRESSO, according to the Plat thereof, as recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida; said lands situated lying, and being in Broward County, Florida.

This page is only a part of a 2016 ALTA Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I – Requirements; and Schedule B, Part II – Exceptions.

# **Old Republic National Title Insurance Company**

AMERICAN LAND TITLE ASSOCIATION COMMITMENT Schedule B-I

Issuing Office File Number: RechterStonegat Fund File #489119

Requirements All of R. 1 is Sertisfied Blanddard

All of the following requirements must be met:

- 1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
- 1. Pay the agreed amount for the estate or interest to be insured.
- 3 Pay the premiums, fees, and charges for the Policy to the Company.
- 4 Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
  - A. Mortgage from Rechter Holdings, Inc., a Florida corporation, as to Parcels I and III, Rechter Progresso 835, LLC, a Florida limited liability company, as to Parcel II to the proposed insured mortgagee(s).
- 5. A search commencing with the effective date of this commitment must be performed at or shortly prior to the closing of this transaction. If this search reveals a title defect or other objectionable matters, an endorsement will be issued requiring that this defect or objection be cleared on or before closing.
- 6. Taxes for the year 2016 which have been paid under receipt number EEX-16-00000865, on 11-29-2016, Parcel/Account ID # 494234-05-7050, the gross amount being \$8,190.09, Parcel I
- 7. Taxes for the year 2016 which have been paid under receipt number LBX-16-00137912, on 12-14-2016, Parcel/Account ID # 494234-06-250, the gross amount being \$7,304.26, Parcel II.
- 8. Taxes for the year 2016 which have been paid under receipt number LBX-16-00025031, on 11-14-2016, Parcel/Account ID # 494234-07-1770, the gross amount being \$9,484.62, Parcel III.
- Record satisfaction of the mortgage from Rechter Holdings, Inc. to Landmark Bank, N.A. dated June 25, 2014, and 9 recorded June 30, 2014 in O.R. Book 50896, Page 1449, together with Collateral Assignment of Contract and License Rights in O.R. Book 50896, Page 1481, Public Records of Broward County, Florida, Parcel I.
- 10. Record release or reassignment of the Collateral Assignment of Rents, Leases, Profits, and Contracts recorded June 30, 2014, in O.R. Book 50896, Page 1475, Public Records of Broward County, Florida, Parcel I.
- 11. Record termination (or release as to the subject property) of the Financing Statement recorded June 30, 2014, in O.R. Book 50896, Page 1487, Public Records of Broward County, Florida, Parcel I.
- 12. Restoration of priority must be achieved with regard to that certain Notice of Commencement in favor of A&M Roofing, Inc. recorded May 18, 2017, in Instrument Number 114391986, Public Records of Broward County, Florida, the exception for which shall be deleted, when the following requirements are met. (1) Obtain an owner's affidavit which contains the following: (a) names and addresses of all persons serving notice to owner pursuant to Sec. 713.06(2), F.S., (or if none received, the affidavit should so state); (b) a statement that a personal inspection of the property was made to determine whether persons posted a notice to owner on the property; (c) the names and addresses of all persons having privity of contract with the owner under Sec. 713.05, F.S.; (d) a statement that the construction on the improvement described in the notice of commencement has ceased (identifying the notice by date, book and page and/or instrument number where recorded); (e) a statement that the owner has obtained the affidavit required by Sec. 713.06 (3)(d)(1), F.S., from all parties having privity of contract with the owner under Sec. 713.05, F.S.; (f) a statement that, 1) all persons serving notice to owner, and 2) all persons having privity of contract with the owner under Sec. 713.05, F.S., have been paid in full for all work, materials and labor furnished to date, and 3) that any further work, materials or labor shall relate to a new Notice of Commencement to be recorded subsequent to the [describe the mortgage, mortgage modification, or deed to be insured]; and (g) indemnification in favor of the

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# Old Republic National Title Insurance Company AMERICAN LAND TITLE ASSOCIATION COMMITMENT Schedule B-I (Continued)

Issuing Office File Number: RechterStonegat Fund File #489119

proposed-insured, title agent and the Company as to the averments contained therein and if the owner is an entity, also from its principal(s). (2) A Waiver and Release upon Final Payment under Sec. 713.20(5), F.S., must be obtained from: (a) all persons serving notice to owner; and (b) all persons having privity of contract with the owner under Sec. 713.05, F.S. (as identified in the owner's affidavit above). (3) If not already recorded, the mortgage, mortgage modification or deed to be insured must be recorded after the Waiver and Releases upon Final Payment are received, and a new Notice of Commencement must be recorded subsequent to the insured instrument. (4) Construction may resume only after compliance with items 1-3 herein.

- 13. That certain Notice of Commencement recorded 9/26/16 in Instrument Number 113957905, Public Records of Broward County, Florida, set forth in schedule B II, number 6 of this commitment, which EXPIRED 11/30/16, may be deleted from the owner or loan policy based on an affidavit of a reliable person stating that 90 days have actually elapsed since the final furnishing of labor, services or materials to the property described in this commitment, Parcel III.
- 14. Good standing under the State of Florida for Rechter Holdings, Inc., a Florida corporation has been verified as of the certification date of this commitment. Satisfactory evidence must be furnished establishing that Rechter Holdings, Inc., a Florida corporation remains in good standing under the laws of Florida at date of the insured purchase and sale and/or loan.
- 15 Record corporate resolution of the Board of Directors of Rechter Holdings, Inc., a Florida corporation authorizing the execution of mortgage, if required by TN 11.05.03.
- 16. Good standing under the State of Florida for Rechter Progresso 835, LLC, a Florida limited liability company has been verified as of the certification date of this commitment. Satisfactory evidence must be furnished establishing that Rechter Progresso 835, LLC, a Florida limited liability company remains in good standing under the laws of Florida at date of the insured purchase and sale and/or loan.
- 17. If the LLC is relying on a Statement of Authority for the execution of instruments to be insured, confirm that the person executing the instruments to be insured has the authority to bind the LLC pursuant to a Statement of Authority granting said person the authority to transfer or enter into other transactions relating to real property held by the LLC. Said Statement of Authority must be filed with the Florida Department of State and a certified copy must be recorded in the official records of the county where the property lies. A determination must also be made that there is no subsequent Statement limiting that person's authority.
- 18. If there is no Statement of Authority filed with the Florida Department of State and recorded in the official records of the county where the property lies authorizing the person executing the documents in the current transaction, confirm that the person executing the instruments to be insured is identified as a manager of a manager-managed, or a member of a member-managed limited liability company pursuant to the Articles of Organization or last annual report filed after the year of formation with the Florida Department of State, and that there is no subsequent Statement filed with the Florida Department of State or recorded in the official records of the county where the property lies limiting that manager/member's authority.
- 19. Where there is knowledge that the information filed with the Florida Department of State is inconsistent with the Operating Agreement of the limited liability company, confirm that the instruments to be insured are executed by a manager or member authorized pursuant to the Operating Agreement. If the regulations or operating agreement are not produced, then all of the members of the limited liability company, or a majority of the members-in-interest per Sec. 605.0102(37), F.S., if the number of the members is substantial, must execute an affidavit consenting to the transaction. The affidavit shall establish the names of all of the current members of the limited liability company and their interests.
- 20. A determination should be made that the member or manager authorizing the transaction or executing the instruments to be insured is not a debtor in bankruptcy and has not been a debtor in bankruptcy since becoming a

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# Old Republic National Title Insurance Company AMERICAN LAND TITLE ASSOCIATION COMMITMENT Schedule B-I (Continued)

Issuing Office File Number: RechterStonegat Fund File #489119

member or manager of the limited liability company. If the LLC is a sole member LLC, then a determination should be made that there are no creditors who have acquired or are attempting to acquire control of the LLC by executing on or attaching or seizing the member's interest in the LLC. These determinations may be made by an affidavit of the member executing the instruments to be insured.

- 21. A determination should be made that the limited liability company is not one of a family or group of entities. If the limited liability company is one of a family or group of entities, determine that none of the other entities in this family or group of entities is a debtor in bankruptcy. For these determinations Fund members may rely on an affidavit of the person executing the instruments to be insured. In the event that one or more of the other entities is a debtor in bankruptcy, Fund Underwriting Counsel must approve the transaction before title is insured.
- 22. A determination should be made that the member or manager authorizing the transaction or executing the instruments to be insured has not become dissociated pursuant to Sec. 605.0302(11), F.S. (by filing a statement of dissociation), Secs. 605.0212, 605.0601, or 605.0602, F.S., nor has that person wrongfully caused dissolution of the company. For these determinations Fund members may rely on an affidavit of the person executing the instruments to be insured.
- 23. Affidavit to be executed by Rechter Holdings, Inc., a Florida corporation, as to Parcels I and III, Rechter Progresso 835, LLC, a Florida limited liability company, as to Parcel II stating: 1) There are no matters pending against the affiant that could give rise to a lien that would attach to the property between August 14, 2017 and the recording of the interest to be insured. 2) That the affiant(s) have not and will not execute any instruments that would adversely affect the interest to be insured.
- 24 Closing funds are to be disbursed by or at the direction of the Title Agent identified at bottom of Schedule A.
- 25. Title Agent is to record the insured instruments as soon as possible after closing,
- 26. Confirmations from all parties in possession setting forth the nature of their rights of possession for purposes of specifically making an exception that identifies those tenants and the nature of their rights in Schedule B of the policy and an affidavit from owner(s) confirming no other persons in possession. In the alternative, an exception shall be made for rights of the lesses under unrecorded leases or for rights of parties in possession.
- 27. À survey meeting The Fund's Title Notes requirements must be furnished. If such survey reveals any encroachments, overlaps, boundary line disputes, or other adverse matters, they will appear as exceptions in the policy to be issued based upon this commitment.

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# **Old Republic National Title Insurance Company**

AMERICAN LAND TITLE ASSOCIATION COMMITMENT Schedule B-II

Issuing Office File Number: RechterStonegat Fund File #489119

#### Exceptions

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the Public Records or attaching subsequent to the Commitment Date hereof but prior to the date the Proposed Insured acquires for value of record the estate or interest or Mortgage thereon covered by this Commitment.

- 2. a. General or special taxes and assessments required to be paid in the year 2017 and subsequent years.
  - b. Rights or claims of parties in possession not recorded in the Public Records.
  - Any encroachment, encumbrance, violation, variation or adverse circumstance that would be disclosed by an inspection or an accurate and complete land survey of the Land and inspection of the Land.
  - K Easements or claims of easements not recorded in the Public Records.
  - Any lien, or right to a lien, for services, labor or material furnished, imposed by law and not recorded in the Public Records.

3. Any Owner's Policy issued pursuant hereto will contain under Schedule B the following exception: Any adverse ownership claim by the State of Florida by right of sovereignty to any portion of the Land insured hereunder, including submerged, filled and artificially exposed lands, and lands accreted to such lands.

₩4.

Any lien provided by County Ordinance or by Chapter 159, F-S. In favor of any city, town, village or port-authority, for unpaid service charges for services by any water systems, sewer systems or gas systems serving the land described herein; and any lien for waste fees in favor of any county or municipality.

Any lien or claim of lien for services, labor or materials which may take priority over the estate or interest insured by reason of that certain Notice of Commencement recorded May 18, 2017, under Instrument Number 114391986, Public-Records of Broward County, Florida, Parcett. A Notice of Termination was recorded 9/13/17.
 Rights of the lessees under unrecorded leases. or f.

- All matters contained on the Plat of PROGRESSO, as recorded in Plat Book 2, Page 18, together with Ordinance No. C-01-46 in O.R. Book 32481, Page 217, as to Block 214 only, Public Records of Miami-Dade County, Florida, All Parcels.
- Reservations in favor of the State of Florida, as set forth in the deed from the Trustees of the Internal Improvement Fund of the State of Florida recorded, under Deed Book 419, Page 500, Public Records of Broward County, Florida; however, the right of entry and exploration associated with the oil and mineral reservation has been released pursuant to Sec. 270.11, F.S. Lot 20 only of Block 214.

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# Old Republic National Title Insurance Company AMERICAN LAND TITLE ASSOCIATION COMMITMENT Schedule B-II (Continued)

Issuing Office File Number: RechterStonegat Fund File #489119

- 9. Reservations in favor of the State of Florida, as set forth in the deed from the Trustees of the Internal Improvement Fund of the State of Florida recorded under Deed Book 459, Page 357, Public Records of Broward County, Florida; however, the right of entry and exploration associated with the oil and mineral reservation has been released pursuant to Sec. 270.11, F.S. Lots 17 and 21, Block 214.
- Conditional Permit for Construction of Sign and Light Poles recorded in O.R. Book 2619, Page 54, Public Records of Broward County, Florida, Lot 21 of Block 214.
- All matters contained in Amended Easement Deed by Court Order Settlement of Landowner Action recorded in O.R. Book 49510, Page 562, amended in O.R. Book 49885, Page 466; O.R. Book 50264, Page 1803 and O.R. Book. 50335, Page 1901, Public Records of Broward County, Florida, All Parcels.
- 12. Easement in favor of City of Fort Lauderdale recorded in O.R. Book 3980, Page 541, Public Records of Broward County, Florida, Block 214 only.
- 13. Resolution No. 2016-041 accepting a Warranty Deed from Rechter Holdings, Inc. recorded in Instrument Number 113500870, Public Records of Broward County, Florida, Block 214 only.
- 14. Fort Lauderdale Community Redevelopment Agency Property and Business Investment Improvement Program Agreements recorded in Instrument Number 113377692, Instrument Number 113377693, and Instrument Number 113377694, Public Records of Broward County, Florida, Block 214 only.
- 15. Encroachments, encumbrances, violations, variations, or adverse circumstances, if any, actually shown on the survey of 905-913 NE 4th Avenue, FL 33304 prepared by Accurate land Surveyors, Inc., updated April 18, 2014, Job Number SU-14-0322, including a driveway eneroachment in road right-of-way along the East boundary, and driveway eneroachment in alley right-of-way along the West boundary, Parcel I only. *ICG 12550 Drive asphalt access Southeast in the survey of the standard survey* exception, which can
- 6. The immediately preceding Exception is in addition to, and not in lieu of, the standard survey exception, which can not be deleted without current survey information acceptable to The Company as set forth in Title Notes 25.03.06 and 25.03.07, as to Parcel I only.
- 17. Encroachments, encumbrances, violations, variations, or adverse circumstances, if any, actually shown on the survey of 835 NE 2nd Avenue, Ft. Lauderdale, FL 33304 prepared by Accurate land Surveyors, Inc., dated April 12, 2017, Job Number SU-17-1219, including a driveway encroachment in road right-of-way along the East boundary, and driveway encroachment in alley right-of-way along the West boundary, Parcel II only.
- 18. Encroachments, encumbrances, violations, variations, or adverse circumstances, if any, actually shown on the survey of 716-718 NE 2nd Avenue, Ft. Lauderdale, FL 33304 prepared by Accurate land Surveyors, Inc., dated April-12, 8/18/2, 2017, Job Number SU-17-2858, including a driveway encroachment in alley reservation along the East boundary, and overhang in road right-of-way along the West boundary, Parcel III only.
- 19. The general sovereignty land exception may be deleted from the resulting Lender's policy, despite any exception to the contrary. However, any other water-related exceptions stated herein must be included in the policy.

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This page is only a part of a 2016 ALTA Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy: the Commitment Conditions; Schedule A; Schedule B, Part I – Requirements; and Schedule B. Part II – Exceptions.

# AMERICAN LAND TITLE ASSOCIATION COMMITMENT FOR TITLE INSURANCE

# ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

# NOTICE

IMPORTANT-READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACONTRACTUAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT, THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

## COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I-Requirements; Schedule B, Part II-Exceptions; and the Commitment Conditions, Old Republic National Title Insurance Company, a Florida Corporation (the "Company"), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each. Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Policy Amount and the name of the Proposed Insured.

If all of the Schedule B, Part I-Requirements have not been met within 6 months after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

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Issued through the Office of

Robert Marc Schwartz, P.A. - 4608 4700 NW Boca Raton Boulevard Suite 104 Boca Raton, FL 33431-4860

> Authorized Signatory Robert M. Schwartz President

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY A Stock Company 400 Second Avenue South, Minneapolis, Minnesota 55401 (512) 371-111



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FORM CF6R (8/1/16) (With Florida Modifications) File Number: RechterStonegat Page 1 of 3 DoubleTime #.0761390 Exhibit 5 Page 30 of 135

# **Commitment Conditions**

#### I. DEFINITIONS

- (a) "Knowledge" or "Known": Actual or imputed knowledge, but not constructive notice imparted by the Public Records.
- (b) "Land": The land described in Schedule A and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy.
- (c) "Mortgage": A mortgage, deed of trust, or other security instrument, including one evidenced by electronic means authorized by law.
- (d) "Policy": Each contract of title insurance, in a form adopted by the American Land Title Association, issued or to be issued by the Company pursuant to this Commitment.
- (c) "Proposed Insured": Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.
- (f) "Proposed Policy Amount": Each dollar amount specified in Schedule A as the Proposed Policy Amount of each Policy to be issued pursuant to this Commitment.
- (g) "Public Records": Records established under state statutes at the Commitment Date for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.
- (h) "Title": The estate or interest described in Schedule A.
- 2. If all of the Schedule B, Part I-Requirements have not been met within the time period specified in the Commitment to Issue Policy, this Commitment terminates and the Company's Hability and obligation end.
- 3. The Company's liability and obligation is limited by and this Commitment is not valid without:
  - (a) the Notice:
  - (b) the Commitment to Issue Policy;
  - (c) the Commitment Conditions;
  - (d) Schedule A;
  - (c) Schedule B, Part I-Requirements;
  - (f) Schedule B, Part II-Exceptions; and
  - (g) a counter-signature by the Company or its issuing agent that may be in electronic form.

#### 4. COMPANY'S RIGHT TO AMEND

The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company shall not be liable for any other amendment to this Commitment.

#### 5. LIMITATIONS OF LIABILITY

- (ii) The Company's liability under Commitment Condition 4 is limited to the Proposed Insured's actual expense incurred in the interval between the Company's delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured's good faith reliance to:
  - (i) comply with the Schedule B, Part I-Requirements;
  - (ii) eliminate, with the Company's written consent, any Schedule B, Part II-Exceptions; or
  - (iii) acquire the Title or create the Mortgage covered by this Commitment.

This page is only a part of a 2016 ALTA Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I – Requirements; and Schedule B, Part II – Exceptions.

- (b) The Company shall not be liable under Commitment Condition 5(a) if the Proposed Insured requested the amendment or had knowledge of the matter and did not notify the Company about it in writing.
- (c) The Company will only have liability under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.
- (d) The Company's liability shall not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Conditions 5(a)(i) through 5(a)(iii) or the Proposed Policy Amount.
- (e) The Company shall not be liable for the content of the Transaction Identification Data, if any.
- (f) In no event shall the Company be obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I-Requirements have been met to the satisfaction of the Company.
- (g) In any event, the Company's liability is limited by the terms and provisions of the Policy.

#### 6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT

- (a) Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.
- (b) Any claim must be based in contract and must be restricted solely to the terms and provisions of this Commitment.
- (c) Until the Policy is issued, this Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.
- (d) The deletion or modification of any Schedule B, Part II-Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.
- (c) Any amendment or endorsement to this Commitment must be in writing and authenticated by a person authorized by the Company,
- (f) When the Policy is issued, all liability and obligation under this Commitment will end and the Company's only liability will be under the Policy.

#### 7. IF THIS COMMITMENT HAS BEEN ISSUED BY AN ISSUING AGENT

The issuing agent is the Company's agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for the purpose of providing closing or settlement services.

#### 8. PRO-FORMA POLICŸ

The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.

This page is only a part of a 2016 ALTA Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I – Requirements; and Schedule B, Part II – Exceptions.

# ROBERT MARC SCHWARTZ, P. A.

Attorney at Law Serving Florida for over 45 years

ROBERT M. SCHWARTZ, B.C.S.

FL BAR BOARD CERTIFIED REAL ESTATE LAWYER

CHRISTINE PROCTER, FRP FLORIDA REGISTERED PARALEGAL

September 20, 2017

Bob@RobertSchwartzPA.com Christine@RobertSchwartzPA.com

Telephone: 561-241-1850 Facsimile: 561-241-1845

Heather Zatik, Vice President Stonegate Bank 2400 N Commerce Parkway, Suite 200 Weston, FL 33326

RE: \$3,200,000.00 loan (the "Loan") from STONEGATE BANK, a Florida banking corporation (the "Lender") to RECHTER HOLDINGS, INC., a Florida corporation ("Holdings"), and RECHTER PROGRESSO 835, LLC, a Florida limited liability company ("Progresso") (hereinafter Holdings and Progresso are sometimes collectively referred to herein as "Borrower").

Dear Ms. Zatik:

We have acted as counsel to Borrower and as special counsel to Michael R. Rechter ("Guarantor") solely in connection with the Loan from Lender to Borrower. In rendering this opinion, we have reviewed originals (or copies identified to our satisfaction as true copies of the originals) of the documents listed upon Exhibit "A" attached hereto and incorporated herein by reference (which documents are collectively referred to as the "Loan Documents").

This opinion has been prepared and is to be construed in accordance with the REPORT ON THIRD-PARTY LEGAL OPINION CUSTOMARY PRACTICE IN FLORIDA BY THE LEGAL OPINION STANDARDS COMMITTEE OF THE FLORIDA BAR BUSINESS LAW SECTION, AND THE LEGAL OPINIONS COMMITTEE OF THE REAL PROPERTY PROBATE AND TRUST LAW SECTION OF THE FLORIDA BAR DATED DECEMBER 3, 2011 (the "Report"). The Report is hereby incorporated by reference into this Opinion.

In rendering the opinions set forth below, we have relied, with your approval, solely on our examination of the documents listed on Exhibit "A" and originals or copies of those documents listed on Exhibit "B" attached hereto and made a part hereof (the "Supporting Documents") and such other documents, instruments and certificates as we have deemed necessary in issuing this letter. We have made no independent verification of the facts asserted to be true and correct in the Supporting Documents, including the factual representations and warranties contained in the Loan Documents. We have relied, with your approval, as to factual matters that affect our opinions on the matters set forth in the certificates furnished to us by the Borrower which are referenced in the Supporting Documents, although we have no actual knowledge that they are untrue. In rendering the opinions set forth below, we have made no assumptions other than those set forth in this letter and in the Report.

Whenever our opinion herein with respect to the existence or absence of facts is qualified by the phrase "to our knowledge" or "known to us," it is intended to indicate that during the course of

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our representation of Borrower and Guarantor no information has come to our attention that would give us actual knowledge of the existence or absence of such facts. However, except to the extent expressly set forth herein, and except for a review of our own files and discussions with Borrower and Guarantor, we have not undertaken any independent investigation to determine the existence or absence of such facts and no inference as to our knowledge of the existence or absence of such facts should be drawn from the fact of our representation of Borrower and Guarantor.

For the purpose of this opinion, we are assuming that Lender has been duly organized and is validly existing under all applicable law and has the requisite power to execute the Loan Documents and that the execution of the Loan Documents has been duly authorized and that the party executing the Loan Documents on behalf of Lender has the requisite authority to so act.

Based on the foregoing, and subject to the qualifications and limitations stated in this letter and in the Report, and specifically excluding those laws, rules and regulations that are defined as the Excluded Laws in the "COMMON ELEMENTS OF OPINIONS-LIMITATIONS TO LAWS OF SPECIFIC JURISDICTIONS OR TO SUBSTANTIVE AREAS OF LAW; EXCLUDED AREAS OF LAW" section of the Report, it is our opinion that:

- 1. Borrower Rechter Holdings, Inc. is a Florida corporation, Borrower Rechter Progresso 835, LLC is a Florida limited liability company, both are duly organized, validly existing and in good standing under the laws of the State of Florida and have all requisite power to own and operate the real and personal property described in the Mortgage, Assignment of Leases and Rents, Loan Agreement and Fixture Filing (the "Mortgage and Security Agreements") and to carry on their businesses as now being conducted and as contemplated, to incur indebtedness as contemplated by the Loan Documents, execute the Loan Documents, carry out the provisions of the Loan Documents and perform its obligations thereunder.
- 2. The Loan Documents have been duly authorized by all necessary action on the part of Borrower, have been duly executed and delivered by Borrower and Guarantor and constitute the valid and binding obligations of Borrower and Guarantor, enforceable in accordance with their respective terms.
- 3. On its face, the Note is nonusurious. The Borrower will not be entitled to rely upon the defense of usury to successfully defeat or avoid the obligation to pay the principal of, interest on and other sums payable on the Loan Documents, assuming that (i) Lender and its assigns never charge or accrue interest of more than 24.99% per annum (including in the computation of interest, any amounts, other than repayment of principal or reasonable out-of-pocket expenses paid to unrelated third parties, to which Lender and its assigns may be entitled or otherwise benefit, any service charge, loan discount and fees, prepayment premium, reserves, loan management fees, commitment fees, additional interest, late penalties or other charges contemplated by the Note), and (ii) the amount of the unpaid

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principal balance of the Note shall be determined by proceeds advanced to or on behalf of the Borrower as opposed to the face amount of the Note.

- 4. To our knowledge there is no action, inquiry, investigation or proceeding threatened or pending at law or in equity or by any administrative board or governmental authority against Borrower and, to our knowledge, neither the Borrower nor the Guarantor is in default under any other agreement or in the payment of any other indebtedness or with respect to any order, writ, injunction, decree or demand of any Court or any governmental authority.
- 5. The execution and delivery of the Loan Documents and the performance of their respective terms by Borrower will not violate or contravene the Articles of Incorporation or Bylaws of Rechter Holdings, Inc., or the Articles of Organization or Operating Agreement of Rechter Progresso 835, LLC or, to our knowledge, any indenture, agreement or other instrument to which the Borrower and Guarantor is a party or by which Borrower and Guarantor or their property may be bound, or be in conflict with, result in a breach of, or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement, or other instrument, or result in the creation of a lien of any nature whatsoever upon any of such property or assets, except as contemplated by the provisions of such Loan Documents, and no action or approval with respect thereto by any third person is required.
- 6. The Mortgage, the Loan Agreement, the Uniform Commercial Code Financing Statements (UCC-3) provided to Lender shall, upon recordation, perfect the security interest of Lender in the real, personal property and fixtures described in and secured by said documents. The foregoing is not intended to be and shall not constitute an opinion as to title or the priority of the lien and encumbrance affecting the real property.
- 7. The Guaranty has been properly executed and delivered by Guarantor and are a legal, valid, and binding obligation and agreement of Guarantor enforceable in accordance with their terms.
- 8. We have no knowledge of any proceedings, notices or violations against the Borrower or the Guarantor, or the Property (as defined in the Mortgage) regarding failure to comply with any environmental law or regulation including federal, state or local environmental or similar law.

# All opinions given herein are subject to the following qualifications:

1. (a) The effect of bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights and remedies of creditors generally, including but not limited to, the federal Bankruptcy Code and all other applicable federal or state bankruptcy, insolvency, reorganization, receivership, moratorium and assignment for the benefit of creditor's laws, including state fraudulent transfer laws; Stonegate Bank September 20, 2017 Page -4-

- The effect of general principles of equity, whether applied by a court of law or equity, (b) including, but not limited to, (i) principles governing the availability of specific performance, injunctive relief, the appointment of a receiver, or other traditional equitable remedies, which generally place the award of such remedies, subject to certain guidelines, in the discretion of the court to which application for such relief is made; (ii) principles affording traditional equitable defenses (e.g., waiver, laches and estoppel) as applied to a party seeking enforcement; (iii) the requirement of good faith and fair dealing in the performance and enforcement of an agreement on the part of the party seeking enforcement after the agreement has been entered into; (iv) the reasonableness of the enforcing party's conduct or of enforcing a particular provision, after the agreement has been entered into, in light of the circumstances existing at the time of such conduct or attempted enforcement; (v) the materiality of the borrower's breach; (vi) impracticability or impossibility of performance at the time of attempted enforcement; (vii) and unconscionability, as applied to the enforcing party's conduct after the agreement is entered into and at or before the time of attempted enforcement;
- 2. (a) The effect of the following rules concerning the waiver of rights: (i) The provisions of the Uniform Commercial Code as adopted in the State of Florida and as in effect upon the date hereof ("UCC"), which provides that obligations of good faith, diligence, reasonableness and care may not be disclaimed in transactions subject to the UCC; (ii) the provisions of the UCC which limit the enforceability of waivers in connection with the secured party's enforcement of its rights and personal property security; and (iii) decisions which provide that in a federal court the forum selection clause is not necessarily binding on the courts;
  - (b) The effect of general rules of contract law that a manifestation of a choice of one remedy may be a bar to another remedy if the remedies are inconsistent and the other party has materially changed its position in reliance on the choice;
  - (c) The effect of general rules of tort law and the UCC which limit the right of the creditor to use force or cause a breach of the peace in the enforcement of the creditor's rights;
  - (d) The effect of the provisions of the UCC respecting the sale or disposition of collateral and the availability of a deficiency judgment following a disposition; and
  - (e) The effect of general rules of contract law that limit the enforceability of provisions releasing, exculpating or exempting a party from, or requiring indemnification for, liability for action or inaction, to the extent the action or inaction involves gross negligence, recklessness or willful misconduct or, in the case of misrepresentation

CAM # 17-1390 ROBERT MARC SCHWARTZ, P.A., 4700 NW BOCA RATON BOULEVARD, SUITE 104, BOCA RATON, FL 33431-4860 Exhibit 5 Page 36 of 135 Stonegate Bank September 20, 2017 Page -5-

> or negligence. To our knowledge, there are no existing facts which after application of the principles set forth in sub-clauses (a) and (d) above, or this sub-clause (e), would render any of the Loan Documents or any part of any Loan Document invalid or unenforceable as a whole or in part which in the event of a breach of a covenant would result in the Lender being unable to exercise remedies normally available to a secured lender.

No opinion is expressed with respect to the status of title to the Mortgaged Property or with respect to the relative priority of any liens or security interests created by the Loan Documents. We have assumed that as to matters of title and priority, the Borrower has good title to the Mortgaged Property and that with respect to the Real Property (excluding fixtures), the Lender is relying upon an Old Republic National Title Insurance Company Title Insurance Commitment issued by Robert Marc Schwartz, P.A., to be supplemented, subsequent to closing, with an Old Republic National Title Insurance Title Insurance Policy.

We are members of The Florida Bar and, accordingly, express no opinion with respect to the laws of any other jurisdiction, other than those of the laws of the State of Florida and the laws of the United States.

This opinion letter speaks only as of the date hereof. We assume no obligation to update or supplement this opinion letter if any applicable laws change after the date of this opinion letter or if we become aware after the date of this opinion letter of any facts or other developments, whether existing before or arising after the date hereof, that might change the opinions expressed above.

This opinion letter is furnished to you solely for your benefit in connection with the Transaction and, except as set forth below, may not be relied upon by any other party without our prior written consent in each instance. At your request, we hereby consent to reliance hereon by any future assignee of your interest in the loans pursuant to the Loan Documents on the condition and understanding that: (i) this opinion letter speaks only as of the date hereof, (ii) we have no responsibility or obligation to update or supplement this opinion letter, to consider its applicability or correctness to any person other than its addressee(s), or to take into account changes in law, facts or any other developments of which we may later become aware, and (iii) any such reliance by a future assignee must be actual and reasonable under the circumstances existing at the time of assignment, including any changes in law, facts or any other developments known to or reasonably knowable by the assignee at such time.

Very truly yours, ROBERT MARC SCHWARTZ, P.A. Robert M. Schwartz, President

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# EXHIBIT "A"

# Loan Documents

- 1. Acknowledgment of Financial Statement
- 2. Acknowledgment of Escrow
- 3. Agreement to Provide Insurance
- 4. Anti-Coercion Statement
- 5. Certificates of Resolutions, Status and Incumbency
- 6. Collateral Assignment of Rents & Leases
- 7. Cooperation Agreement Note
- 8. Environmental Indemnity
- 9. Errors & Omissions Agreement
- 10. Garnishment Waiver
- 11. Guaranty by Michael R. Rechter

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- 12. Loan Agreement
- 13. Mortgage
- 14. Note
- Uniform Commercial Code Financing Statement (UCC-1)
   a. Florida Secretary of State
  - b. Broward County Recording Department

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# EXHIBIT "B"

# Supporting Documents

- 1. Articles of Incorporation and Bylaws of RECHTER HOLDINGS, INC., a Florida corporation.
- 2. Articles of Organization and Operating Agreement of Rechter Progresso 835, LLC, a Florida limited liability company
- 3. Certificates of Good Standing issued by the Department of State of the State of Florida as to Borrower
- 4. Certificates to Counsel of Michael R. Rechter as President of RECHTER HOLDINGS, INC., and as Manager of Rechter Progresso 835, LLC, a Florida limited liability company, and individually as Guarantor

# CERTIFICATE TO COUNSEL Dated: September 20, 2017

The undersigned, Michael R. Rechter, in his capacity as President of RECHTER HOLDINGS, INC., a Florida corporation, and as Manager of RECHTER PROGRESSO 835, LLC, a Florida limited liability company (the "Companies"), and individually as Guarantor, hereby states the following in order to induce ROBERT MARC SCHWARTZ, P.A. ("Opining Counsel") to provide an opinion letter, dated September 19, 2017 (the "Opinion Letter"), the form of which has been provided to the Companies, based, in part, on the factual matters set forth in this Certificate to Counsel (the "Certificate").

Unless otherwise defined herein, capitalized terms set forth in the Opinion Letter shall have the same meanings when used herein.

1. <u>Knowledge</u>. I am familiar with the Loan Documents relating to the Loan between the Companies and Stonegate Bank (the "Other Transaction Party"). I have knowledge of all of the facts contained herein or I have obtained such information from the other officers of the Companies whose duties require them to have personal knowledge thereof.

2. <u>Representations and Warranties True and Correct.</u> The representations and warranties of the Companies as set forth in the Loan Documents are true, correct, and complete as of the date of this Certificate, with the same effect as if made on the date of this Certificate. The Companies hereby consent to Opining Counsel's reliance on such representations and warranties.

3. <u>Organizational Documents</u>. Exhibit "A" to this Certificate is a true, correct and complete copy of the Companies' Organizational Documents, including the Articles of Incorporation and Bylaws of Rechter Holdings, Inc., the Articles of Organization and Operating Agreement of Rechter Progresso 835, LLC, and Certificates of Good Standing as to both Companies issued by the Department of State of the State of Florida.

4. <u>Resolutions</u>. Exhibit "B" to this Certificate contains true, correct and complete copies of the Certificate of Resolutions, Status and Incumbency approving the transaction and the Loan Documents, and authorizing Michael R. Rechter to execute same on behalf of the Rechter Holdings, Inc., as President, and on behalf of Rechter Progresso 835, LLC, as Manager (the "Resolution").

5. <u>Effectiveness</u>. The Organizational Documents and the Resolutions remain in full force and effect and there have been no amendments to the Organizational Documents or the Resolutions or actions taken to amend the Organizational Documents or the Resolutions. The Resolutions have not been modified or rescinded and are the only Resolutions adopted by the Companies relating to the Transaction and the Loan Documents. The Companies believe that the Transaction is within the power of the Companies as provided in its Organizational Documents.

6. <u>Signatory: Binding Agreement</u>. Michael R. Rechter, in his capacity as President of Rechter Holdings, Inc., and as Manager of Rechter Progresso 835, LLC, a Florida limited liability company, has been authorized to sign the Loan Documents on behalf of the Companies, and has, in fact, signed the Loan Documents. The Companies' intent to enter into a binding agreement is demonstrated by such signature, and the Companies have provided the executed Loan Documents to the Other Transaction Party with the intent of creating a binding agreement on the part of the Companies.

7. No Dissolution. No action has been taken by the Companies in contemplation of any liquidation or

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dissolution of either Company and no such actions are contemplated. To my knowledge, no action has been taken by the Florida Department of State to administratively dissolve the Companies, and the Companies have not received any notification from the Florida Department of State to this effect.

8. Compliance with Other Agreements and with Judgments, Decrees and Orders. The Companies have no other Agreements, Judgments, Decrees or Orders which affect in any way its ability to execute the Loan Documents or perform the actions provided for in the Loan Documents.

9. No Breach and No Security Interest Created. The undersigned is not aware, nor have the Companies received any notices that the execution, delivery or performance of the Loan Documents (or any of them): (i) constitutes a breach of, or a default under, any agreement of either of the Companies; (ii) results in the creation of a security interest or a lien on the assets of the Companies, except pursuant to the Loan Documents, or any of them; or (iii) violates any judgment, decree or order of any court or administrative tribunal applicable to the Companies.

10. No Consent. No consent, approval, authorization or order of any person or entity (including any governmental authority or of any court) is required for the Companies: (a) to execute and deliver the Loan Documents and (b) to perform the obligations contemplated thereby. There is no law or regulatory requirement governing the Companies that affects its ability to grant security interests in its assets or otherwise engage in the Transaction.

11. No Litigation. There is no action, suit or proceeding, at law or in equity, or by or before any governmental agency, now pending or overtly threatened in writing against Companies that challenges the validity or enforceability of, or that seeks to enjoin the performance of, or seeks damages with respect to, the Loan Documents or the Transaction.

12. Bankruptcy. No proceedings have been commenced in bankruptcy for the reorganization or liquidation of the Companies, nor have the Companies made an assignment for the benefit of their creditors.

13. Accuracy of Statements. The undersigned hereby certifies that he is not aware of any facts that could render any of the foregoing statements to be untrue or incomplete in any respect.

14. Consent. The Companies have reviewed the form of the Opinion Letter and hereby consent to the issuance of the Opinion Letter. The Companies also consent to the delivery of this Certificate to the Other Transaction Party.

15. Reliance. This Certificate is issued solely for the benefit of Opining Counsel and may not be relied upon by any party other than Opining Counsel. This Certificate may be relied upon by Opining Counsel in connection with the issuance of the Opinion Letter.

IN WITNESS WHEREOF, the undersigned hereunto sets his hand as of the date first above written.

Rechter Holdings, Inc. a Florida corporation

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Rechter Progresso 835, LLC a Florida limited liability company

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By: Michael R. Rechter, individually and as President Michael R. Rechter, individually and as Manager

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#### LOAN AGREEMENT Loan Number 6016869

THIS AGREEMENT, dated as of this 20<sup>th</sup> day of September, 2017, by and between, by **RECHTER** HOLDINGS, INC., a Florida corporation and **RECHTER** PROGRESSO 835, LLC, a Florida limited liability company, both having an address of 241 East Prospect Road, Ft. Lauderdale, FL 33332 (hereinafter collectively called the "Borrowers" or the "Borrower"), and STONEGATE BANK, a Florida banking corporation, and its successors or assigns whose address is 400 North Federal Highway, Pompano Beach, Florida 33062 ("Lender").

#### RECITALS.

A. Borrowers have applied to Lender for a loan in the principal amount of Three Million Two Hundred Thousand and 00/100 Dollars (\$3,200,000,00) (the "Loan") to be secured by a first mortgage on the commercial real property located at 716-718 NE 2<sup>nd</sup> Avenue, Ft. Lauderdale, FL 33304 (Property "A" – owned by Rechter Holdings, Inc.), 913 NE 4<sup>th</sup> Avenue, Ft. Lauderdale, FL 33304 (Property "B" owned by Rechter Holdings, Inc.), and 835 NE 2<sup>nd</sup> Avenue, Ft. Lauderdale, FL 33304 (Property "C" owned by Rechter Progresso 835, LLC), (collectively all three shall be referred to as the "Property"), along with an Assignment of Rents, UCC-1 Financing Statement and other loan documents secured by the Property (together with all fixtures and improvements thereon, the "Land"), which Land is more particularly described as:

Property A: Lots 4, 5 and 6, Block 257 of PROGRESSO, according to the Plat thereof, as recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida; said land situate, lying and being in Broward County, Florida.

and

Property B: Lots 17-21, LESS the East 10 feet thereof, of Block 214 of PROGRESSO, and all that part of Block 214 of PROGRESSO lying South of said Lot 21 and East of the alley running North and South through said Block 214, according to the Plat thereof, as recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida; said lands situated, lying and being in Broward County, Florida, all LESS that portion of land dedicated to Broward County, as described in Instrument Number 113500871.

and.

Property C: Lots 33 and 34, Block 289 of PROGRESSO, according to the Plat thereof, as recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida; said lands situated, lying and being in Broward County.

The Land and any improvements located thereon (the "Improvements") are hereinafter collectively referred to as the "Premises."

B. Borrower sand Lender have negotiated the terms and conditions of, and wish to enter into, this Agreement in order to set forth the terms and conditions of the Loan.

NOW, THEREFORE, in consideration of the Premises, and of the mutual covenants and agreements set forth below, Borrowers and Lender agree as follows:

1. <u>DEFINITIONS</u>. As used in this Agreement the terms listed below shall have the following meanings unless otherwise required by the context:

(a) <u>Affiliate</u>: An Affiliate of any Person means (i) any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such Person and (ii) any other Person that beneficially owns at least twenty percent (20%) of the voting common stock or partnership interest or limited liability company interest, as applicable, of such Person. For the purposes of this definition, "control" when used with respect to any Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, partnership interests, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

(b) <u>Appraisal</u>: Each appraisal of the Premises (i) ordered by Lender, (ii) prepared by an MAI appraiser selected by Lender, (iii) in compliance with all federal and state standards for appraisals including the Governmental Requirements, (iv) reviewed and approved by Lender, and (v) in form and substance satisfactory to Lender based on its standards and practices applied in reviewing real estate appraisals.

(c) <u>Appraised Value</u>: The then current "as-is" value of the Premises, as determined by an Appraisal which meets the Governmental Requirements, prepared by an MAI appraiser selected and engaged by Lender.

(d) <u>Approvals and Permits</u>: Each and all approvals, authorizations, bonds, consents, certificates, franchises, licenses, permits, registrations, qualifications, and other actions and rights granted by or filings with any Persons necessary, or appropriate, for the development of the Premises or for the conduct of the business and operations of Borrower.

(e) <u>Assignment of Leases, Rents and Contract Rights</u>: A Collateral Assignment of Leases, Rents and Contract Rights of even date herewith from Borrower assigning to Lender all of its right, title and interest in and to all agreements for the leasing of the Premises or any part thereof, if any, and all rents, issues and profits derived or to be derived from the Premises.

(f) <u>Financing Statements</u>: The financing statements from Borrower to Lender to perfect Lender's security interest in the personal property described in the Mortgage and in the Assignment of Leases, Rents and Contract Rights.

(g) <u>GAAP</u>: Generally accepted accounting principles consistently applied, as adopted in the United States, and as amended from time to time.

(h) <u>Governmental Authority</u>: Any governmental or quasi-governmental authority, agency, authority, board, commission, or governing body authorized by federal, state or local laws or regulations as having jurisdiction over the Borrower, the Premises or the ownership, development or sale thereof.

(i) <u>Governmental Requirements</u>: The standards for real property appraisals established under applicable regulations governing state chartered banks promulgated by the Board of Governors of the Federal Reserve System or the United States Comptroller of the Currency.

(j) <u>Guarantor</u>: Michael R. Rechter, and his respective heirs, personal representatives, successors and/or assigns, or any other individual or entity now or hereafter guaranteeing the Loan (hereinafter "Guarantor").

(1) Land: That certain parcel of real property identified in Recital "A" above.

(m) Loan Documents: Any and all documents evidencing, securing, or executed in connections with the Loan.

(n) <u>Loan to Value Ratio</u>: The ratio of (i) the aggregate amount outstanding of the Loan, plus unfunded interest reserves under the Loan, plus any accrued but unpaid interest and any fees, costs, charges and other expenses which have become due under the Loan but not yet paid, to (ii) the Appraised Value of the Premises, expressed in a percentage.

(o) <u>Maximum Loan to Value Ratio</u>: A maximum Loan to Value Ratio of seventy-five percent (75%) based on an as-is appraised value.

(p) Mortgage: Mortgage, Assignment of Rents and Security Agreement from Borrower to Lender, securing the Note in the amount of Three Million Two Hundred Thousand and 00/100 Dollars (\$3,200,000.00) and which is a valid first mortgage lien on the Land, all contract rights derived therefrom and all Improvements, fixtures, equipment and personal property owned by Borrower to be located on or used in connection with the Land, and any replacements or additions thereto, and all modifications and amendments thereto.

(q) <u>Note</u>: Promissory Note of even date herewith from Borrower to the order of Lender in the principal amount of Three Million Two Hundred Thousand and 00/100 Dollars (\$3,200,000.00), evidencing the Loan, as the same shall be amended, modified, increased or extended from time to time.

(r) <u>Person</u>: A natural person, a partnership, a joint venture, an unincorporated association, a limited liability company, a corporation, a trust, any other legal entity, or any Governmental Authority.

(s) <u>Premises</u>: The Land and all Improvements, fixtures and personal property now or hereafter located on the Land.

(t) <u>Title Company</u>: Old Republic National Title Insurance Company.

(u) <u>The Loan</u>. Lender shall make the Loan to Borrower upon the terms and conditions set forth herein, and Borrower shall take the Loan and expressly agrees to comply with and perform all of the terms and conditions of this Agreement, the Note, and the Mortgage, and the Loan Documents evidencing and securing the Loan. The Loan shall be evidenced by the Note and secured by the Mortgage and other Loan Documents as provided herein. The amount of the Loan is of Three Million Two Hundred Thousand and 00/100 Dollars (\$3,200,000.00).

2. <u>CONDITIONS TO LENDER'S OBLIGATION TO CLOSE THE LOAN</u>. The conditions listed below are a condition precedent to any obligation of Lender and shall be complied with in form and substance satisfactory to Lender in Lender's sole discretion prior to closing:

(a) <u>Title Insurance</u>: Borrowers shall deliver to Lender an original Title Commitment for a Mortgagee Title Insurance Policy ("Policy") issued by the Title Company, in the amount of the Note, showing "Stonegate Bank, a Florida banking corporation and its successors and assigns, as their interest may appear" as insured, which title insurance commitment shall commit to insure (i) Lender against loss or damage on account of mechanics liens upon the Premises, (ii) that the Mortgage is a valid first lien on the fee simple title at the time of each advance, and (iii) that title to the Land encumbered by the Mortgage is good and marketable and free and clear of all liens, encumbrances, easements, exceptions, reservations and restrictions except for those approved by Lender. Lender shall be sent copies of all recorded exceptions and the title premium invoice and will require notification from the Title Company of survey approval. All standard exceptions shall be deleted from the Policy. The Policy shall be on a 2006 form and shall contain the following endorsements: (i) unmodified Florida Form 9; (ii) Survey; (iii) Environmental; (iv) variable interest rate; and (v) such other endorsements as Lender may require. In addition, an Insured Closing Letter shall be required, and, if required by Lender, reinsurance and a direct access agreement. Borrowers shall be responsible for all costs incurred in obtaining the Title Commitment and the subsequent Policy and any required title endorsements.

(b) <u>Survey</u>: Borrowers shall furnish to Lender a survey of Property A, Property B and Property C, recently dated, showing a legal description identical to that in the Title Commitment and complying with Lender's "Survey Requirements" to be provided to Borrower. The certification on each survey shall be to the Lender, Lender's attorney, the Title Company, the Borrowers' attorney, and the Borrowers. Borrowers shall furnish the Surveyor with a copy of the Mortgagee Title Commitment and copies of all recorded title exceptions in order that the Surveyor can locate all easements and other matters affecting each property. Borrowers shall deliver one (1) print of the survey to the Lender and to the Title Company for its review and approval prior to Closing.

(c) Note: The Note shall be duly authorized, executed and delivered to Lender.

(d) <u>Mortgage</u>: The Mortgage shall be duly authorized, executed, acknowledged, delivered to Lender, and recorded, which shall be a valid first mortgage lien on the Premises and all fixtures and personal property owned by Borrowers to be used in connection with the Improvements.

(e) <u>Assignments</u>: The Collateral Assignment of Leases, Rents and Contract Rights shall be duly authorized, executed, and acknowledged by Borrower, and delivered to Lender.

(f) <u>Mortgagor's Affidavit</u>: An affidavit of Borrowers shall be executed and delivered to Lender certifying that no liens exist on the Premises other than for taxes not yet due and payable and that no other parties are entitled to possession except as may be otherwise provided herein.

(g) <u>Financing Statements</u>: Borrower shall authorize, and hereby authorizes, Lender to file or record such Financing Statements as Lender may require to perfect its security interest in the personal property described in the Mortgage.

(h) <u>Insurance</u>: Borrower shall obtain and maintain the following insurance with respect to the Improvements:

(i) "All Risks" or "Special" Form Property Insurance. Lender shall be named as insured mortgagee & loss payee on the Property and casualty insurance to the full replacement value of the improvements located on the Property, which shall be in such amounts and form and by such companies as shall be approved and required by Lender. The policy must cover all standard insurable perils including fire, extended coverage, and a Mortgage Clause, which is acceptable to the Lender in its reasonable discretion. The deductible amount thereunder shall be borne by the Borrower in the event of a loss, and the deductible must not exceed \$25,000.00 per occurrence. Further, in the event of a loss, the Borrower shall abide by all provisions of the insurance contract, including proper and timely notice of the loss to the insurer, and the Borrower further agrees it will notify Lender of any loss in the amount of \$25,000.00 or greater and that no claim at or in excess of \$25,000.00 thereunder shall be settled without the prior written consent of the Lender, which consent shall not be unreasonably withheld or delayed by the Lender.

(ii) <u>Public Liability</u>. Public liability insurance insuring against all claims for personal or bodily injury, death, or property damage occurring upon, in or about the Property which shall be in such amounts and form and by such companies as shall be approved and required by Lender

(iii) <u>General Liability</u>. General liability insurance and workers compensation insurance which shall be in such amounts and form and by such companies as shall be approved and required by Lender

(iv) <u>Flood</u>. If the property is in a flood zone, lender will require flood insurance which shall be in an amount equal to the maximum insurable value of any vertical improvements if required by Lender.

(v) <u>Business Interruption Insurance</u>. If applicable, business interruption insurance.

General Requirements. All such insurance at all times will be in an insurance (i) company or companies in such amounts and with terms acceptable to the Lender, with loss, if any, payable to the Lender as its interest may appear, pursuant to a noncontributory mortgagee clause which shall be satisfactory to the Lender and addressed to: Stonegate Bank, 400 North Federal Highway, Pompano Beach, Florida 33062. All policies shall provide that they will not be canceled without thirty (30) days notice to Lender. All policies must be paid one (1) year in advance. Upon the issuance of such policies the Borrower will deliver to the Lender receipts for the premiums paid thereon and certificates of insurance and certified copies of such policies. Any policies furnished the Lender shall become its property in the event the Lender becomes the owner of the Premises by foreclosure or otherwise. The Lender is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies on the Premises, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to the Lender. In case of loss under any such policy of insurance, the Lender may apply the net proceeds to the payment of the indebtedness hereby secured, whether due or not until the indebtedness is fully paid and provided further that Lender has no further obligations under the Loan Documents, the remainder shall go to the Borrower.

(j) <u>Appraisal</u>: A certified appraisal of each parcel comprising the Property by an appraiser satisfactory to Lender in Lender's sole discretion shall have been obtained by Lender and paid for by Borrowers. The total amount of the Loan shall not exceed seventy-five percent (75%) of the appraised as-is value of the Land.

(k) <u>Corporate Documents</u>: With respect to each Borrower, the following documents shall be delivered to Lender: the Articles of Corporation/Articles of Organization certified by the state of registration, a current good standing certificate from the Secretary of the State of Florida, an incumbency certificate specifying by name and title of the officers, directors and shareholders or the managers and members of each company (as appropriate), and certified resolutions of the Officers and Directors or Managers and Members of each company (as appropriate) authorizing the execution and delivery of this Agreement, the Mortgage, Note, and all other documents necessary or desirable, for the consummation of the transactions contemplated by this Agreement.

(1) <u>Flood Insurance</u>: If applicable, for each property, Borrowers shall deliver to Lender evidence satisfactory to Lender either that the Premises are not within a hazardous flood area as designated by the Department of Housing and Urban Development and any other governmental authority, or, if the Premises are within such a hazardous area, that the Premises are covered by flood insurance supplied by the Federal Insurance Administration to the maximum amount available, all as provided in the Flood Disaster Protection Act of 1973, as amended, together with appropriate endorsements thereto providing for Lender's interests in the same manner as the Builder's Risk Insurance, including without limitation that such insurance will not be cancelled without 30 days notice to Lender. Borrower agrees that Lender shall have the right to take any action necessary to continue said insurance in full force and effect including, but not limited to, paying premiums. Any funds advanced to continue said policies in full force and effect shall be considered as Advances hereunder and shall bear interest from the date of disbursement at the same rate as other Advances and payment of said funds and interest shall be secured by the Mortgage. Satisfactory evidence of flood area designation shall be certification from a third party at Borrower's expense.

(m) <u>Opinion of Borrowers' Counsel</u>: Borrowers shall deliver to Lender an opinion of counsel for Borrowers and addressed to Lender, such counsel to be reasonably satisfactory to Lender, which opinion of counsel shall include all of the following:

(i) all Loan documents and instruments, including but not limited to the Guaranty, required to be delivered have been duly authorized, executed and delivered and are valid, binding and enforceable in accordance with their terms, subject to any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the right of creditors generally,

(ii) that Borrowers are each duly organized, in good standing under the laws of the State of Florida, are qualified to do business in the State of Florida, and have all the necessary power and authority to undertake their obligations under the loan,

(iii) that the proposed use of the Property complies with all applicable zoning and building laws and regulations, and all other applicable federal, state and local laws, ordinances and regulations, and that all required approvals of any nature whatsoever have been obtained, including without limitation, permits and approvals required by all governmental agencies regulating air and water pollution, site plan and plat approval, surface water management approvals, and all approvals required to pursuant to the local land development regulations.

(iv) that there is no charter, partnership agreement, bylaw or preference stock provision of Borrowers and no provision of any existing mortgage, indenture, contract or agreement known to such counsel binding on Borrowers or affecting their property which would conflict with or in any way prevent the execution, delivery and carrying out of the terms of the loan,

(v) that there are no proceedings pending or threatened before any court or administrative agency which will materially adversely affect the financial condition or operation of Borrowers, or any Guarantor, or the Property, including but not limited to bankruptcy, reorganization or insolvency proceeding or any other debtor-creditor proceedings under the Bankruptcy Code or any similar statute, nor to counsel's knowledge, which could lead to such proceedings,

(vi) that the lien of the Mortgage is a valid first lien on the Property and is not subject to any other lien or encumbrance, and the security interests described in the Financing Statements are good and valid security interests and not subject to any purchase money security interests,

(vii) that the Note and the interest provided for therein does not violate any usury or other laws of the State of Florida, and

(viii) such other matters as Lender may reasonably require.

The Letter of Opinion shall be issued in accordance with, and governed by, Part II of the Reports on Standards for Opinions of Florida Legal Counsel for Business and Real Estate Transactions (September 1998) issued by the Business Law Section and the Real Property, Probate & Trust Law Section of the Florida Bar.

(n) <u>Expenses</u>: Borrowers shall have paid all those fees and charges due and payable or ordered paid by Lender as provided herein under Paragraph 3 of this Agreement entitled Expenses.

(o) <u>Easements and Agreements</u>: If applicable, all necessary easements and agreements between the Premises and adjacent properties and dedicated public rights of way if necessary, in order for the Premises to have adequate drainage, retention, utilities, parking, access and ingress-egress shall have been approved by Lender and shall have been executed and recorded prior to recordation of Lender's Mortgage.

(p) <u>Financial Statements</u>: The Guarantor shall provide to Lender a personal financial statement certified to Lender.

(r) <u>Tax I.D. Numbers</u>: Borrower shall provide Lender with the taxpayer identification number and/or social security numbers of the Borrower and Guarantors.

(s) <u>Taxes</u>: All taxes and assessments payable in connection with the Premises and the Improvements are to be paid at the time of the Closing and subsequent taxes and assessments must be paid when due.

(t) <u>Satisfaction of Mortgages</u>: Satisfaction of all existing mortgages, if any, will be required prior to Closing.

(u) <u>Liens</u>: Prior to Closing, Lender shall receive evidence satisfactory to Lender in Lender's sole discretion that no liens exist for work done prior to the Closing of the Loan and that no rights exist which could be deemed superior to Lender's lien priority as a first mortgagee or grantee under the Mortgage.

(v) <u>Toxic Waste and Environment Audits</u>: Borrowers shall supply a Phase I Environmental Audit for each property, which must be acceptable to Lender. Additionally, as a condition to closing, Borrowers and Guarantor shall execute and deliver an Environmental Indemnification Agreement prepared by Lender which shall hold Lender and its successors and assigns harmless in the event of present or future existence of hazardous substances on the Premises. It is expressly understood and agreed that such obligations under the Environmental Indemnification Agreement are enforceable whether or not Lender seeks recovery against the collateral securing the Loan.

(w) <u>Other Documents</u>: Borrowers shall deliver to Lender such other documents and information as Lender may reasonably require.

(x) <u>Representations and Warranties</u>: The representations and warranties of Borrower as set forth in this Agreement and the Loan documents shall be true and correct.

(y) <u>Property Improvements</u>. Borrowers shall provide Lender with evidence of all costs paid to date for improvements made to the Property.

(z) <u>40 Year Inspection</u>. For each Property, Borrowers shall provide to Lender either a satisfactory 40 year inspection report or a building condition report approved by Lender.

3. <u>EXPENSES</u>: Borrowers shall pay the Lender a transaction fee of \$16,000.00, the balance of which shall be paid at closing. Additionally, Borrower shall pay all fees and charges incurred in the procuring and making of the Loan and all other expenses incurred by Lender during the term of the Loan, including without limitation Title Company's fees and premiums, charges for examination of title to the Premises, expenses of surveys, appraisals, Florida Documentary Stamp Taxes, Intangible Taxes, recording expenses, and the fees of the attorneys for Lender, the Borrower shall also pay any and all insurance premiums, taxes, assessments, water rates, sewer rates and other charges, liens and encumbrances upon the Premises. Such

amounts, unless sooner paid, shall be paid from time to time as Lender shall request either to the person to whom such payments are due or to Lender if Lender has paid the same.

4. <u>WARRANTIES AND REPRESENTATIONS OF BORROWER</u>. Borrower represents and warrantis (which representations and warranties shall be deemed continuing) as follows:

(a) <u>Organization Status</u>. Borrowers each are (i) duly organized under the laws of the State of their creation (ii) in good standing under the laws of the state of its organization, as applicable, and (iii) qualified to do business and are in good standing under the laws of the State of Florida.

(b) <u>Compliance with Laws</u>. To each Borrower's knowledge, there is no violation of any applicable zoning, building or any other local, state or federal laws, ordinances and regulations existing with respect to the current use thereof; and Borrower has obtained all licenses, permits and approvals required by all local, state and federal agencies regulating such current use; and Borrower is in compliance with all laws, regulations, ordinances and orders of all governmental authorities.

(c) <u>Financial Statements</u>. The financial statements of the Borrowers and Guarantor heretofore delivered to Lender are true and correct in all respects, have been prepared in accordance with generally accepted accounting principles, and fairly present the respective financial conditions of the subjects thereof as of the respective dates thereof, and no material adverse change has occurred in the financial conditions reflected therein since the respective dates thereof and no additional borrowings have been made by Borrower or Guarantors since the date thereof other than the borrowing contemplated hereby or approved by Lender.

(d) <u>Authority to Enter into Loan Documents</u>. The Borrowers and the Guarantor have full power and authority to enter into the Loan documents and consummate the transactions contemplated hereby, and the facts and matters expressed or implied in the opinions of its legal counsel are true and correct.

(e) <u>Validity of Loan Documents</u>. The Loan Documents have been approved by those persons having proper authority, and to the best of each Borrower's knowledge are in all respects legal, valid and binding according to their terms.

(f) <u>Priority of Lien on Personalty</u>. No chattel mortgage, bill of sale, security agreement, financing statement or other title retention agreement (except those executed in favor of Lender) has been or will be executed with respect to any personal property, chattel or fixture used in conjunction with the construction, operation, or maintenance of the Improvements as described in the Financing Statement.

(g) <u>Conflicting Transactions of Borrowers</u>. The consummation of the transaction hereby contemplated and the performance of the obligations of Borrowers under and by virtue of the Loan Documents will not result in any breach of, or constitute a default under, any lease, bank loan or credit agreement, or other instrument to which any of the Borrowers are a party or by which they may be bound or affected.

(h) <u>Pending Litigation</u>. There are no actions, suits or proceedings pending against Borrower or the Premises, or, to the knowledge of Borrowers, circumstances which could lead to such action, suits or proceedings against or affecting Borrowers or the Premises, or involving the validity or enforceability of any of the Loan documents, before or by any government authority, except actions, suits and proceedings which have been specifically disclosed to and approved by Lender in writing; and to Borrower's knowledge they are not in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority.

(i) <u>Availability of Utilities</u>. All utility services are available at the boundaries of the Premises, including water supply, storm and sanitary sewer facilities, and gas, electric and telephone facilities.

(j) <u>Condition of Premises</u>. The Premises are not now damaged or injured as a result of any fire, explosion, accident, flood or other casualty.

(k) <u>Contracts</u>. Borrowers have not made any contract or arrangement of any kind the performance of which by the other party thereto would give rise to a lien on the Premises.

(1) <u>No Default</u>. There is no Event of Default or default on the part of Borrower under this Agreement, the Note or the Mortgage, and no event has occurred and is continuing which with notice, or the passage of time, or either, would constitute a default under any provision thereof.

5, <u>ADDITIONAL COVENANTS OF BORROWERS</u>. Borrower covenants and agrees with Lender as follows:

(a) <u>Taxes</u>. Borrowers certify that each has filed or caused to be filed all federal, state and other tax returns which, to the best of each Borrower's knowledge, are required to be filed, and have paid or caused to be paid all taxes as shown on said returns or in any manner due to be paid (including, but not limited to, ad valorem and personal property taxes) or on any assessment received by Borrowers and not being contested in good faith, to the extent that such taxes have become due. Borrowers further certify that Borrowers have paid all other taxes, levies and charges of any nature, including any governmental charges.

(b) <u>Notice of Litigation</u>. Borrowers shall promptly give Lender written notice of (a) a judgment entered against either Borrower, or (b) the commencement of any action, suit, claim, counterclaim or proceeding against or investigation of either Borrower which, if adversely determined, would materially adversely affect the business of Borrower, or which questions the validity of this Agreement, the Note or the Mortgage, or any other actions or agreements taken or to be made pursuant to any of the foregoing.

(c) <u>Notice of Default</u>. Borrowers shall promptly give Lender written notice of any act of default under any agreement with Lender or under any other contract to which Borrower is a party and of any acceleration of indebtedness caused thereby.

(d) <u>Reports</u>. Borrowers shall promptly furnish Lender with copies of all stockholder, governmental agency, and other special reports pertaining to or affecting Borrowers or the Premises, which would materially adversely affect the business of Borrower or the operation of the Premises.

(c) <u>Change in Ownership, Control or Management</u>. Borrowers shall not change its ownership during the term of the Loan. Notwithstanding, a change in each Borrower's ownership structure as they exist as of the date of this Agreement for estate planning purposes or due to a transfer of shares into a trust for the benefit of a shareholder and/or his or her family members, or due to a transfer of shares to a shareholder's spouse or lineal descendant shall not be deemed a default under the Loan Documents, including the Commercial Guarantees.

(f) <u>Construction Liens</u>. Each Borrower will allow no work or construction to be commenced on the Land, or goods specially fabricated for incorporation therein, which has not been fully paid for, prior to the recording of the Mortgage, which could constitute a lien on the Premises. Borrower shall save and hold Lender harmless from the claims of any construction lien or equitable lien and pay promptly upon demand any loss or losses which Lender may incur as a result of the filing of any such lien, including the reasonable cost of defending same and the Lender's reasonable attorneys' fees in connection therewith.

In addition, Borrower agrees, at its sole cost and expense, to have any mechanics' lien or equitable lien which may be filed against the Premises or undisbursed funds of this Loan released or bonded within thirty (30) days of the date of filing same, time being of the essence. If Borrower fails, after demand, to cause said lien or liens to be released or bonded as aforesaid, Lender may take such steps as it deems necessary and any funds expended shall be charged to Borrower's Loan account and shall bear interest as provided by the Loan Documents.

(g) <u>No Transfer of Premises</u>. The Premises or any part thereof shall not be sold, leased, conveyed, mortgaged or encumbered in any way without the prior written consent of Lender, except as may be provided elsewhere herein or in the Mortgage, it being understood and agreed that the full balance due on the Loan shall be paid in full to Lender upon the sale of the Premises.

(h) <u>Compliance with Laws</u>. Borrowers will comply promptly with all federal, state and local laws, ordinances and regulations relating to the construction, use, sale and leasing of the Premises, including, but not limited to, (i) the Interstate Land Sales Full Disclosure Act, if appropriate, (ii) all applicable federal and state securities laws, and (iii) if applicable, all laws of the State of Florida applicable to condominium developments, and will obtain and keep in good standing all necessary licenses, permits and approvals required or desirable for use of the Improvements.

(i) <u>Brokerage Commissions</u>. Borrowers shall pay all brokerage fees or commissions, if any, arising from the making of the Loan pursuant to a separate fee agreement between Borrowers and any broker. Borrowers agree to defend, indemnify, and hold Lender harmless from and against any and all cost, claim, liability, damage or expense (including, but not limited to, reasonable attorney's fees) in connection with the Brokers or relating to any other claims of fees due from any parties.

(j) <u>Title to Personalty</u>. Borrowers will deliver to Lender, on demand, any contracts, bills of sale, statements, receipted vouchers or agreements under which Borrower claims title to any materials, fixtures or articles incorporated in the Improvements or subject to the lien of the Mortgage.

(k) <u>Financial Statements</u>. Within ninety (90) days after the end of each fiscal or calendar year, Borrower shall supply Lender with an internal, company prepared, annual financial statement for the prior fiscal year for Borrower and personal financial statements of each Guarantor. The form and content of all financial statements shall be acceptable to Lender in its sole and absolute discretion. In addition, Borrower and each Guarantor shall provide Lender with certified copies of annual tax returns as filed with the Internal Revenue Service within 15 days of the date filed with the IRS. Further, Guarantor shall provide Lender, from time to time, upon Lender's request, copies of brokerage and other account statements as are required by Lender to calculate Guarantor's Liquid Assets. In addition, all financial statements must be certified by the Borrower to be correct and complete as of the date prepared and shall include a complete description of all contingent liabilities, including, without limitation, all indebtedness guaranteed. Failure to provide any of the information required in this paragraph shall be an Event of Default hereunder. Borrower shall further covenant and agree that Lender shall have the absolute right to inspect Borrower's books and records concerning the Premises on reasonable prior notice and during reasonable business hours.

(1) <u>Collection of Insurance Proceeds</u>. Borrower will cooperate with Lender in obtaining for Lender the benefits of any insurance or other proceeds lawfully or equitably payable to it in connection with the transaction contemplated hereby and the collection of any indebtedness or obligation of Borrower to Lender incurred hereunder (including the payment by Borrower of the expense of an independent appraisal on behalf of Lender in case of a fire or other casualty affecting the Premises).

(m) <u>Indebtedness</u>. With respect to the Premises encumbered by the Mortgage of even date herewith, Borrower will not incur, create, assume or permit to exist any indebtedness or liability on account of advances or deposits, any indebtedness or liability for borrowed money for the Premises, any indebtedness constituting the deferred purchase price of any property or assets, or any indebtedness owed under any conditional sale or title retention agreement, or any other indebtedness or liability evidenced by notes, bonds, debentures or similar obligations without the written approval of Lender, except:

(i) indebtedness owed Lender; and

(ii) indebtedness incurred on open accounts for materials, equipment and supplies purchased in the ordinary course of business, payment for which shall be made promptly when due.

(n) <u>Guaranty</u>. With respect to the Premises encumbered by the Mortgage, neither Borrower will guaranty or otherwise in any way become or be responsible for obligations of any other person, whether by agreement to purchase the indebtedness of any other person, or agreement for the furnishing of funds to any other person through the purchase of goods, supplies or services (or by way of stock purchase, capital contribution, advance or loan) for the purpose of paying or discharging indebtedness of any other person, or otherwise.

(o) <u>Further Assurances and Preservation of Security</u>. Borrowers will do all acts and execute all documents for the better and more effective carrying out of the intent and purposes of this Agreement, as Lender shall reasonably require from time to time, and will do such other acts necessary or desirable to preserve and protect the collateral at any time securing or intending to secure the Note, as Lender may require.

(p) <u>No Assignment</u>. Borrowers shall not assign this Agreement or any interest therein and any such assignment is void and of no effect. Lender may assign this Agreement and any other Agreements contemplated hereby, and all of its rights hereunder and thereunder, and all provisions of this Agreement shall continue to apply to the Loan. Lender agrees to notify Borrowers of any such assignment. Lender also shall have the right to participate the Loan with any other lending institution.

#### (q) Indemnification.

(i) Borrowers shall indemnify and hold Lender harmless from and against any claims, including, without limitation, brokers' claims, arising in connection with the Loan or the purchase or development of the Land, except for claims arising from Lender's gross negligence or willful misconduct.

In addition, Rechter Holdings, Inc. shall indemnify and hold Lender (ii) harmless for any claims brought by the Fort Lauderdale Community Redevelopment Agency (hereinafter "CRA") pursuant any of the three Agreements recorded under Instrument Nos. 113377692, 113377693 and 113377694 in the public records of Broward County, Florida, or any subsequently recorded agreements or documents affecting the Mortgaged Property. In particular, if any monetary and/or non-monetary claims are brought by the CRA against Rechter Holdings, Inc. that in any way attach to the Mortgaged Property or affect the priority of the Mortgage securing the Property, Rechter Holdings shall satisfy such claims within thirty (30) days of demand being made by the CRA. Failure to timely cure such claims within 30 days shall be deemed a default of this Agreement and the Loan Documents. Further, should Lender be named as a party to a lawsuit brought by the CRA based on any claims against Rechter Holdings, Inc., Rechter Holdings, Inc. shall be responsible to reimburse the Lender for its reasonable attorney's fees and costs incurred throughout the proceedings, through appeal, and to reimburse Lender for any damages Lender incurs as a result of any claims brought by the CRA related to the subject Mortgaged Property. Failure to reimburse Lender within thirty (30) days of request being made shall be deemed a default of this Agreement and the Loan Documents.

(r) <u>Operating Account</u>. Borrower or Guarantor shall maintain a depository relationship with Lender during the term of the Loan.

(s) <u>Leases</u>. The leases with the tenants located at the Mortgaged Property shall be subordinate to the Mortgage.

(t) <u>Debt Service</u>. Borrower agrees that during the term of the Loan it shall maintain a minimum debt service coverage ("DSC") of 125% based on the then current rents and expenses. The DSC is measured by the ratio of (1) EBITDA of Borrowers to (2) annual principal and interest payments of all indebtedness of Borrowers, calculated using the actual interest rate then in effect and the remaining amortization schedule. As used herein, "EBITDA" shall mean the sum of earnings before interest, taxes, depreciation and amortization (less 5% vacancy, 4%, management fees at 5% and 2% reserves). The Borrower shall be required to pay down the loan balance so that the remaining loan balance shall be equal to or exceed a minimum of 125% DSC. This covenant shall be measured for compliance annually upon Lender's receipt of the financial statements and other supporting documentation of Borrower required herein.

(u) <u>Acknowledgement of Commitment Letter</u>. The Borrower acknowledges the Loan Commitment Letter dated August 21, 2017, as may be amended, and shall comply with all terms and conditions set forth therein and the Loan is subject to its terms.

(v) <u>Escrow for Property Taxes</u>. The Borrower acknowledges that the Lender shall collect monthly payments held in escrow to pay for the annual property taxes on the mortgaged property when due.

(w) <u>Subordination of Loans to Owners</u>. Borrowers acknowledges and agrees that any loan from any of its owners to Borrower shall be subordinate to, in all respects, Borrower's obligations pursuant to the Loan Documents and Guarantors' obligations pursuant to their Guaranty of the Loan and related documents.

(x) <u>Partial Release of Property Upon Loan Paydown</u>. The Loan is secured by a mortgage and other loan documents on more than one property that comprises the Land as described herein. So long as the Loan is not in default and is in good standing, the Lender will agree to release any particular property secured by the Mortgage in exchange for receiving a payment equal to 120% of the pro-rata loan amount of the particular unit being released, <u>but only so long as</u> the overall maximum loan to value ratio (as defined in Paragraph 1(o) above) of the Loan remains at no greater than 75% and the minimum DCS is maintained in compliance with Paragraph 5(t) (above).

#### (y) Holdbacks.

(i) As noted in Paragraph 5(q)(ii), the CRA has recorded three Agreements under Instrument Nos, 113377692, 113377693 and 113377694 in the public records of Broward County, Florida, as part of certain grants/loans provided to Rechter Holdings. Inc. The CRA Property and Business Investment Improvement Program Agreement dated July 28, 2015, recorded under Instrument No. 113377692 includes a Promissory Note and Mortgage attached as Exhibits "G" and "F," respectively. The parties agree that the Lender shall holdback from the loan proceeds the amount of \$125,000.00 until such time, if ever, that either: (A) the CRA executes and delivers to Lender an agreement in recordable form subordinating the rights of the CRA Mortgage in favor of Lender's Mortgage ("Subordination Agreement"); or (B) the CRA provides any other form of written assurances to Lender that, in the Lender's sole discretion, sufficiently provides that the CRA's rights in the Agreements. including the CRA Mortgage, do not take legal priority over the lien rights of Lender's Mortgage and the other Loan Documents ("Acceptable Assurances"). The holdback amount shall be released to Borrowers upon the Lender's receipt of either the original signed Subordination Agreement (or upon it being recorded in the public records of Broward County, Florida) or the Acceptable Assurances. If the CRA does not provide the Subordination Agreement or Acceptable Assurances, Lender shall not release these funds to Borrowers until the Lender's receipt of the full loan proceeds to release Property, whether by paying off the full balance of the Loan or paying off that portion entitling Borrowers to a release of Property B as set forth in Paragraph 5(x) above.

(ii) Lender shall also holdback an additional \$242,000.00 from the loan proceeds pursuant to this subparagraph. Of this amount, \$105,000.00 shall be released to Borrowers upon the current lease commencement date for Property B currently scheduled for October 2017. The remaining \$137,000.00 shall be released to Borrowers upon the issuance of the Certificate of Occupancy for Property C.

(z) As a post-closing requirement, Borrowers shall obtain and provide to Lender a signed estoppel certificate from Triniti Trading Company in the form provided by Lender (or one that is approved by Lender) within ten (10) dates of the date of this Agreement.

6. <u>APPRAISALS</u>. During the term of the Loan, Lender may obtain a new or updated Appraisal at Borrower's expense at any time, provided, however, Borrower shall not be responsible for the cost of more than one (1) Appraisal in any twelve (12) month period, unless one of the following has occurred:

(a) Any portion of the Premises is released from the lien of the Mortgage;

(b) An Event of Default has occurred; or

(c) A new Appraisal or updated Appraisal is required under applicable Governmental Requirements.

7. <u>DEFAULT</u>. An "Event of Default", as used in this Loan Agreement, shall occur at any time or from time to time:

(a) <u>Failure to Pay</u>. If any obligation or any installment thereof is not paid when due (subject to any grace periods set forth in the Note);

(b) <u>Failure to Perform</u>. If any Obligation other than an Obligation requiring the payment of money or the occurrence of an event described in Subsections (c) through (k), inclusive, below is not duly and promptly performed or is violated and such non-performance or violation is not curable, or if curable continues for a period of fifteen (15) days after written notice thereof from Lender to Borrowers, provided, however, if such non-performance or violation may not reasonably be cured within such fifteen (15) day period, an Event of Default shall not be deemed to have occurred so long as same shall be diligently and continuously endeavored to be cured. Notwithstanding the foregoing, it shall be an Event of Default if such non-performance or violation has not been cured within thirty (30) days after notice thereof;

(c) <u>Breach of Covenants, Warranties and Representations</u>. If any warranty or representation made by any Borrower in this Agreement or pursuant to the terms hereof shall at any time be false or misleading in any material respect, or if any Borrower shall fail to keep, observe or perform any of the terms, covenants, representations or warranties contained in this Agreement, the Note, the Mortgage, or any other document given in connection with the Loan or development of the Premises, or is unwilling to meet its obligations thereunder;

(d) <u>Judgment</u>. If a final judgment for the payment of money is rendered against Mortgagor or Guarantor and the same remains unsatisfied except for such period of time as execution on the judgment is effectively stayed;

(e) <u>Voluntary Bankruptcy. Etc.</u> If Borrowers or Guarantor (i) is voluntarily adjudicated a bankrupt or insolvent, (ii) seeks or consents to the appointment of a receiver or trustee for itself or for all or any part of its property, (iii) files a petition seeking relief, including reorganization, arrangement or similar relief, under the present Bankruptcy Code or other similar present or future applicable laws of the United States or any state or any other competent jurisdiction, (iv) makes a general assignment for the benefit of ereditors or (v) admits in writing its inability to pay its debts as they mature; (f) <u>Involuntary Bankruptey, Etc.</u> If a receiver or trustee is appointed for Borrowers or Guarantor or for all or any part of their respective properties without their respective consents and such appointment is not vacated within sixty (60) days, or if a petition is filed against Borrowers seeking relief, including reorganization, arrangement or similar relief, under the present Bankruptey Code or other similar present or future applicable laws of the United States or any state or other competent jurisdiction, and such petition is not dismissed within sixty (60) days after the filing thereof;

(g) <u>Material Adverse Change</u>. The Lender determines, in its sole and absolute discretion, that a material adverse change has occurred in the financial condition of the Borrower or any Guarantor from the condition set forth in the most recent financial statement of the Borrower and the Guarantors heretofore furnished to Lender, or from the condition of the Borrower or any Guarantor as heretofore disclosed to Lender;

(h) <u>Dissolution</u>. If either Borrower voluntarily or involuntarily dissolves or liquidates;

(i) <u>Death or Incompetency</u>. If any individual Guarantor dies or becomes incapacitated; <u>provided</u>, <u>however</u>, upon the death of any individual Guarantor, Borrowers shall have sixty (60) days following the death of such individual Guarantor to provide evidence that the obligations of such individual Guarantor under the Guaranty have been accepted and ratified by such Guarantor's estate and the estate shall remain open (with no transfer of estate assets) until the Obligations have been paid in full;

(j) <u>Default by Guarantor</u>. If any Guarantor fails to duly pay or perform any covenant, term, provision, or condition of the Guaranty, or fails to duly pay or perform any and all indebtedness, liabilities and obligations (whether joint or several, direct or indirect, absolute or contingent, liquidated or unliquidated, matured or unmatured) of Guarantor to Lender or to any of Lender's affiliates, whether now existing or hereafter created or arising or now owned or howsoever hereafter acquired by Lender or by any of Lender's affiliates; or

(k) <u>Default</u>. The failure of any Borrower to comply in a timely manner with any terms or conditions of this Loan Agreement or any of the Loan Documents, which failure (other than the failure to make any payment required under the Loan Documents).

8. <u>REMEDIES OF LENDER</u>. Upon the happening of an Event of Default, then Lender may, at its option, upon written notice to Borrower:

(a) Cancel this Agreement;

Agreement;

(b) Commence an appropriate legal or equitable action to enforce performance of this

(c) Accelerate the payment of the Note and the Loan and any other sums secured by the Mortgage, apply all or any portion of any equity funds toward payment of the Loan, and commence appropriate legal and equitable action to foreclose the Mortgage and collect all such amounts due Lender;

(d) Exercise all rights under any agreements assigned to Lender and lease or let the Premises; and take such action as may be reasonable to preserve and protect the Premises and any construction materials stored thereon; or

(e) Exercise any other rights or remedies Lender may have under the Mortgage or other Loan documents referred to in this Agreement or executed in connection with the Loan or which may be available under applicable law.

9. <u>GENERAL TERMS</u>. The following shall be applicable throughout the period of this Agreement or thereafter as provided herein:

(a) <u>Rights of Third Parties.</u> All conditions of the Lender hereunder are imposed solely and exclusively for the benefit of Lender and its successors and assigns, and no other person shall have standing to require satisfaction of such conditions or be entitled to assume that Lender will make advances in the absence of strict compliance with any or all thereof, and no other person shall, under any circumstances, be deemed to be a beneficiary of this Agreement or the Loan documents, any provisions of which may be freely waived in whole or in part by the Lender at any time if, in its sole discretion, it deems it desirable to do so.

(b) <u>Borrowers are not Lender's Agent</u>. Nothing in this Agreement, the Note, the Mortgage or any other Loan document shall be construed to make the Borrowers the Lender's agent for any purpose whatsoever, or the Borrower and Lender partners, or joint or co-venturers, and the relationship of the parties shall, at all times, be that of debtor and creditor.

(c) <u>Evidence of Satisfaction of Conditions</u>. Lender shall, at all times, be free independently to establish to its good faith and satisfaction, and in its absolute discretion, the existence or nonexistence of a fact or facts which are disclosed in documents or other evidence required by the terms of this Agreement.

(d) <u>WAIVER OF JURY TRIAL</u>. LENDER AND BORROWERS HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE LENDER ENTERING INTO THIS AGREEMENT,

(e) <u>Headings</u>. The headings of the sections, paragraphs and subdivisions of this Agreement are for the convenience of reference only, and shall not limit or otherwise affect any of the terms hereof.

(f) <u>Invalid Provisions to Affect No Others</u>. If performance of any provision hereof or any transaction related hereto is limited by law, then the obligation to be performed shall be reduced accordingly; and if any clause or provision herein contained operates or would prospectively operate to invalidate this Agreement in part, then the invalid part of said clause or provision only shall be held for naught, as though not contained herein, and the remainder of this Agreement shall remain operative and in full force and effect.

(g) <u>Application of Interest to Reduce Principal Sums Due</u>. In the event that any charge, interest or late charge is above the maximum rate provided by law, then any excess amount over the lawful rate shall be applied by Lender to reduce the principal sum of the Loan or any other amounts due Lender hereunder.

(h) <u>Governing Law</u>. The laws of the State of Florida shall govern the interpretation and enforcement of this Agreement.

(i) <u>Number and Gender</u>. Whenever the singular or plural number, masculine or feminine or neuter gender is used herein, it shall equally include the others and shall apply jointly and severally.

(j) <u>Prior Agreement</u>. To the extent necessary, this Agreement shall be deemed to be an amendment to any prior loan agreement between Borrowers and Lender, and in the event of a conflict between the terms of this Agreement or any such prior agreement, the terms of this Agreement shall govern.

(k) <u>Waiver</u>. If Lender shall waive any provisions of the Loan documents, or shall fail to enforce any of the conditions or provisions of this Agreement, such waiver shall not be deemed to be a continuing waiver and shall never be construed as such; and Lender shall thereafter have the right to insist upon the enforcement of such conditions or provisions. Furthermore, no provision of this Agreement shall be amended, waived, modified, discharged or terminated, except by instrument in writing signed by the parties hereto.

(1) <u>Notices</u>. All notices from the Borrower to Lender and Lender to Borrower required or permitted by any provision of this Agreement shall be in writing and sent by registered or certified mail or nationally recognized overnight delivery service and addressed as follows:

To the Borrower:	Rechter Holdings, Inc. Rechter Progresso 835, LLC Attn: Michael R. Rechter 241 East Prospect Road Ft. Lauderdale, FL 33332
To the Lender:	Stonegate Bank Attn: Heather Zatik, Vice President 2400 North Commerce Parkway, Suite 200 Weston, Florida 33326

Such addresses may be changed by such notice to the other party. Notice given as hereinabove provided shall be deemed given on the date of its deposit in the United States Mail and, unless sooner actually received, shall be deemed received by the party to whom it is addressed on the third calendar day following the date on which said notice is deposited in the mail, or if a courier system is used, on the date of delivery of the notice. Lender's failure to send such courtesy copy to Borrower's counsel shall not in any way be deemed a failure to properly deliver notice to Borrower. Borrowers acknowledge that service of process of a lawsuit or of any other legal papers on any of the Borrowers at the above stated address shall be effective on all such Borrowers, and each Borrower authorizes any other such Borrower to accept service on behalf of the other Borrowers.

(m) <u>Successors and Assigns</u>. This Agreement shall inure to the benefit of and be binding on the parties hereto and their heirs, legal representatives, successors and assigns; but nothing herein shall authorize the assignment hereof by the Borrower.

(n) <u>Attorney's Fees and Costs</u>. Wherever a provision is made to award the Lender its reasonable attorney's fees and costs, such an award is only applicable in the event the Lender is the prevailing party in an action against the Borrower or Guarantors.

(o) <u>Non-Homestead</u>. The Property shall not be the homestead of the Borrowers or of any Guarantor during the term of the loan or at any time prior to the satisfaction of the mortgage.

IN WITNESS WHEREOF, Borrowers and Lender have caused this Agreement to be executed on the date first above written.

(remainder of page left blank - signature pages to follow)

#### BORROWERS:

RECHTER HOLDINGS, INC. a Florida corporation

By:

Michael R. Rechter, President

**RECHTER PROGRESSO 835, LLC** a Florida limited liability company

By:

Michael R. Rechter, Manager

STATE OF FLORIDA COUNTY OF PALM BEACH

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgements, the foregoing instrument was acknowledged before me by Michael R. Rechter, as President of Rechter Holdings, Inc., a Florida corporation, and as Manager of Rechter Progresso 835, LLC, a Florida limited liability company, who does so freely and voluntarily under authority duly vested in him by said companies. He is personally known to me or produced \_\_\_\_\_\_\_\_ as identification.

WITNESS by hand and official seal in the County and State last aforesaid this  $2^{10}$  day of September, 2017.

CHRISTINE PROCTER MY COMMISSION # FF 983338 EXPIRES: August 16, 2020 Bonded Thru Budget Notary Services

NOTARY PUBLIC Print Name: Christine Piorter My Commission Expires 8/16/2020

# STONEGATE BANK, a Florida banking corporation

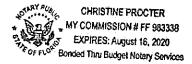
By:

Heather Zatik, Vice President

STATE OF FLORIDA COUNTY OF <u>PALM BEACH</u>

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgements, the foregoing instrument was acknowledged before by Heather Zatik, as Vice President of Stonegate Bank, who does freely and voluntarily under authority duly vested in her by said company. She is personally known to me or produced <u>FL du</u> as identification.

WITNESS by hand and official seal in the County and State last aforesaid this 2017.



<u>Christine Procter</u> NOTARY PUBLIC Print Name: <u>Christine Procter</u> My Commission Expires 8/16/2020

This Instrument was Prepared By, Record and Return to: Joseph B. Heimovics, Esq. Joseph B. Heimovics, P.A. 15951 SW 41<sup>st</sup> Street, Suite 800 Davie, Florida 33331

FLORIDA DOCUMENTARY STAMP TAXES IN THE AMOUNT OF \$11,200.00 AND FLORIDA NON-RECURRING INTANGIBLE TAXES IN THE AMOUNT OF \$6,400.00 ARE BEING PAID UPON RECORDATION OF THIS MORTGAGE.

## MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (Loan Number 6016869)

THIS MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (the "Mortgage"), made as of 19th day of September, 2017, by RECHTER HOLDINGS, INC., a Florida corporation and RECHTER PROGRESSO 835, LLC, a Florida limited liability company (collectively "Mortgagor"), both having an address of 241 East Prospect Road, Ft. Lauderdale, FL 33332, in favor of STONEGATE BANK, a Florida banking corporation as Mortgagee and the secured party, whose address is 400 North Federal Highway, Pompano Beach, Florida 33062.

## Grants and Agreements

Now, therefore, in order to induce Mortgagee to make the Loan to Mortgagor, Mortgagor agrees as follows:

#### ARTICLE I DEFINITIONS, HEADINGS, RULES OF CONSTRUCTION AND SECURITY AGREEMENT

I.I <u>Definitions</u>. As used in this Mortgage and in the exhibits attached hereto, the following terms shall have the following meanings herein specified, such definition to be applicable equally to the singular and plural forms of such terms:

(a) Default Rate: The Default Rate as defined in the Loan Agreement,

(b) <u>Environmental Law</u>: Any law, enactment, statute, code, ordinance, order, rule, regulation, judgment, decree, writ, injunction, franchise, permit, certificate, license, authorization, or other direction or requirement of any Governmental Authority, as same may be amended from time to time, whether now in existence or established or hereafter enacted, promulgated, adopted, entered or issued, both within and outside the present contemplation of the parties hereto, relating to pollution or protection of the environment.

(c) Events of Default: Those events described in Article VII hereof.

(d) <u>Fixtures</u>: All property and equipment now owned or hereafter acquired by Mortgagor and now or hereafter located under, on, or above the Land, whether or not permanently affixed, which, to the fullest extent permitted by applicable law in effect from time to time, shall be deemed fixtures and a part of the Land.

(e) <u>Future Advances</u>: Any loan of money from Mortgagee to Mortgagor made within twenty (20) years from the date hereof. The total amount of such loan or loans may decrease or increase from time to

time, but the total unpaid aggregate balance secured by this Mortgage at any one time shall not exceed \$6,400,000.00, plus interest thereon, and any disbursements made for the payment of the Impositions (whether taxes, levies or otherwise), insurance, or other liens on the Mortgaged Property, with interest on such disbursements. The Mortgagee has no obligation, whatsoever, to make a Future Advance.

(f) <u>Governmental Authority</u>: Any (domestic or foreign) federal, state, county, municipal or other governmental department, entity, authority, commission, board, bureau, court, agency or any instrumentality of any of them.

(g) <u>Governmental Requirement</u>: Any law, enactment, statute, code, ordinance, order, rule, regulation, judgment, decree, writ, injunction, franchise, permit, certificate, license, authorization, or other direction or requirement of any Governmental Authority now existing or hereafter enacted, adopted, promulgated, entered, or issued applicable to Mortgagee, Mortgagor or the Mortgaged Property, including, without limitation, any Environmental Law.

(h) <u>Guarantor</u>: Those individual(s) and/or entities identified in the Loan Agreement and each Guaranty of Payment and Performance executed in favor of Mortgagee.

(i) <u>Guaranty</u>: Each Guaranty of Payment and Performance dated of even date herewith executed by each Guarantor for the benefit of Mortgagee, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

(j) <u>Hazardous Substances</u>: Any hazardous, toxic or dangerous waste, substance or material including, but not limited to, any elements or compounds which are now or hereafter (i) identified in Section 101(14) of the CERCLA, 42 U.S.C. Section 9601(14), and as set forth in 40 C.F.R. Section 302, as the same may be amended from time to time, (ii) determined to be toxic, a pollutant or contaminant, under any Environmental Law, (iii) contained in the list of hazardous substances adopted by the United States Environmental Protection Agency, (iv) defined as "petroleum" and "petroleum products" as defined in Fla. Stat. Section 376.301, as same may be amended from time to time, and (v) asbestos, radon, polychlorinated biphenyls and such other elements, compounds, materials, substances or waste which are otherwise dangerous, hazardous, harmful or deleterious to human or animal health or safety, or the environment.

(k) <u>Impositions</u>: All (i) real estate and personal property taxes and other taxes and assessments, public or private; utility rates and charges including those for water and sewer; all other governmental and non-governmental charges and any interest or costs or penalties with respect to any of the foregoing; and charges for any public improvement, easement or agreement maintained for the benefit of or involving the Mortgaged Property, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever that at any time prior to or after the execution of this Mortgage may be assessed, levied or imposed upon the Mortgaged Property or the Rent or income received therefrom, or any use or occupancy thereof, (ii) other taxes, assessments, fees and governmental and non-governmental charges levied, imposed or assessed upon or against Mortgagor or any of its properties and (iii) taxes levied or assessed upon this Mortgage, the Note, and the other Obligations.

(l) <u>Improvements</u>: All buildings, structures, appurtenances and improvements, including all additions thereto and replacements and extensions thereof, now constructed or hereafter to be constructed under, on or above the Land, which term includes any part thereof.

(m) Land: The real property located at 716-718 NE 2<sup>nd</sup> Avenue, Ft. Lauderdale, FL 33304 (Property "A" – owned by Rechter Holdings, Inc.), 913 NE 4<sup>th</sup> Avenue, Ft. Lauderdale, FL 33304 (Property "B" owned by Rechter Holdings, Inc.), and 835 NE 2<sup>nd</sup> Avenue, Ft. Lauderdale, FL 33304 (Property "C" owned by Rechter Progresso 835, LLC), which Property is more particularly described as:

#### Property A:

Lots 4, 5 and 6, Block 257 of PROGRESSO, according to the Plat thereof, as recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida; said land situate, lying and being in Broward County, Florida.

#### and

Property B:

Lots 17-21, LESS the East 10 feet thereof, of Block 214 of PROGRESSO, and all that part of Block 214 of PROGRESSO lying South of said Lot 21 and East of the alley running North and South through said Block 214, according to the Plat thereof, as recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida; said lands situated, lying and being in Broward County, Florida, all LESS that portion of land dedicated to Broward County, as described in Instrument Number 113500871.

#### and

Property C:

Lots 33 and 34, Block 289 of PROGRESSO, according to the Plat thereof, as recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida; said lands situated, lying and being in Broward County.

together with all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages, projections, appurtenances, water rights including riparian and littoral rights, streets, ways, alleys, and strips and gores of land now or hereafter in anyway belonging, adjoining, crossing or pertaining to the Land (hereinafter also collectively referred to as the Property").

(n) <u>Leases</u>: Any and all leases, subleases, licenses, concessions, or grants of other possessory interests, together with the security therefor, now or hereafter in force, oral or written, covering or affecting the Mortgaged Property or any part thereof.

(o) Lender: Shall mean Mortgagee.

(p) Loan: Three Million Two Hundred Thousand and 00/100 Dollars (\$3,200,000.00), as evidenced by the Note.

(q) Loan Agreement: That certain Loan Agreement dated of even date herewith, as the same may be amended or modified from time to time.

(r) Loan Documents: Those items required by this Mortgage or the Note and any other document or instrument executed, submitted, or to be submitted by Mortgagor or others in connection with the Loan, including but not limited to the: (i) Note, (ii) Mortgage, (iii) the Loan Agreement, (iv) financing statements, (v). Guarantees, (vi) Assignment of Rents, and (vii) any other document or instrument executed by Mortgagor in connection with the Loan.

(s) <u>Mortgaged Property</u>: The Land, Improvements, Fixtures, Leases, Rents and Personal Property together with:

(i) all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Mortgaged Property or any part thereof under the power of eminent domain, or by agreement in lieu thereof, or for any damage thereto caused by any governmental action (whether by such taking or otherwise), such as without limitation, any award for change of grade of streets;

(ii) all judgments, awards and settlements hereafter made, and all insurance proceeds hereafter paid for any damage to the Mortgaged Property, and all uncarned insurance premiums on any insurance policies maintained by the Mortgagor pursuant to this Mortgage;

(iii) all awards and refunds hereafter made with respect to any Imposition; and

(iv) the estate, right, title, interest, privilege, claim or demand whatsoever of Mortgagor, now or hereafter, either at law or in equity, in and to the Mortgaged Property.

The term Mortgaged Property includes any part of the foregoing property described as Mortgaged Property, and all proceeds, products, replacements, improvements, betterments, extensions, additions, substitutions, renewals, accessories, and appurtenances thereto and thereof.

(t) Mortgagee: STONEGATE BANK, a Florida banking corporation.

(u) <u>Mortgagor</u>: collectively RECHTER HOLDINGS, INC., a Florida limited liability company, and RECHTER PROGRESSO 835, LLC, a Florida limited liability company.

(v) Note: That certain Promissory Note dated as of even date herewith from Mortgagor to Mortgagee, in the principal amount of Three Million Two Hundred Thousand and 00/100 Dollars (\$3,200,000.00), and by this reference made a part hereof to the same extent as though set out in full herein, and any other note given to Mortgagee evidencing a Future Advance, as any of said note may from time to time hereafter be modified, amended, extended or renewed.

(w) <u>Obligations</u>: Any and all of the indebtedness, liabilifies, covenants, promises, agreements, terms, conditions, and other obligations of every nature whatsoever, whether joint or several, direct or indirect, absolute or contingent, liquidated or unliquidated, of Mortgagor to Mortgagee, including, without limitation, those evidenced by, secured by, under and as set forth in the Note, this Mortgage, or the other Loan Documents, together with all expenses, attorneys' fees, paralegals' fees and legal assistants' fees incurred by Mortgagee in the preparation, execution, perfection or enforcement of any document relating to any of the foregoing; and any and all Future Advances.

(x) <u>Permitted Title Exceptions</u>: Those matters, if any, described in Schedule B to the title insurance policy insuring Mortgagee's interest in this Mortgage.

(y) <u>Person</u>: Any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government, or agency or political subdivision thereof, or any other form of entity.

(z) <u>Personal Property</u>: All of the following property of Mortgagor whether now owned or existing, or hereafter acquired or arising, whether located in, on, pertaining to, used or intended to be used in connection with or resulting or created from the ownership, development, management, or operation of the Land:

(1) all improvements (to the extent same are not deemed to be real property) and

landscaping;

(2) all Fixtures (to the extent same are not deemed to be real property) and goods to

become Fixtures;

(3) all rights of Mortgagor to any accounts, accounts receivable, other receivables, contract rights, and all deposits made thereunder, chattel paper, instruments and documents; any other obligations or indebtedness owed to Mortgagor from whatever source arising; all rights of Mortgagor to receive any performance or any payments in money or kind; all guaranties of the foregoing and security therefor; all of the right, title and interest of Mortgagor in and with respect to the goods, services, or other property that gave rise to or that secure any of the foregoing, and all rights of Mortgagor as an unpaid seller of goods and services, including, but not limited to, the rights to stoppage in transit, replevin, reclamation, and resale;

(4) all goods, including without limitation, all machinery, equipment, furniture, furnishings, building supplies and materials, appliances, business machines, tools, aircraft and motor vehicles of every kind and description, and all warranties and guaranties for any of the foregoing;

(5) all inventory, merchandise, raw materials, parts, supplies, work-in-process and finished products intended for sale, of every kind and description, in the custody or possession, actual or constructive, of Mortgagor including such inventory as is temporarily out of the custody or possession of Mortgagor, any returns upon any accounts and other proceeds resulting from the sale or disposition of any of the foregoing, including, without limitation, raw materials, work-in-process, and finished goods;

(6) all general intangibles, including, without limitation, corporate or other business records and books, computer records whether on tape disc or otherwise stored, blueprints, surveys, architectural or engineering drawings, plans and specifications, trademarks, trade names, goodwill, telephone numbers, licenses, governmental approvals, franchises, permits, payment and performance bonds, tax refund claims, and agreements with utility companies, together with any deposits, prepaid fees and charges paid thereon;

(7) all Leases and Rents (to the extent same are not deemed to be real property);

(8) all judgments, awards of damages and settlements from any condemnation or eminent domain proceedings regarding the Land, the Improvements or any of the Mortgaged Property;

(9) all insurance policies required by this Mortgage, the unearned premiums therefor

and all loss proceeds thereof;

(10) all other personal property, including without limitation, rights as developer or declarant under any declaration of condominium, management contracts, construction contracts, architectural contracts, service contracts, engineering contracts, advertising contracts, contracts for purchase and sale of any of the Mortgaged Property, purchase orders, equipment leases, monies in escrow accounts, reservation agreements, prepaid expenses, deposits and down payments with respect to the sale or rental of any of the Mortgaged Property, options and agreements with respect to additional real property for use or development of the Mortgaged Property, end-loan commitments, surveys, abstracts of title, all brochures, advertising materials, condominium documents and prospectuses;

(11) all contracts of sale and all deposits made thereunder; and

(12) all proceeds, products, replacements, additions, betterments, extensions, improvements, substitutions, renewals and accessions of any and all of the foregoing.

(z) <u>Rents</u>: All of the rents, royalties, issues, revenues, income, profits, security deposits and other benefits whether past due, or now or hereafter arising from the Mortgaged Property and the occupancy, use and enjoyment thereof.

(aa) Units: Shall have the meaning ascribed to such term in the Loan Agreement.

1.2 <u>Rules of Construction</u>. The use of any gender shall include all other genders. The singular shall include the plural and the plural shall include the singular. The word "or" is not exclusive and the use of the word "and" may be conjunctive or disjunctive in the sole and absolute discretion of Mortgagee. The captions of Articles, Sections and Subsections of this Mortgage are for convenient reference only, and shall not affect the construction or interpretation of any of the terms and provisions set forth herein.

1.3 <u>Security Agreement</u>. This Mortgage constitutes a "Security Agreement" within the meaning of and shall create a security interest under the Uniform Commercial Code-Secured Transactions as adopted by the State of Florida, with respect to the Fixtures, Leases, Rents and Personal Property. A carbon, photographic or other reproduction of this Mortgage or of any financing statement shall be sufficient as a financing statement. The debtor's principal place of business and the secured party's address is set forth in the introduction to this Mortgage.

#### ARTICLE II GRANT

# 2.1 <u>Grant</u>. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to secure the payment, observance, performance and discharge of the Obligations, Mortgagor does by these presents give, transfer, grant, bargain, sell, alien, remise, release, assign, mortgage, hypothecate, deposit, pledge, set over, confirm, convey and warrant unto Mortgagee all estate, right, title and interest of Mortgagor in and to the Mortgaged Property, whether now owned or held or hereafter acquired by Mortgagor, subject, however, to the Permitted Title Exceptions, to have and to hold the Mortgaged Property unto Mortgagee, its successors and assigns forever.

2.2 <u>Condition of Grant</u>. Subject to the provisions of this Mortgage, the condition of these presents is such that if Mortgagor shall pay, observe, perform and discharge the Obligations, or cause same to be paid, observed, performed and discharged in strict accordance with the terms thereof, then this Mortgage and the estates, interests, rights and assignments granted hereby shall be null and void, but otherwise shall remain in full force and effect.

2.3 <u>Subrogation</u>. The Mortgagee is hereby subrogated to the claims and liens of all parties whose claims or liens are fully or partially discharged or paid with the proceeds of the indebtedness secured by this Mortgage notwithstanding that such claims or liens may have been cancelled and satisfied of record.

#### ARTICLE III ASSIGNMENT OF LEASES AND RENTS

3.1 <u>Assignment</u>. The Mortgagor does hereby absolutely and unconditionally assign and transfer to Mortgagee all of Mortgagor's estate, right, title and interest in and to the Leases and Rents, to have and to hold the Leases and Rents unto Mortgagee, its successors and assigns forever. From time to time, upon request of Mortgagee, Mortgagor shall give further evidence of this assignment to Mortgagee by executing and delivering to Mortgagee specific assignments of the Leases and Rents, in form and content approved by Mortgagee. All such specific assignments shall be of the same dignity and priority as this Mortgage. From time to time, upon request of Mortgagee, Mortgagor shall also execute and deliver to Mortgagee any notification to tenants or other document reasonably required by Mortgagee.

3.2 Payment of Rents to Mortgagor, as Trustee, Until Default. So long as no Event of Default has occurred, Mortgagor may, as trustee for the use and benefit of Mortgagee, collect, receive and accept the Rents as they become due and payable (in the ordinary course of Mortgagor's business); provided, however, that if the Rents exceed the payments due under the Note, the Mortgagor may use such excess, first, for the operation and benefit of the Mortgaged Property and, second, for the general benefit of the Mortgagor. Upon the occurrence of an Event of Default Mortgagee may, at its option, remove the Mortgagor as trustee for the collection of the Rents and appoint any other person including, but not limited to, itself as a substitute trustee to collect, receive, accept and use all such Rents in payment of the

Obligations, in such order as Mortgagee shall elect in its sole and absolute discretion, whether or not Mortgagee takes possession of the Mortgaged Property. Mortgagor hereby directs each of the respective tenants under the Leases, and any rental agent, to pay to Mortgagee all such Rents, as may now be due or shall hereafter become due, upon demand for payment thereof by Mortgagee without any obligation on the part of any such tenant or rental agent to determine whether or not an Event of Default has in fact occurred. Upon an Event of Default, the permission hereby given to Mortgagee's not collect, receive and accept such Rents as trustee shall terminate and such permission shall not be reinstated upon a cure of the Event of Default without Mortgagee's specific written consent. Exercise of Mortgagee's rights under this Section, and the application of any such Rents to the Obligations, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant hereto, but shall be cumulative and in addition to all other rights and remedies of Mortgagee.

3.3 <u>Performance Under Leases</u>. If applicable, Mortgagor covenants that it shall, at its sole cost and expense, (a) duly and punctually perform and discharge, or cause to be performed and discharged, all of the obligations and undertakings of Mortgagor or its agents under the Leases, (b) use its best efforts to enforce or secure, or cause to be enforced or secured, the performance of each and every obligation and undertaking of the respective tenants under the Leases, (c) promptly notify Mortgager if Mortgagor receives any notice from a tenant claiming that Mortgagor is in default under a Lease and (d) appear in and defend any action or proceeding arising under or in any manner connected with the Leases.

3.4 <u>No Obligation of Mortgagee</u>. This Assignment shall not be deemed or construed to constitute Mortgagee as a mortgagee in possession of the Mortgaged Property nor shall it obligate Mortgagee to take any action or to incur expenses or perform or discharge any obligation, duty or liability of Mortgagor under any Lease.

3.5 <u>Cumulative Remedies</u>. Each and every right, remedy and power granted to Mortgagee by this Arficle shall be cumulative and in addition to every other right, remedy and power given by the Loan Documents and now or hereafter existing in equity, at law, or by virtue of statute or otherwise. The failure of Mortgagee to avail itself of any of its rights, remedies and powers shall not be construed or deemed to be a waiver thereof.

3.6 <u>Notification of Mortgagee's Rights</u>. Mortgagee shall have the right, but not the obligation, at any time and from time to time, to notify any tenant under any Lease of the rights of Mortgagee as provided in this Article and Mortgagor, upon demand from Mortgagee, shall confirm to such tenant the existence of such rights.

3.7 <u>Other Assignments</u>. Mortgagor shall not further assign or transfer the Leases or Rents except in favor of Mortgagee as provided in this Article, and shall not create or permit to be created or to remain, any mortgage, pledge, lien, encumbrance, claim, or charge on the Leases or Rents. Any transaction prohibited under this Section shall be null and void.

3.8 Leases. Mortgagor shall not enter into any Leases of any of the Mortgaged Property without the prior written consent of Mortgagee.

#### ARTICLE IV REPRESENTATIONS AND WARRANTIES

4.1 <u>Representations and Warranties</u>. Mortgagor hereby represents and warrants to Mortgagee that to the Mortgagor's best knowledge:

(a) <u>Organization, Company Power, Partnership Power, Etc.</u> Each 'Mortgagor (A) is duly incorporated and/or organized, validly existing and in good standing under the laws of the state of Florida, (B) has the corporate and/or /company power and authority to own its properties and to carry on its business as now being conducted, and all of its issued and outstanding membership shares and/or interests are fully paid and nonassessable, there are no outstanding rights or options to acquire any additional shareholder and/or membership interests and its shareholder and/or

membership interests have not been pledged or encumbered in any manner whatsoever, (C) is in compliance with all Governmental Requirements, and (D) has not amended or modified its articles or certificate of incorporation or its operating agreement except as previously disclosed in writing to Mortgagee prior to the execution hereof.

(b) Validity of Loan Documents. To the best of Mortgagor's knowledge, (i) the execution, delivery and performance by Mortgagor of the Loan Documents, and the borrowing evidenced by the Note, (A) are within the powers and purposes of Mortgagor, (B) have been duly authorized by all requisite action of Mortgagor, (C) do not require the approval of any Governmental Authority, and (D) will not violate any Governmental Requirement, or any indenture, agreement or other instrument to which Mortgagor is a party or by which it or any of its property is bound, or be in conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of its property or assets, except as contemplated by the provisions of the Loan Documents; and (ii) the Loan Documents, constitute the legal, valid and binding obligations of Mortgagor and other obligors named therein, if any, in accordance with their respective terms.

(c) <u>Financial Statements</u>. All balance sheets, statements of profit and loss, and other financial data that have been given to Mortgagee with respect to the Mortgagor and other parties from which financial statements will be submitted to Mortgagee (the "Other Parties"), (i) are complete and correct in all material respects, and (ii) accurately present the financial condition of said parties as of the dates, and the results of its or their operations, for the periods for which the same have been furnished; all balance sheets disclose all known liabilities, direct and contingent, as of their respective dates; and there has been no change in the condition of the Mortgagor financial or otherwise, since the date of the most recent financial statements given to Mortgagee with respect to said parties, other than changes in the ordinary course of business, none of which changes has been materially adverse.

(d) <u>Other Agreements</u>. Mortgagor is not a party to any agreement or instrument materially and adversely affecting it or its present or proposed businesses, properties or assets, operation or condition, financial or otherwise, and Mortgagor is not in default in the performance, observance or fulfillment of any of the material obligations, covenants or conditions set forth in any agreement or instrument to which it is a party.

(e) <u>Other Information</u>. All other information, including reports, financial statements, certificates, papers, data and otherwise, given and to be given to Mortgagee with respect (i) to Mortgagor (ii) to the Loan and (iii) to others obligated under the terms of the Loan Documents, are true, accurate and correct in all material respects and complete.

(f) <u>Title</u>. Mortgagor is indefeasibly seized of and has and will have fee simple title to the Land and Improvements free and clear of any and all mortgages, liens, encumbrances, claims, charges, equities, covenants, conditions, restrictions, easements, rights-of-way and all other matters affecting the Land and Improvements, whether or not of record, except for the Permitted Title Exceptions. Mortgagor has and will have good, absolute title to the Fixtures and Personal Property all free and clear of any and all liens, charges, encumbrances, security interests and adverse claims whatsoever, except those in favor of Mortgagee. Mortgagor will preserve its title to the Mortgaged Property and will forever warrant and defend the same to Mortgagee and will forever warrant and defend the validity and priority of the lien of this Mortgage against the claims of all persons and parties whomsoever.

(g) <u>No Violations</u>. To the best of Mortgagor's knowledge, no Governmental Requirement (including, but not limited to, 21 U.S.C. Section 811 and 881, and 18 U.S.C. Section 1961), and no covenant, condition, restriction, easement or similar matter affecting the Land or Improvements has been violated, and Mortgagor has not received any notice of violation from any Governmental Authority or any other person with respect to any of the foregoing matters.

(h) <u>Taxes</u>. Mortgagor has filed all federal, state, county and municipal income tax returns required to have been filed by it, and has paid all taxes that have become due pursuant to such returns, pursuant to any

assessments received by it or pursuant to law, and Mortgagor does not know of any basis for additional assessment with respect to such taxes or additional taxes. The Land is assessed separately from all other adjacent land for the purposes of real estate taxes and there is no intended public improvements which may involve any charge being levied or assessed, or which may result in the creation of any lien upon the Mortgaged Property.

(i) <u>Litigation</u>. There are no judgments outstanding against Mortgagor and there is no action, suit, proceeding, or investigation now pending (or to the best of Mortgagor's knowledge after diligent inquiry, threatened) against, involving or affecting Mortgagor or the Mortgaged Property, or any part thereof, at law, in equity or before any Governmental Authority that if adversely determined as to the Mortgaged Property or as to Mortgagor's operation and ownership of the Mortgaged Property, nor is there any basis for such action, suit, proceeding or investigation.

(j) <u>Utilities</u>. There is available to the Land and Improvements through public or private casements or rights-of-way abutting or crossing the Land (which would inure to the benefit of Mortgagee in case of enforcement of this Mortgage) a water supply and a sanitary sewer service approved by all health and other authorities having jurisdiction, and electric, gas (if applicable) and telephone service, all of sufficient capacity to serve the needs of the Land and Improvements according to their intended purpose.

(k) <u>Condition of Mortgaged Property</u>. The Mortgaged Property or any part thereof, now existing, is not damaged or injured as a result of any fire, explosion, accident, flood or other casualty. The Improvements, if any, as of the date of this Mortgage, are free of any defects in material, structure and construction and do not violate any Governmental Requirements. There is no existing, proposed or contemplated plan to modify or realign any street or highway or any existing, proposed or contemplated eminent domain proceeding that would result in the taking of all or any part of the Mortgaged Property or that would adversely affect the use or the operation of the Mortgaged Property.

(I) <u>Zoning</u>. The Land is zoned so as to permit the Land and Improvements to be used for

(m) <u>No Default</u>. No default or Event of Default exists under any of the Loan Documents; and no event has occurred and is continuing which, with notice or the lapse of time, or both, would constitute a default

their intended purpose.

under any provision thereof.

(n) <u>Environmental Contamination/Hazardous Substances</u>. Mortgagor and the Mortgaged Property are in full compliance with all Environmental Laws, and there are no civil, criminal or administrative actions, suits, demands, claims, hearings, notices or demand letters, notices of violation, investigations, or proceedings pending or threatened against the Mortgagor or the Mortgaged Property relating in any way to any Environmental Law or any agreement, plan, order, decree, judgment, injunction, notice or demand letter issued, entered, promulgated or approved under any Environmental Law. There have never been nor are there currently any Hazardous Substances located on, in, or under the Mortgaged Property or used in connection therewith, and neither Mortgagor nor any other person has ever used the Mortgaged Property for the manufacture, processing, distribution, use, transport, handling, treatment, storage, disposal, emission, discharge or release of any Hazardous Substance. No notice or advice has been received by Mortgagor of any condition or state of facts that would be contributing to a claim of pollution or any other damage to the environment by reason of the conduct of any business on the Mortgaged Property or operation of the Mortgaged Property, whether past or present.

(o) <u>Representations and Warranties in Other Loan Documents</u>. All of the representations and warranties contained in the other Loan Documents are true and correct,

4.2 <u>Reliance on Representations</u>. The Mortgagor acknowledges that the Mortgagee has relied upon the Mortgagor's representations, has made no independent investigation of the truth thereof, is not charged with any knowledge contrary thereto that may be received by an examination of the public records in Tallahassee, Florida and the location where the Land is located, or that may have been received by any officer, director, agent, employee or shareholder of Mortgagee.

#### ARTICLE V AFFIRMATIVE COVENANTS

5.1 <u>Payment and Performance</u>. Mortgagor shall promptly pay and punctually perform, or shall cause to be promptly paid and punctually performed, all of the Obligations as and when due and payable.

5.2 <u>Compliance with Laws</u>. Mortgagor shall promptly and faithfully comply with, conform to and obey all Governmental Requirements and the rules and regulations now existing or hereafter adopted by every Board of Fire Underwriters having jurisdiction, or similar body exercising similar functions, that may be applicable to Mortgagor or to the Mortgaged Property or to the use or manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of the Mortgaged Property, whether or not such Governmental Requirement or rule or regulation shall necessitate structural changes or improvements or interfere with the use or enjoyment of the Mortgaged Property.

#### 5.3 <u>Impositions</u>.

(a) Mortgagor shall pay all impositions on the Mortgaged Property and all taxes levied or assessed upon this Mortgage, the Note and the Obligations, or any of them. In the event of the passage, after the date of this Mortgage, of any law (i) making it illegal for the Mortgagor to pay the whole or any part of the Impositions, or charges or liens herein required to be paid by Mortgagor, or (ii) rendering the payment by Mortgagor of any and all taxes levied or assessed upon this Mortgage, the Note, or the Obligations or the interest in the Mortgaged Property represented by this Mortgage unlawful, or (iii) rendering the covenants for the payment of the matters set forth in Subparts (i) and (ii) of this Subsection by Mortgagor legally inoperative, the Mortgagor shall pay, upon demand, the entire unpaid Obligations notwithstanding anything in the Note, this Mortgage, or the other Loan Documents to the contrary.

(b) Unless Mortgagee collects monthly escrow payments to be applied toward the ad valorem taxes on the Mortgage Property, Mortgagor shall pay all ad valorem taxes on the Mortgaged Property on or before the date same become delinquent and shall deliver to Mortgagee tax receipts evidencing said payment within ten (10) days thereof. Mortgagor shall also deliver to Mortgagee receipts evidencing the payment of all other Impositions within thirty (30) days after same become due and payable or before same shall become delinquent, whichever is sooner.

#### 5,4 Insurance.

Mortgagor, at Mortgagor's sole cost, at all times must obtain and maintain in force and (a)effect all insurance coverages reasonably required by the Mortgagee which insurance policies and coverages shall be in the amounts and otherwise meet all requirements of the Mortgagee. Mortgagor shall furnish evidence of renewal or replacement coverage not later than thirty (30) days prior to the date any coverage will expire, and will furnish to the Mortgagee the originals, or duplicate copies, of all policies required and all renewals or replacements thereof, or original certificates of coverage satisfactory to Mortgagee, as Mortgagee may elect. If any loss occurs with respect to the Mortgaged Property, Mortgagee is hereby appointed attorney-in-fact for Mortgagor to make proof of loss or damage to the Mortgaged Property, and the Mortgagor will not adjust or settle any such loss without Mortgagee's prior written consent, which consent shall not be unreasonably withheld or delayed. Upon any default by Mortgagor under this Mortgage, all right, title and interest of Mortgagor in and to all such insurance policies then in force, including any and all unearned premiums and existing claim, will pass to Mortgagee, which, at its option, and as attomey-in-fact for Mortgagor, may then make, settle and give biding acquittances for claims under all such policies, and may assign and transfer such policies or cancel or surrender them, applying any uncarned premium in such manner as the Mortgagee may elect. The foregoing appointment of Mortgagee as attorney-in-fact for Mortgagor is coupled with an interest, and is irrevocable. Notwithstanding the occurrence of any casualty or the availability of any insurance proceeds, Mortgagor will pay the Indebtedness in the manner required by this Mortgage and the Loan Documents.

(b) All policies of insurance required hereunder shall: (i) be written by carriers which are licensed or authorized to transact business in the State of Florida, and are rated "A" or higher, Class XII or higher, according to the latest published Best's Key Rating Guide and which shall be otherwise acceptable to Mortgagee in all other respects, (ii) be written with a deductible of not more than \$25,000.00 and for such amounts as are sufficient to prevent the Mortgagor from becoming a co-insurer thereunder, and (iii) be otherwise satisfactory to Mortgagee.

(c) Mortgagor shall not, without the prior written consent of Mortgagee, take out separate insurance concurrent in form or contributing with regard to any insurance coverage required by this Mortgage.

5.5 <u>Repair</u>. Mortgagor shall keep the Mortgaged Property in good order and condition and make all necessary or appropriate repairs and replacements thereof and betterments and improvements thereto, ordinary and extraordinary, foreseen and unforeseen, and use its best efforts to prevent any act that might impair the value or usefulness of the Mortgaged Property.

# 5.6 Restoration Following Casualty.

If all or any part of the Mortgaged Property shall be damaged or destroyed by a casualty (a) covered by insurance under Section 5.4, Mortgagor shall immediately give written notice thereof to Mortgagee and the appropriate insurer. Mortgagee is authorized and empowered (but not obligated or required) to make proof of loss and to settle, adjust or compromise any claims for loss, damage or destruction under any policies of insurance required under this Mortgage; provided, however, that Mortgagee shall not make such proof of loss or settle, adjust or compromise such claim so long as (i) no Event of Default exists, and no condition exists which but for notice would constitute an Event of Default and (ii) Mortgagor shall forthwith make such proof of loss and diligently prosecute the payment of such claim and the settlement, adjustment or compromise thereof and, at Mortgagee's reasonable request, retain legal counsel (acceptable to Mortgagee) to represent Mortgagor in connection with such prosecution, settlement, adjustment or compromise. All proceeds of insurance, as provided in Section 5.4, shall be paid to Mortgagee and shall be applied first to the payment of all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Mortgagee in obtaining such proceeds, and second, at the option of Mortgagee, either to the payment of the Obligations whether or not due, in such order as Mortgagee may elect, or to the restoration, repair, or replacement of the Mortgaged Property. If Mortgagee elects to apply the insurance proceeds to the restoration, repair or replacement of the Mortgaged Property, such proceeds shall be disbursed to Mortgagor as work progresses pursuant to a construction and disbursing agreement in form and content satisfactory to Mortgagee in its sole discretion, and Mortgagor shall promptly and diligently, regardless of whether there shall be sufficient insurance proceeds therefor, restore, repair and rebuild the Mortgaged Property to the equivalent of its condition immediately prior to the casualty. During the period of restoration and repair, Mortgagor shall continue to duly and promptly pay, perform, observe and comply with all of the Obligations. The election by Mortgagee to apply the insurance proceeds to the restoration, repair or replacement of the Mortgaged Property shall not affect the lien of this Mortgage or affect or reduce the Obligations.

(b) If all or any of the Mortgaged Property shall be damaged or destroyed by a casualty not covered by insurance under Section 5.4, or, if so covered, the insurer fails or refuses to pay the claim within thirty (30) days following the filing thereof, Mortgagor shall immediately give written notice thereof to Mortgagee, and Mortgagor shall promptly and diligently, at Mortgagor's sole cost and expense, restore, repair and rebuild the Mortgaged Property to the equivalent of its condition immediately prior to the casualty. During the period of restoration and repair, Mortgagor shall continue to duly and promptly pay, perform, observe and comply with all of the Obligations.

(c) If any work required to be performed under Subsection (a) above, shall involve an estimated expenditure of more than \$10,000.00, no such work shall be undertaken until plans and specifications therefor, prepared by an architect satisfactory to Mortgagee, have been submitted to and approved by Mortgagee.

5.7 <u>Condemnation</u>.

(a) Mortgagor shall immediately notify Mortgagee upon obtaining any knowledge of the institution of any proceedings for the condemnation of the Mortgaged Property or any part thereof.

If all or any part of the Mortgaged Property shall be damaged or taken through (b) condemnation (which term when used in this Mortgage shall include any damage or taking by any Governmental Authority and any transfer by private sale in lieu thereof, either temporarily or permanently), Mortgagee at its option may declare all of the unpaid Obligations to be immediately due and payable, and upon ten (10) days written notice from Mortgagee to Mortgagor all such Obligations shall immediately become due and payable as fully and to the same effect as if such date were the date originally specified for the final payment or maturity thereof. The Mortgagee shall be entitled to all compensation, awards and other payments resulting from such condemnation (including consequential damages) and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or in Mortgagor's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by Mortgagor to Mortgagee and shall, be applied first to the payment of all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Mortgagee in connection with any action or proceeding under this Section, and second, at the option of Mortgagee, either to the payment of the Obligations whether or not due, in such order as Mortgagee may elect, or to the restoration, repair or alteration of the Mortgaged Property. If Mortgagee elects to apply the condemnation awards to the restoration, repair or alteration of the Mortgaged Property, such awards shall be disbursed to Mortgagor as work progresses pursuant to a construction and disbursing agreement in form and content satisfactory to Mortgagee in its sole discretion, and Mortgagor shall promptly and diligently, regardless of whether there shall be sufficient condemnation awards therefor, restore, repair and alter the Mortgaged Property in a manner satisfactory to Mortgagee. During the period of restoration, repair and alteration, the Mortgagor shall continue to duly and promptly pay, perform, observe and comply with all of the Obligations. The election by Mortgagee to apply the condemnation awards to the restoration, repair or alteration of the Mortgaged Property shall not affect the lien of this Mortgage or affect or reduce the Obligations. If any restoration, repair or alteration of the Mortgaged Property shall involve an estimated expenditure of more than \$10,000.00, same shall not be commenced until plans and specifications therefor, prepared by an architect satisfactory to Mortgagee, have been submitted to and approved by Mortgagee.

5.8 Inspection. Mortgagor shall permit Mortgagee and its agents to inspect the Mortgaged Property at any time during normal business hours and at all other reasonable times.

5.9 <u>Contest of Tax Assessments, Etc.</u> After prior written notice to Mortgagee, Mortgagor, at its own expense, may contest by appropriate legal proceedings, promptly initiated and conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of (a) any of the Governmental Requirements referred to in Section 5.2, or (b) any Imposition; provided that; (i) in the case of any unpaid Imposition, such proceedings shall suspend the collection thereof from Mortgagor and from the Mortgaged Property, (ii) the Mortgaged Property or any part thereof will not be in danger of being sold, forfeited, terminated, cancelled or lost, (iii) the use of the Mortgaged Property or any part thereof for its present or future intended purpose or purposes will not be interrupted, lost or terminated, (iv) Mortgagor shall have set aside adequate reserves with respect thereto, and (v) Mortgagor shall have furnished such security as may be required in the proceedings or as may be reasonably requested by Mortgagee.

#### 5.10 Expenses.

(a) Mortgagor shall pay all costs and expenses in connection with the Loan and the preparation, execution, and delivery of the Loan Documents including, but not limited to, reasonable fees and disbursements of counsel appointed by Mortgagee, and all recording costs and expenses, documentary stamp tax and intangible tax on the entire amount of funds disbursed under the Loan, and other taxes, surveys, appraisals, premiums for policies of title and other insurance and all other fees, costs and expenses, if any, or otherwise connected with the Loan transaction.

(b) Mortgagor shall pay or reinburse Mortgagee for all costs, charges, expenses, and reasonable attorneys' fees paid or incurred by Mortgagee pursuant to this Mortgage including but not limited to those costs, charges, expenses and fees paid or incurred for the payment of the Impositions, insurance, completion of construction, repairs, appraisal fees, environmental assessment fees, or any other fees or in any action, proceeding or dispute of any kind in which Mortgagee is a party because of any Obligation not being duly and promptly performed or being violated, including, but not limited to, the foreclosure or other enforcement of this Mortgage, any condemnation or eminent domain action involving the Mortgaged Property or any part thereof, any action to protect the security hereof, or any proceeding in probate, reorganization, bankruptcy, arbitration, or forfeiture in rem. All such amounts paid or incurred by Mortgage and shall be due and payable by Mortgagor immediately, whether or not there be notice or demand therefor.

(c) Any reference in this Mortgage to attorneys' or counsels' fees paid or incurred by Mortgagee shall be deemed to include reasonable paralegals' fees and legal assistants' fees. Moreover, wherever provision is made herein for payment of attorneys' or counsels' fees or expenses incurred by the Mortgagee, said provision shall be deemed to mean reasonable attorneys' or counsels' fees and shall include, but not be limited to, such fees or expenses incurred in any and all judicial, bankruptcy, reorganization, administrative, or other proceedings, including appellate proceedings, whether such fees or expenses arise before proceedings are commenced or after entry of a final judgment.

Note.

(d) Mortgagor shall pay Mortgagee all fees, costs, charges, and expenses required by the

5.11 <u>Preservation of Agreements</u>. Mortgagor shall preserve and keep in full force and effect all agreements, approvals, permits and licenses necessary for the development, use and operation of the Mortgaged Property for its intended purpose or purposes.

5.12 <u>Books and Records</u>. The Mortgagor shall keep and maintain, at all times, full, true and accurate books of accounts and records, adequate to correctly reflect the results of the operation of the Mortgaged Property. The Mortgagee shall have the right, to examine such books and records and to make such copies or extracts therefrom as the Mortgagee shall require.

#### 5.13 Indemnification

Mortgagor shall at its own expense, and does hereby agree to, protect, indemnify, (a) reimburse, defend and hold harmless Mortgagee and its directors, officers, agents, employees attorneys, successors and assigns from and against any and all liabilities (including strict liability), losses, suits, proceedings, settlements, judgments, orders, penalties, fines, liens, assessments, claims, demands, damages, injuries, obligations, costs, disbursements, expenses or fees, of any kind or nature (including attorneys' fees and expenses paid or incurred in connection therewith) arising out of or by reason of (i) an incorrect legal description of the Land; (ii) any action, or inaction of Mortgagee in connection with the Note, this Mortgage, the other Loan Documents or the Mortgaged Property; (iii) the construction of any Improvements; (iv) the use and operation of the Mortgaged Property; (v) any acts or omissions of Mortgagor or any other Person at, on or about the Mortgaged Property regarding the contamination of air, soil, surface waters or groundwaters over, on or under the Mortgaged Property; (vi) the presence, whether past, present or future, of any Hazardous Substances on, in or under the Mortgaged Property; or (vii) any past, present or future events, conditions, circumstances, activities, practices, incidents, actions or plans involving the manufacture, processing, distribution, use, transport, handling, treatment, storage, disposal, cleanup, emission, discharge, seepage, spillage, leakage, release or threatened release of any Hazardous Substance on, in, under or from the Mortgaged Property, in connection with Mortgagor's operations on the Mortgaged Property, or otherwise; all of the foregoing regardless of whether within the control of Mortgagee.

(b) The indemnifications of this Section shall survive the full payment and performance of the Obligations and the satisfaction of this Mortgage.

5.14 <u>Further Assurances</u>. Mortgagor, at its sole expense, upon the request of Mortgagee, shall execute, acknowledge and deliver such further instruments and do such further acts as may, in the opinion of the Mortgagee, be necessary, desirable, or proper to carry out more effectively the purpose of this Mortgage and to subject to the lien hereof any property intended by the terms hereof to be covered hereby, including, without limitation, any proceeds, renewals, additions, substitutions, replacements, products, betterments, accessions and appurtenances thereto and thereof.

5.15 <u>Financing Statements</u>. Mortgagor shall execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such financing statements, continuation statements, and such further assurances as Mortgagee may from time to time consider reasonably necessary to create, perfect, preserve and maintain in full force and effect Mortgagee's lien upon the Fixtures, Leases, Rents and Personal Property; and, Mortgagee, at the expense of Mortgagor, may cause such statements and assurances to be recorded and rerecorded, filed and re-filed, in the name of Mortgagor, and Mortgagor hereby constitutes and irrevocably appoints Mortgagee its true and lawful attorney-in-fact, which appointment is coupled with an interest, with full power of substitution, and empowers said attorney or attorneys in the name of Mortgagor, but at the option of said attorney-in-fact, to execute and file any and all financing statements.

# 5.16 Hazardous Substances.

(a) Mortgagor shall immediately notify Mortgagee orally and in writing if Mortgagor (i) becomes aware of the presence of any Hazardous Substance or other environmental problem or liability on, in, under, released from or associated with the Mortgaged Property, or (ii) receives any complaint, order, citation, notice or other written or oral communication (collectively an "Environmental Complaint") regarding air emissions, water discharges or any other environmental, health or safety matter affecting the Mortgaged Property or any part thereof, or the presence of any Hazardous Substance on, in, under, released from or associated with the Mortgaged Property, or any part thereof, or the presence of any Hazardous Substance on, in, under, released from or associated with the Mortgaged Property, or any past, present or future events, conditions, circumstances, activities, practices, incidents, actions or plans involving the manufacture, processing, distribution, use, transport, handling, treatment, storage, disposal, cleanup, emission, discharge, seepage, spillage, leakage, release or threatened release of any Hazardous Substance on, under or from the Mortgaged Property. Mortgagor shall forthwith transmit to Mortgagee copies of any Environmental Complaint.

(b) Mortgagor shall, at its own cost and expense, take any action necessary or advisable for the cleanup of any Hazardous Substance on, in, under, released from or associated with the Mortgaged Property, including any removal, containment or remedial actions in accordance with all applicable Environmental Laws, and shall pay or cause to be paid all cleanup, administrative, enforcement and other costs, expenses or fines which may be asserted against Mortgagor, Mortgagee, the Mortgaged Property, or any other Person in connection therewith.

5.17 <u>Reappraisal of Mortgaged Property</u>. If Mortgagor at any time believes, in its reasonable discretion, that the appraised value of the Mortgaged Property is declined, Mortgagee may obtain a then current appraisal (the "Appraisal") of the Mortgaged Property. Each Appraisal shall be at Mortgagor's expense, shall be performed and prepared by an appraiser certified or licensed under the State of Florida and acceptable to Mortgagee, which Appraisal shall meet all appraisal standards prescribed by all Governmental Authorities regulating Mortgagee, and shall otherwise be in form and substance satisfactory to Mortgagee.

5.18 <u>Performance of Loan Documents</u>. Mortgagor shall duly and punctually perform all covenants, terms and agreements expressed as binding upon it under all of the Loan Documents.

5.19 <u>Performance of Other Agreements</u>. Mortgagor shall duly and punctually perform all covenants, terms and agreements expressed as binding upon it under any Permitted Title Exception, or any other agreement of any nature whatsoever binding upon it with respect to the Mortgaged Property.

5.20 <u>Tax and Insurance</u>. Supplementing the provisions of Sections 5.3 and 5.4 hereof, upon the occurrence of an Event of Default, and upon Mortgagee's request, Mortgagor shall pay to Mortgagee on the payment date of installments of interest as provided in the Note, together with and in addition to such installments of interest, an installment of the Impositions and insurance premiums for such insurance as is required hereunder, next due on the Mortgaged Property in an amount sufficient, as estimated by Mortgagee, to accumulate the sum required to pay such Impositions and insurance, as applicable, thirty (30) days prior to the due date thereof. Amounts held hereunder shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Mortgagee, and no interest shall be payable with respect thereto. Upon demand of Mortgagee, Mortgagor shall deliver to Mortgagee, within ten (10) days after such demand, such additional money as is necessary to make up any deficiencies in the amounts necessary to enable. Mortgagee to pay such Impositions and insurance premiums when due. In case of an Event of Default, Mortgagee may apply any amount under this Section remaining to Mortgagor's credit to the reduction of the Obligations, at such times and in such manner as Mortgagee shall determine.

#### ARTICLE VI NEGATIVE COVENANTS

6.1 <u>Use Violations, Etc.</u> Mortgagor shall not use the Mortgaged Property or allow the same to be used or occupied for any unlawful purpose or in violation of any Governmental Requirement or restrictive covenant covering, affecting or applying to the ownership, use or occupancy thereof, commit or permit or suffer any act to be done or any condition to exist on the Mortgaged Property or any article to be brought thereon that may be dangerous, or that may in any way increase any ordinary fire or other hazard, unless safeguarded as required by law, or that may, in law, constitute a nuisance, public or private.

# 6.2 Care of the Mortgaged Property.

(a) Mortgagor shall not commit or permit any waste, impairment, or deterioration of the Mortgaged Property, or perform any clearing, grading, filling or excavation of the Mortgaged Property, or make or permit to be made to the Mortgaged Property any alterations or additions that would have the effect of materially diminishing the value thereof (in Mortgagec's sole opinion) or take or permit any action that will in any way increase any ordinary fire or other hazard arising out of the construction or operation thereof.

(b) Mortgagor shall not, without the prior written consent of Mortgagee, remove, demolish or substantially alter, or permit the removal, demolishment or substantial alteration of, any Improvements on the Land. In the event such consent is given and if any work to be performed shall involve an estimated expenditure of more than \$50,000.00, no such work shall be undertaken until plans and specifications therefor, prepared by an architect satisfactory to Mortgagee, shall have been submitted to and approved by Mortgagee.

(c) Mortgagor shall not permit any of the Fixtures or Personal Property to be demolished or to be removed from the Land, without the prior written consent of Mortgagee. In the event such consent is given, the Mortgagee may require that said Fixture or Personal Property be replaced by an article of equal suitability and value, owned by Mortgagor free and clear of any vendor's lien, chattel mortgage, or security interest of any kind, except such as may be approved in writing by Mortgagee, and that such replacement article be encumbered by the lien of this Mortgage. Notwithstanding the foregoing, the Mortgagor may remove or demolish any Fixture or Personal Property without first obtaining the Mortgagee's prior written consent provided (i) the value of such article does not exceed in value at the time of disposition thereof \$10,000.00 for any single item, or a total of \$50,000.00 in any one year for all such items and (ii) that said article is replaced and subject to the lien of this Mortgage as aforesaid.

# 6.3 Other Liens and Mortgages.

(a) Mortgagor shall not, without the prior written consent of Mortgagee, create or permit to be created or to remain, any mortgage, pledge, construction lien or other lien, conditional sale or other title retention

agreement, encumbrance, claim, or charge on (whether prior or subordinate to the lien of this Mortgage or the other Loan Documents) the Mortgaged Property or income therefrom, other than this Mortgage, the other Loan Documents and the Permitted Title Exceptions. Any transaction prohibited under this Section shall be null and void.

(b) Mortgagor shall not, without the prior written consent of Mortgagee, (i) enter into any agreement either oral or in writing, whereby any permitted Junior Mortgage is modified or amended in any manner whatsoever, (ii) permit the release of any guarantor or modification of any guaranty affecting any permitted Junior Mortgage, or (iii) incur any additional indebtedness secured thereby.

(c) Mortgagor shall not directly or indirectly, take, acquire, or permit to be taken or acquired by any other party, any interest whatsoever in any permitted Junior Mortgage without the prior written consent of Mortgage.

6.4 <u>Transfer of Mortgaged Property</u>. Except as otherwise provided herein, Mortgagor shall not sell, convey, or transfer or permit to be sold, conveyed or transferred any interest in the Mortgaged Property or any part thereof, other than the shall of Units in the ordinary course of Borrower's business. A contract to deed or agreement for deed, or an assignment, pledge, or encumbrance of a beneficial interest in any land trust, or a lease for all or substantially all of the Land or Improvements shall constitute a transfer prohibited by the provisions of this Section and shall be null and void.

6.5 <u>Transfer of Other Assets</u>. Mortgagor shall not, directly or indirectly, sell, convey, or transfer or permit to be sold, conveyed, or transferred any of its assets to any Person to which Mortgagor is related or connected. The term "assets" as used in this Section does not include the Mortgaged Property, the sale, conveyance, or transfer of which is prohibited as provided in Section 6.4 hereof.

6.6 <u>Environmental Contamination/Hazardous Substances</u>. Mortgagor and the Mortgaged Property shall at all times remain in full compliance with all Environmental Laws. Mortgagor shall not, nor permit any other person to manufacture, process, distribute, use, transport, handle, treat, store, dispose, emit, discharge, leak, spill or release any Hazardous Substance on, in, under or from the Mortgaged Property.

#### ARTICLE VII EVENTS OF DEFAULT

7.1 <u>Events of Default</u>. An "Event of Default", as used in this Mortgage, shall occur at any time or from time to time:

(a) <u>Failure to Pay</u>. If any Obligation or any installment thereof is not paid when due (subject to any grace periods set forth in the Loan Documents);

(b) <u>Failure to Perform</u>. If any Obligation other than an Obligation requiring the payment of money or the occurrence of an event described in Subsections (c) through (k), inclusive, below is not duly and promptly performed or is violated and such non-performance or violation is not curable, or if curable continues for a period of fifteen (15) days after written notice thereof from Mortgagee to Mortgagor, provided, however, if such non-performance or violation may not reasonably be cured within such fifteen (15) day period, an Event of Default shall not be deemed to have occurred so long as same shall be diligently and continuously endeavored to be cured. Notwithstanding the foregoing, it shall be an Event of Default if such non-performance or violation has not been cured within thirty (30) days after notice thereof;

(c) <u>False Representation</u>. If any representation or warranty made in any Loan Document by or on behalf of Mortgagor or Guarantor is at any time false, misleading, or breached;

(d) <u>Judgment</u>. If a final judgment for the payment of money is rendered against Mortgagor or Guarantor and the same remains unsatisfied except for such period of time as execution on the judgment is effectively stayed;

(e) <u>Voluntary Bankruptcy. Etc.</u> If Mortgagor or Guarantor (i) is voluntarily adjudicated a bankrupt or insolvent, (ii) seeks or consents to the appointment of a receiver or trustee for itself or for all or any part of its property, (iii) files a petition seeking relief, including reorganization, arrangement or similar relief, under the present Bankruptcy Code or other similar present or future applicable laws of the United States or any state or any other competent jurisdiction, (iv) makes a general assignment for the benefit of creditors or (v) admits in writing its inability to pay its debts as they mature;

(f) <u>Involuntary Bankruptcy. Etc.</u> If a receiver or trustee is appointed for Mortgagor or Guarantor or for all or any part of their respective properties without their respective consents and such appointment is not vacated within sixty (60) days, or if a petition is filed against Mortgagor seeking relief, including reorganization, arrangement or similar relief, under the present Bankruptcy Code or other similar present or future applicable faws of the United States or any state or other competent jurisdiction, and such petition is not dismissed within sixty (60) days after the filing thereof;

(g) <u>Financial Condition</u>. If a material adverse change has occurred, at any time or times subsequent to the date hereof, in the financial condition, results of operations, operations, business, properties, or prospects of Mortgagor, Guarantor, any endorser, co-maker, surety or any guarantor of the Obligations, such as, by way of illustration and not limitation, a downturn in financial performance, the loss of key customers, the loss of critical licenses, management exodus, or a labor strike;

(h) <u>Dissolution</u>. If Mortgagor voluntarily or involuntarily dissolves or liquidates;

(i) <u>Death or Incompetency</u>. If any individual Guarantor dies or becomes incapacitated; <u>provided, however</u>, upon the death of any individual Guarantor, Mortgagor shall have sixty (60) days following the death of such individual Guarantor to provide evidence that the obligations of such individual Guarantor under the Guaranty have been accepted and ratified by such Guarantor's estate and the estate shall remain open (with no transfer of estate assets) until the Obligations have been paid in full;

(j) <u>Default by Guarantor</u>. If any Guarantor fails to duly pay or perform any covenant, term, provision, or condition of the Guaranty, or fails to duly pay or perform any and all indebtedness, liabilities and obligations (whether joint or several, direct or indirect, absolute or contingent, liquidated or unliquidated, matured or unmatured) of Guarantor to Mortgagee or to any of Mortgagee's affiliates, whether now existing or hereafter created or arising or now owned or howsoever hereafter acquired by Mortgagee or by any of Mortgagee's affiliates;

(k) <u>Default under Loan Documents</u>. If any Event of Default occurs under any of the other Loan Documents, or if any obligation of Mortgagor under any of the other Loan Documents is not fully performed;

(I) <u>Foreclosure of Other Liens</u>. If the holder of any mortgage or other lien on the Mortgaged Property, whether a Permitted Title Exception or not (without hereby implying Mortgagee's consent to any such mortgage or other lien) institutes foreclosure or other proceedings for the enforcement of any of its remedies thereunder; or

(in) <u>Notice Limiting Future Advances</u>. If Mortgagor, pursuant to Florida Statutes Section 697.04(1)(b) as amended from time to time, files for record a notice limiting the maximum amount which may be secured by this Mortgage.

### ARTICLE VIII RIGHTS AND REMEDIES

8.1 <u>Remedies</u>. If an Event of Default shall have occurred, Mortgagee may, at its option, exercise any, some or all of the following remedies, concurrently or consecutively.

(a) <u>Acceleration</u>. Mortgagee may declare all of the unpaid Obligations, together with all accrued interest thereon, to be due and payable without notice or demand which are hereby expressly waived, and upon such declaration all such Obligations shall immediately become due and payable as fully and to the same effect as if the date of such declaration were the date originally specified for the full payment or maturity thereof all of the foregoing without notice of default, notice of acceleration or intention to accelerate, presentment or demand for payment, protest, notice of nonpayment or dishonor, or notices or demands of any kind or character.

# (b) Mortgagee's Right to Enter and Take Possession. Operate and Apply Income.

(i) Mortgagee may demand that Mortgagor surrender the actual possession of the Mortgaged Property and upon such demand, Mortgagor shall forthwith surrender same to Mortgagee and, to the extent permitted by law, Mortgagee itself, or by such officers or agents as it may appoint, may enter and take possession of all of the Mortgaged Property and may exclude Mortgagor and its agents and employees wholly therefrom.

(ii) If Mortgagor shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after Mortgagee's demand, Mortgagee may obtain a judgment or order conferring on Mortgagee the right to immediate possession or requiring the Mortgagor to deliver immediate possession to Mortgagee; to the entry of which judgment or decree the Mortgagor hereby specifically consents.

(iii) Mortgagee may from time to time: (A) continue and complete construction of, hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof; (B) make all reasonably necessary maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional Fixtures and Personal Property; (C) insure or keep the Mortgaged Property insured; (D) exercise all the rights and powers of the Mortgagor in its name or otherwise with respect to the same; and (E) enter into agreements with others (including, without limitation, new Leases or amendments, extensions, or cancellations to existing Leases) all as Mortgagee from time to time may determine in its sole discretion. Mortgagor hereby constitutes and irrevocably appoints Mortgagee its true and lawful attorney-in-fact, which appointment is coupled with an interest, with full power of substitution, and empowers said attorney or attorneys in the name of Mortgagor, but at the option of said attorney-in-fact, to do any and all acts and execute any and all agreements that Mortgagee may deem necessary or proper to implement and perform any and all of the foregoing.

(iv) The Mortgagee may, with or without taking possession of the Mortgaged Property as hereinabove provided, collect and receive all the Rents therefrom, including those past due as well as those accruing thereafter, and shall apply the monies so received first, to the payment of all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Mortgagee and its agents in connection with the collection of same, whether or not in possession of the Mortgaged Property, and second, in such order as Mortgagee may elect, to the payment of the Obligations.

#### (c) <u>Proceedings to Recover Sums Due</u>.

(i) If any installment or part of any Obligation shall fail to be paid when due, Mortgagee shall be entitled to sue for and to recover judgment against the Mortgagor for the amount so due and unpaid together with all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Mortgagee in connection with such proceeding, together with interest thereon at the Default Rate from the date incurred by Mortgagee. All such costs and expenses shall be secured by this Mortgage and shall be due and payable by Mortgagor immediately.

(ii) If Mortgagor shall fail to pay upon the Mortgagee's demand, after acceleration as provided in Subsection 8.1(a), all of the unpaid Obligations, together with all accrued interest thereon, Mortgagee shall be entitled to sue for and to recover judgment against the Mortgagor for the entire amount so due and unpaid together with all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Mortgagee in connection with such proceeding, together with interest thereon at the Default Rate from the date incurred by Mortgagee. All such costs and expenses shall be secured by this Mortgage and shall be payable by Mortgagor immediately. Mortgagee's right under this Subsection may be exercised by Mortgagee either before, after or during the pendency of any proceedings for the enforcement of this Mortgage, including appellate proceedings.

(iii) No recovery of any judgment as provided in Subsections (i) and (ii) above and no attachment or levy of any execution upon any of the Mortgaged Property or any other property shall in any way affect the lien of this Mortgage upon the Mortgaged Property or any part thereof, or any lien, rights, powers, or remedies of Mortgagee hereunder, but such lien, rights, powers and remedies shall continue unimpaired as before.

#### (d) Foreclosure.

(i) Mortgagee may institute proceedings for the partial or complete foreclosure of this Mortgage and Mortgagee may, pursuant to any final judgment of foreclosure, sell the Mortgaged Property as an entirety or in separate lots, units, or parcels.

(ii) In case of a foreclosure sale of all or any part of the Mortgaged Property, the proceeds of sale shall be applied in accordance with Section 8.8 below hereof, and the Mortgagee shall be entitled to seek a deficiency judgment against the Mortgagor to enforce payment of any and all Obligations then remaining due and unpaid, together with interest thereon, and to recover a judgment against the Mortgagor therefor.

(iii) The Mortgagee is authorized to foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, or Mortgagee may elect which tenants Mortgagee desires to name as parties defendant in such foreclosure and failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted by the Mortgager to be, a defense to any proceedings instituted by the Mortgagee to collect the unpaid Obligations or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

(e) <u>Receiver</u>. Mortgagee may apply to any court of competent jurisdiction to have a receiver appointed to enter upon and take possession of the Mortgaged Property, collect the Rents therefrom and apply the same as the court may direct, such receiver to have all of the rights and powers permitted under the laws of the State of Florida. The right of the appointment of such receiver shall be a matter of strict right without regard to the value or the occupancy of the Mortgaged Property or the solvency or insolvency of Mortgagor. The expenses, including receiver's fees, attorneys' fees, costs and agent's commission incurred pursuant to the powers herein contained, together with interest thereon at the Default Rate, shall be secured hereby and shall be due and payable by Mortgagor immediately without notice or demand. Notwithstanding the appointment of any receiver or other custodian, Mortgagee shall be entitled as pledgee to the possession and control of any cash or deposits at the time held by, payable, or deliverable under the terms of this Mortgage to the Mortgagee, and the Mortgagee shall have the right to offset the unpaid Obligations against any such cash or deposits in such order as Mortgagee may elect.

(f) <u>Remedies as to Personal Property</u>. Mortgagee may exercise any or all of its rights and remedies under the Uniform Commercial Code-Secured Transactions as adopted by the State of Florida or other applicable law as well as all other rights and remedies possessed by Mortgagee, all of which shall be cumulative. Mortgagee is hereby authorized and empowered to enter the Mortgaged Property or other place where the Personal Property may be located without legal process, and to take possession of the Personal Property without notice or demand, which hereby are waived to the maximum extent permitted by the laws of the State of Florida. Upon demand by Mortgagee, Mortgager may sell at one or more public or private sales and for such price as Mortgagee may deem commercially reasonable, any and all of the Personal Property secured by this Mortgage, and any other security or property held by Mortgagee and Mortgagee may be the purchaser of any or all of the Personal Property.

(g) Other. Mortgagee may institute and maintain any suits and proceedings as the Mortgagee may deem advisable (i) to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or in violation of this Mortgage, (ii) to preserve or protect its interest in the Mortgaged Property, and (iii) to restrain the enforcement of or compliance with any Governmental Requirement that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such Governmental Requirement might impair the security hereunder or be prejudicial to the Mortgagee's interest.

8.2 <u>Remedies Cumulative and Concurrent</u>. No right, power or remedy of Mortgagee as provided in the Note, this Mortgage, or the other Loan Documents is intended to be exclusive of any other right, power, or remedy of Mortgagee, but each and every such right, power and remedy shall be cumulative and concurrent and in addition to any other right, power or remedy available to Mortgagee now or hereafter existing at law or in equity and may be pursued separately, successively or together against Mortgagor, or any endorser, co-maker, surety or guarantor of the Obligations, or the Mortgagee to exercise any such right, power or remedy shall in no event be construed as a waiver or release thereof.

8.3 <u>Waiver, Delay or Omission</u>. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies consequent thereon, and no delay or omission of Mortgagee to exercise any right, power or remedy shall be construed to waive any such Event of Default or to constitute acquiescence therein.

8.4 <u>Credit of Mortgagee</u>. To the maximum extent permitted by the laws of the State of Florida, upon any sale made under or by virtue of this Article, Mortgagee may bid for and acquire the Mortgaged Property, or any part thereof, and in lieu of paying cash therefor may apply to the purchase price, any portion of or all of the unpaid Obligations in such order as Mortgagee may elect.

8.5 <u>Sale</u>. Any sale or sales made under or by virtue of this Article shall operate to divest all the estate, right, title, interest, claim and demand whatsoever at law or in equity, of the Mortgagor and all Persons, except tenants pursuant to Leases approved by Mortgagee, claiming by, through or under Mortgagor in and to the properties and rights so sold, whether sold to Mortgagee or to others,

8.6 <u>Proofs of Claim</u>. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition, seizure of the Mortgaged Property by any Governmental Authority, or other judicial proceedings affecting Mortgagor, any endorser, co-maker, surety, or guarantor of the Obligations, or any of their respective properties, the Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have its claim allowed in such proceedings for the entire unpaid Obligations at the date of the institution of such proceedings, and for any additional amounts which may become due and payable after such date.

8.7 <u>Waiver of Redemption, Notice, Marshalling, Etc.</u> To the full extent Mortgagor may do so, Mortgagor hereby:

(a) agrees that it will not at any time plead, claim or take advantage of any Laws now or hereafter in force providing for any appraisement, valuation, stay or extension, and waives and releases all rights of valuation, appraisement, stay of execution, exemption from civil process, extension of time for payment and notice of election to accelerate the Obligations;

(b) waives all rights to a marshalling of the assets of Mortgagor, including the Property, or to a sale in the inverse order of alienation in the event of a foreclosure of the Property, and agrees not to assert any right under any Law pertaining to the marshalling of assets, the sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Mortgagee under the terms of this Mortgage to a sale of the Property without any prior or different resort for collection, or the right of Mortgagee to the payment of the Obligations out of the proceeds of sale of the Property in preference to every other claimant whatsoever;

(c) waives any right to bring or utilize any defense, counterclaim or setoff, other than one which denies the existence or sufficiency of the facts upon which any foreclosure action is grounded, other than compulsory counterclaims. If any defense, counterclaim or setoff, other than one permitted by the preceding clause, is timely raised in a foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a Claim which could be tried in an action for money damages, such Claim may be brought in a separate action which shall not thereafter be consolidated with the foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying the foreclosure action; and

(d) waives and relinquishes any and all rights and remedies which Mortgagor may have or be able to assert by reason of the provisions of any Laws pertaining to the rights and remedies of sureties.

8.8 <u>Application of Proceeds</u>. The proceeds of any sale of all or any portion of the Mortgaged Property shall be applied by Mortgagee first, to the payment of receiver's fees and expenses, if any, and to the payment of all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Mortgagee, together with interest thereon at the Default Rate from the date so incurred, in connection with any entry, action or proceeding under this Article and, second, in such order as Mortgagee may elect, to the payment of the Obligations. Mortgagor shall be and remain liable to Mortgagee for any difference between the net proceeds of sale and the amount of the Obligations until all of the Obligations have been paid in full.

8.9 <u>Discontinuance of Proceedings</u>. If Mortgagee shall have proceeded to enforce any right under any Loan Document and such proceedings shall have been discontinued or abandoned for any reason, then except as may be provided in any written agreement between Mortgager and Mortgagee providing for the discontinuance or abandonment of such proceedings, Mortgagor and Mortgagee shall be restored to their former positions and the rights, remedies and powers of Mortgagee shall continue as if no such proceedings had been instituted.

8.10 <u>Mortgagee's Actions</u>. Mortgagee may, at any time without notice to any Person and without consideration, do or refrain from doing any or all of the following actions, and neither the Mortgagor, any endorser, co-maker, surety or guarantor of the Obligations, nor any other Person (hereinafter in this Section collectively referred to as the "Obligor") now or hereafter liable for the payment and performance of the Obligations shall be relieved from the payment and performance thereof, unless specifically released in writing by Mortgagee: (a) renew, extend or modify the terms of the Note, this Mortgage, and the other Loan Documents, or any of them; (b) forbear or extend the time for the payment or performance of any or all of the Obligations; (c) apply payments by any Obligor to the reduction of the unpaid Obligations in such manner, in such amounts, and at such times and in such order and priority as Mortgagee may see fit; (d) release any Obligor; (e) substitute or release in whole or in part the Mortgaged Property or any other collateral or any portion thereof now or hereafter held as security for the Obligations without affecting, disturbing or impairing in any

manner whatsoever the validity and priority of the lien of this Mortgage upon the Mortgaged Property which is not released or substituted, or the validity and priority of any security interest of the Mortgagee in such other collateral which is not released or substituted; (f) subordinate the lien of this Mortgage or the lien of any other security interest in any other collateral now or hereafter held as security for the Obligations; (g) join in the execution of a plat or replat of the Land; (h) consent to the granting of any easement on the Land; and (i) generally deal with any Obligor or any other party as Mortgagee may see fit. Mortgagee shall join in and consent to the filing of a declaration of condominium or declaration of restrictive covenants regarding all or any part of the Land.

### ARTICLE IX MISCELLANEOUS

Maximum Rate of Interest. Nothing contained herein, in the Note, or in any other Loan 9.1 Document or in any instrument or transaction related thereto, shall be construed or so operate as to require the Mortgagor or any person liable for the payment of the Loan made pursuant to the Note, or liable for the payment of any Obligations, to pay interest, or any charge in the nature of interest, in an amount or at a rate which exceeds the maximum rate of interest allowed by applicable law, as amended from time to time. Should any interest or other charges in the nature of interest received by Mortgagee or paid by the Mortgagor or any parties liable for the payment of the Loan made pursuant to the Note, or liable for the payment of any Obligations, exceed the maximum rate of interest allowed by applicable law, as amended from time to time, then such excess sum shall be credited against the principal balance of the Note or the balance of the other Obligations, as applicable, unless the Mortgagor or such other parties liable for such payments, as applicable, shall notify the Mortgagee, in writing, that the Mortgagor or such other party elects to have such excess sum returned to it forthwith, it being the intent of the parties hereto that under no circumstances shall the Mortgagor or any parties liable for any of the aforesaid payments be required to pay interest in excess of the maximum rate of interest allowed by applicable law, as amended from time to time. The Mortgagee may, in determining the maximum rate of interest allowed under applicable law, as amended from time to time, take advantage of any state or federal law, rule or regulation in effect from time to time which may govern the maximum rate of interest which may be reserved, charged or taken.

9.2 <u>Continuing Agreement</u>. This Mortgage and all of the Mortgagor's representations, warranties and covenants herein, Mortgagee's security interest in the Mortgaged Property and all of the rights, powers and remedies of Mortgagee hereunder shall continue in full force and effect until all of the Obligations have been paid and performed in full; until Mortgagee has no further obligation to make any advances under the Loan; and until Mortgagee, upon the request of the Mortgagor, has executed a satisfaction of mortgage. Furthermore, if for any reason no Obligations are owing, notwithstanding such occurrence, this Mortgage shall remain valid and in full force and effect as to subsequent Obligations, so long as Mortgagee has not executed a satisfaction of mortgage; provided, however, that the indemnifications set forth in Article V of this Mortgage shall survive the satisfaction of this Mortgage.

9.3 <u>Survival of Warranties and Covenants</u>. The warranties, representations, covenants and agreements set forth in this Mortgage shall survive the making of the Loan and the execution and delivery of the Note, and shall continue in full force and effect until all of the Obligations shall have been paid and performed in full.

9.4 <u>No Representation by Mortgagee</u>. By accepting or approving anything required to be observed, performed or fulfilled, or to be given to Mortgagee, pursuant to this Mortgage, or the other Loan Documents, including, but not limited to, any officer's certificate, balance sheet, statement, survey or appraisal, Mortgagee shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or representation with respect thereto by Mortgagee.

9.5 <u>Notice</u>. All notices, requests, consents, demands and other communications required or which any party desires to give hereunder shall be in writing and shall be deemed sufficiently given or furnished if delivered by personal delivery, by facsimile, or by nationally recognized overnight courier service, or by certified United States mail, postage prepaid, addressed to the party to whom directed at the addresses specified in this Mortgage (unless changed by similar notice in writing given by the particular party whose address is to be changed):

To the Mortgagor:	Rechter Holdings, Inc. Rechter Progresso 835, LLC Attn: Michael R. Rechter 241 East Prospect Road
	Ft. Lauderdale, FL 33332
To the Mortgagee:	Stonegate Bank Attn: Heather Zatik, Vice President 2400 North Commerce Parkway, Suite 200 Weston, Florida 33326

Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of facsimile, upon receipt; provided that service of a notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon actual receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Mortgage or in any other Loan Document or to require giving of notice or demand to or upon any Person in any situation or for any reason.

9.6 <u>Mortgagee's Right to Pay and Perform</u>. If Mortgagor shall fail to duly pay or perform any of the Obligations required by this Mortgage, then at any time thereafter without notice to or demand upon Mortgagor, and without waiving or releasing any right, remedy, or power of Mortgagee, and without releasing any of the Obligations or any Event of Default, Mortgagee may pay or perform such Obligation for the account of and at the expense of Mortgagor, and shall have the right to enter and to authorize others to enter upon the Mortgaged Property for such purpose and to take all such action thereon and with respect to the Mortgaged Property as may be necessary or appropriate for such purpose. All payments made and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Mortgagee, together with interest thereon at the Default Rate from the date incurred by Mortgage shall be due and payable by Mortgagor immediately, whether or not there be notice, demand, an attempt to collect same, or suit pending.

9.7 <u>Covenants Running With the Land</u>. All covenants contained in this Mortgage shall be binding on the Mortgagor and shall run with the Land.

9.8 <u>Successors and Assigns</u>. All of the terms of this Mortgage shall apply to and be binding upon, and inure to the benefit of, the heirs, devisees, personal representatives, successors and assigns of Mortgagor and Mortgagee, respectively, and all persons claiming under or through them.

9.9 <u>Invalidity</u>.

(a) If any one or more of the provisions contained in this Mortgage is declared or found by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision or portion thereof shall be deemed stricken and severed and the remaining provisions hereof shall continue in full force and effect.

(b) If any one or more of the Obligations is declared or found by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining Obligations shall continue in full force and effect.

9.10 <u>Modification</u>. No agreement unless in writing and signed by an authorized officer of Mortgagee and no course of dealing between the parties hereto shall be effective to change, waive, terminate, modify, discharge, or release in whole or in part any provision of this Mortgage. No waiver of any rights or powers of Mortgagee or consent by it shall be valid unless in writing signed by an authorized officer of Mortgagee and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

9.11 <u>Applicable Law</u>. This Mortgage shall be construed, interpreted, enforced and governed by and in accordance with the laws of the State of Florida (excluding the principles thereof governing conflicts of law), and federal law, in the event federal law permits a higher rate of interest than Florida law.

9.12 <u>Strict Performance</u>. It is specifically agreed that time is of the essence as to all matters provided for in this Mortgage and that no waiver of any Obligation hereinder or secured hereby shall at any time thereafter be held to be a waiver of the Obligations.

9.13 WAIVER OF JURY TRIAL. MORTGAGOR HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING, DEFENSE OR COUNTERCLAIM BASED ON THIS MORTGAGE, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MORTGAGE, THE NOTE, OR ANY OTHER SECURITY DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO OR TO ANY SECURITY DOCUMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGEE PROVIDING THE LOAN TO MORTGAGOR.

IN WITNESS WHEREOF, Mortgagor has executed this instrument as of the day and year first above written.

(remainder of page left blank - signature page to follow)

Signature Page Mortgage, Assignment of Rents and Security Agreement

Signed, sealed and delivered in the presence of: Print Name: Koloret N S. pristine Procte Print Name:

#### **MORTGAGOR:**

RECHTER HOLDINGS, INC. a Florida corporation

By: Michael R. Rechter, President

RECHTER PROGRESSO 835, LLC A Florida limited liability company

see

By: Michael R. Rechter, Manager

STATE OF FLORIDA COUNTY OF BROWARD

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgements, the foregoing instrument was acknowledged before me by Michael R. Rechter, as President of Rechter Holdings, Inc., a Florida corporation, and as Manager of Rechter Progresso 835, LLC, a Florida limited liability company, who does so freely and voluntarily under authority duly vested in him by said companies. He is personally known to me or produced \_\_\_\_\_\_ as identification.

WITNESS by hand and official seal in the County and State last aforesaid this 20 day of September, 2017.

AY PUD CHRISTINE PROCTER MY COMMISSION # FF 983338 EXPIRES: August 16, 2020 Bonded Thru Budget Notary Services

NOTARY PUBLIC Print Name:

My Commission Expires

This Instrument was Prepared By, Record and Return to: Joseph B. Heimovics, Esq. Joseph B. Heimovics, P.A. 15951 SW 41<sup>st</sup> Street, Suite 800 Davie, Florida 33331

# COLLATERAL ASSIGNMENT OF LEASES, RENTS AND CONTRACT RIGHTS Loan Number 6016869

THIS COLLATERAL ASSIGNMENT OF LEASES, RENTS AND CONTRACT RIGHTS (the "Assignment" or "Agreement") made as of the 20<sup>th</sup> day of September, 2017, by **RECHTER HOLDINGS**, INC., a Florida corporation and **RECHTER PROGRESSO 835**, LLC, a Florida limited liability company, both having an address of 241 East Prospect Road, Ft. Lauderdale, FL 33332 (hereinafter collectively called the "Assignor"), to **STONEGATE BANK**, a Florida banking corporation, and its successors or assigns whose address is 400 North Federal Highway, Pompano Beach, Florida 33062 (hereinafter called the "Assignee").

### WITNESSETH:

THAT WHEREAS, contemporaneously herewith, the Assignor has executed and delivered to the Assignee a certain Promissory Note in the principal sum of Three Million Two Hundred Thousand and 00/100 Dollars (\$3,200,000.00) (as the same may be amended, modified, increased or extended from time to time, hereinafter referred to as the "Note"), secured by a Mortgage, Assignment of Rents and Security Agreement (as the same may be amended or modified from time to time, hereinafter referred to as the "Mortgage") on the premises of the Assignor, each located Broward County, Florida, at 716-718 NE 2<sup>nd</sup> Avenue, Ft. Lauderdale, FL 33304 (Property "A" – owned by Rechter Holdings, Inc.), 913 NE 4<sup>th</sup> Avenue, Ft. Lauderdale, FL 33304 (Property "B" owned by Rechter Holdings, Inc.), and 835 NE 2<sup>nd</sup> Avenue, Ft. Lauderdale, FL 33304 (Property "C" owned by Rechter Progresso 835, LLC), and as more particularly described as:

#### Property A:

Lots 4, 5 and 6, Block 257 of PROGRESSO, according to the Plat thereof, as recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida; said land situate, lying and being in Broward County, Florida.

and

#### Property B:

Lots 17-21, LESS the East 10 feet thereof, of Block 214 of PROGRESSO, and all that part of Block 214 of PROGRESSO lying South of said Lot 21 and East of the alley running North and South through said Block 214, according to the Plat thereof, as recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida; said lands situated, lying and being in Broward County, Florida, all LESS that portion of land dedicated to Broward County, as described in Instrument Number 113500871.

#### Property C:

# Lots 33 and 34, Block 289 of PROGRESSO, according to the Plat thereof, as recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida; said lands situated, lying and being in Broward County.

together with all buildings and improvements now or hereafter constructed thereon (all of such premises being hereinafter collectively referred to as the "Mortgaged Premises"); and

WHEREAS, as additional security for the Note and the obligations of the Assignor thereunder, the Assignor has executed and delivered to the Assignee this Agreement;

NOW, THEREFORE, for value received and as security for the payment of said obligations of the Assignor, the Assignor, for itself and for its successors and assigns, does hereby transfer, assign and deliver unto the Assignee, its successors and assigns, all of the right, title and interest of the Assignor in and to (1) all leases, subleases, residence agreements, tenancies and any other agreements affecting the use of the Mortgaged Premises, whether written or oral, now or hereafter existing with respect to any portion or portions of the Mortgaged Premises, together with any renewals or extensions thereof and leases, subleases, residence agreements in substitution therefor (all of which are hereinafter collectively referred to as the "Assigned Leases"), (2) all rents and other payments of every kind due or payable and to become due or payable to the Assignor by virtue of the Assigned Leases, or otherwise due or payable and to become due or payable to the Assignor as the result of any use, possession or occupancy of any portion or portions of the Assigned Leases, (3) all right, title and interest of the Assignor in and to all guarantees of the Assigned Leases, (4) any award made in any court proceeding involving any of the lessees in any bankruptcy, insolvency, or reorganization proceedings in any state or federal court, and (5) all contracts, permits, documents, and other personal property related to or affecting the Mortgaged Premises, as more particularly described in paragraph 3 hereof.

TO HAVE AND TO HOLD the same unto the Assignee, its successors and assigns, until such time as the indebtedness secured by the Mortgage shall have been paid in full, for the purpose of further and collaterally securing (1) payment of the indebtedness evidenced by the Note together with the interest on said indebtedness; (2) payment of all other sums, with interest thereon, to become due and payable to the Assignee hereunder or under the provisions of the Mortgage, the Note, or any other obligation of the Assigner to the Assignee now or hereafter existing; and (3) performance and discharge of each and every obligation, covenant and agreement of the Assigner contained herein, or in the Note, Mortgage or any other obligation of the Assigner to the Assigner now or hereafter existing (this Assignment, the Mortgage, the Note and said other obligations are hereinafter collectively referred to as the "Obligations").

This Agreement is delivered and accepted upon the following terms and conditions:

1. <u>Assignor's License to Operate if no Default</u>. So long as no default shall exist under the Obligations, the Assignor shall have a license to manage and operate the Mortgaged Premises and to collect, receive and apply for its own account all rents, issues and profits accruing by virtue of the Assigned Leases, and to execute and deliver proper receipts and acquittances therefor, provided, however, that without the written consent of the Assignee the Assigner shall not collect any installment of rent in advance of the respective dates prescribed in the Assigned Leases for the payment thereof with the exception of first and last month's rent and a security deposit in an amount set forth in the lease (hereinafter referred to as "Permitted Advance Rental Payments").

and

### 2. Assignee's Rights in Event of Default.

2.1 Immediately upon the occurrence of any default under the Obligations, and until such default shall have been cured as hereinafter defined, the license mentioned in the foregoing paragraph 1 hereof shall cease and terminate, and in such event the Assignee is hereby expressly and irrevocably authorized to enter and take possession of the Mortgaged Premises by actual physical possession, or by written notice served personally upon or sent by certified mail, return receipt requested, to the Assignor as the Assignee may elect, without further authorization, notice or demand (except as otherwise specifically provided in the Note) and without the commencement of any action to foreclose the Mortgage or to exercise its power of sale thereunder.

2.2 The Assignor does hereby constitute and appoint the Assignee, following such entry and taking of possession, irrevocably, with full power of substitution and revocation, its true and lawful attorney, for it and in its name, place and stead, to do and perform any or all of the following actions, as fully, to all intents and purposes, as it could do if personally present, hereby ratifying and confirming all that its said attorney or its substitute shall lawfully do or cause to be done by virtue hereof:

(a) manage and operate the Mortgaged Premises or any part thereof;

(b) lease any part or parts thereof for such periods of time, and upon such terms and conditions as the Assignee may, in its sole discretion, deem proper;

(c) enforce, cancel or modify any of the Assigned Leases;

(d) demand, collect, sue for, attach, levy, recover, receive, compromise and adjust, and make, execute and deliver receipts and releases for all rents, issues, profits and other amounts that may then be or may thereafter become due, owing or payable with respect to the Mortgaged Premises or any part thereof from any present or future lessees, tenants, subtenants or occupants thereof;

(e) institute, prosecute to completion or compromise and settle all summary proceedings, actions for rent or for removing any and all lessees, tenants, subtenants or occupants of the Mortgaged Premises or any part or parts thereof;

(f) enforce or enjoin or restrain the violation of any of the terms, provisions and conditions of any lease or leases, now or hereafter affecting the Mortgaged Premises or any part thereof;

(g) make such repairs and alterations to the Mortgaged Premises as the Assignee may, in its reasonable discretion, deem proper;

(h) pay, from and out of rents, accounts, issues and profits collected in respect of the Mortgaged Premises or any part thereof, or from or out of any other funds, the rent and all other charges required to be paid under any ground lease on which the Mortgage may constitute a lien, any taxes, assessments, water rates, sewer rates, or other government charges levied, assessed or imposed against the Mortgaged Premises, or any portion thereof, and also any and all other charges, costs and expenses which it may be necessary or advisable for the Assignee to pay in the management or operation of the Mortgaged Premises, including (without limiting the generality of any rights, powers, privileges and authority hereinbefore or hereinafter conferred) the costs of such repairs and alterations, commissions for renting the Mortgaged Premises or any portions thereof and legal expenses in enforcing claims, preparing papers or for any other services that may be required; and

(i) generally, do, execute and perform any other act, deed, matter or thing whatsoever that ought to be done, executed and performed in and about or with respect to the Mortgaged Premises, as fully as the Assignor might do, provided, however, that any action, or failure or refusal to act, by the Assignee under this subparagraph 2.2 shall be at its election and without any liability on its part.

2.3 The Assignee shall apply the net amount of rents, accounts, issues and profits received by it from the Mortgaged Premises, after payment of all proper costs and charges (including any liability, loss, expense or damage hereinafter referred to in paragraph 6 hereof), first to the payment, when due, of the installments of interest payable under the Note and thereafter to the payment of principal thereunder. Any of such funds remaining after such application shall be paid as soon as reasonably practicable by the Assignee to the Assigner or paid over to such persons as the Assigner may designate to the Assignee in writing.

2.4 The Assignee shall be accountable to the Assignor only for monies actually received by the Assignee pursuant to this Assignment and the acceptance of this Assignment shall not constitute a satisfaction of any Obligations, or any part hereof, now or hereafter owed by the Assignor to the Assignee, except to the extent of amounts actually received and applied by the Assignee on account of the same.

2.5 The rights and powers of the Assignce hereunder shall continue and remain in full force and effect until all amounts secured hereby, including any deficiency resulting from foreclosure sale, are paid in full, and shall continue after commencement of foreclosure and after foreclosure sale and until expiration of the equity of redemption, notwithstanding sale of the Mortgaged Premises to a purchaser other than the Assignee. Assignee shall not be liable to Assignor or any one claiming under or through Assignor by reason of anything done or left undone by Assignee hereunder.

2.6 For the purposes of this paragraph 2, a default shall be deemed to be cured only when the Assignor shall have paid in full all sums owing and past due, and/or shall have performed all other terms, covenants and conditions, the failure in the performance of which shall terminate the license hereinabove mentioned in paragraph 1 hereof.

Additional Collateral and Security. As additional collateral and security for the payment of the 3. indebtedness evidenced by the Note and for the performance of each and every of the covenants and agreements contained in the Obligations, the Assignor hereby grants Assignee a first security interest in and to all present and future profits, income and issues from the Mortgaged Premises and each and every part and parcel thereof, and also all present and future right, title and interest of the Assignor under and by virtue of each and every franchise, trademark, license, permit, approval, contract for deed, reservation agreement, purchase and sale agreement, loan commitment, management agreement, all utility connection rights and fees paid in connection with the Mortgaged Premises, all accounts, accounts receivable, instruments, documents, chattel paper, electronic chattel paper, deposit accounts, investment property, letter of credit rights, inventory, furniture, intellectual property, general intangibles, and any other document or contractual right, written or verbal, covering or affecting any part or parcel of the Mortgaged Premises, whether any of such is now or hereafter made, and any and all proceeds, replacements, substitutions, amendments, modifications, extensions or renewals of any of same. Assignor hereby warrants that there are no contracts for deed, leases or purchase agreements affecting the Mortgaged Premises as of the day and year first above written nor shall there be any in existence on the date of recordation of the Mortgage and other instruments of security. Assignor further warrants that it has not executed, nor will it execute at any time during the term of the Note, any other assignments or instruments further encumbering the items described above. Assignor hereby authorizes Assignce to file financing statements describing the collateral described herein and in the Mortgage with the appropriate official of the county in which the Mortgaged Premises are located and with the appropriate official of the state in which Assignor is organized. In addition, Assignor shall cooperate with Assignee in obtaining control with respect to collateral consisting of electronic chattel paper, deposit accounts, investment property, and letter of credit rights.

4. <u>Attornment by Lessees in Event of Default</u>. The Assignor hereby irrevocably directs each lessee under each Assigned Lease, upon demand and notice from the Assignee of the Assignor's default under any of the Obligations, to pay the Assignee all rents, issues, fees and profits accruing or due under its Assigned Lease from and after the receipt of such demand and notice. Any Lessee making such payment to the Assignee shall be under no obligation to inquire into or determine the actual existence of any such default claimed by the Assignee.

5. <u>Covenants of Assignor</u>. The Assignor, for itself and for its successors and assigns, covenants and warrants as follows:

(a) that each of the Assigned Leases now or hereafter in effect is and shall be a valid and subsisting lease and agreement and that there are, to the extent ascertainable by the Assignor, no defaults on the part of any of the parties thereto;

(b) other than in the normal course of business and to maintain maximum occupancy of the Mortgaged Premises, that the Assignor will not lease all or any part of the Mortgaged Premises for periods beyond one year without the prior written approval of Assignee;

(c) that the Assignor has not sold, assigned, transferred, mortgaged or pledged any of the rents, issues, fees or profits from the Mortgaged Premises or any part thereof, whether now or hereafter to become due, to any person, firm or corporation other than the Assignee;

(d) that no rents, issues, fees or profits of the Mortgaged Premises, or any part thereof, becoming due subsequent to the date hereof have been collected (other than Permitted Advance Rental Payments) nor has payment of any of the same been anticipated, waived, released, discounted or otherwise discharged or compromised;

(e) that it will not assign, pledge or otherwise encumber any of the Assigned Leases or any of the rents thereunder unless the prior written consent of the Assignee shall have been obtained thereto and unless the instrument creating such assignment, pledge or encumbrance shall expressly state that the same is subject to this Assignment;

(f) that it will not, other than in the normal course of business and to maintain maximum occupancy of the Mortgaged Premises, without in each case having obtained the prior written consent of the Assignee thereto, materially amend or modify, directly or indirectly in any respect whatsoever cancel, terminate, or accept any surrender of any Assigned Lease;

(g) that it will not waive or give any consent with respect to any default or variation in the performance of any of the terms, covenants and conditions on the part of any lessee, sublessee, tenant or other occupant to be performed under any of the Assigned Leases, but will at all times take proper steps to enforce all of the provisions and conditions thereof;

(h) that it will not collect or receive, without in each case having obtained the prior written consent of the Assignee thereto from any such lessee, sublessee, tenant or other occupant, any installment of rent in advance of the respective dates prescribed in the Assigned Leases, except for Permitted Advance Rental Payments;

(i) that it will perform and observe, or cause to be performed and observed, all of the terms, covenants and conditions on its part to be performed and observed with respect to each of the Assigned Leases;

(j) that it will, upon written request by the Assignee, while this Assignment remains in force and effect, give such written notices to any lessee, sublessee, tenant or other occupant of any portion of the Mortgaged Premises concerning this Assignment, or include among the written provisions of any instrument hereafter creating any such lease, sublesse, tenancy or right of occupancy specific reference to this Assignment, and make, execute and deliver all such powers of attorney, instruments of pledge or assignment, and such other instruments or documents as the Assignee may reasonably request at any time for the purpose of securing its rights hereunder; and

(k) that it will notify the Assignee promptly when any Assigned Lease is hereafter executed, extended, renewed, amended or modified and that it will furnish to the Assignee, on demand, true copies of all Assigned Leases hereafter executed and true copies of each agreement or letter effecting the renewal, amendment or modification of any Assigned Lease.

#### 6. <u>Indemnification</u>.

6.1 Upon the occurrence of an uncured Event of Default, the Assignor hereby agrees to indemnify and hold the Assignee harmless (a) against and from any and all liability, loss, damage and expense, including reasonable attorneys' fees, which it may or shall incur under or in connection with any of the Assigned Leases, or by reason of any of the Obligations, or by reason of any action taken by the Assignee under any of the Obligations (including without limitation any action which the Assignee in its discretion may take to protect its interest in the Mortgaged Premises, including without limitation the making of advances and the entering into of any action or proceeding arising out of or connected with the Assigned Leases or the Obligations), and (b) against and from any and all claims and demand whatsoever which may be asserted against the Assignor by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants and conditions contained in any of the Assigned Leases.

6.2 Should the Assignee incur any such liability, loss, damage or expense, the amount thereof, together with interest thereon at the maximum rate permitted by law, shall be payable by the Assigner to the Assignee immediately upon demand, or at the option of the Assignee, the Assignee may reimburse itself therefor out of any rents, issues or profits of the Mortgaged Premises collected by the Assignee.

6.3 Nothing contained herein shall operate or be construed to obligate the Assignee to perform any of the terms, covenants or conditions contained in any Assigned Lease, or to take any measures, legal or otherwise, to enforce collection of any of said rents or other payments, or otherwise to impose any obligation upon the Assignee with respect to any of said leases, including but not limited to, any obligation arising out of any covenant of quiet enjoyment therein contained, in the event that any lessee shall have been joined as a party defendant in any action to foreclose the Mortgage and the estate of such lessee shall have been thereby terminated.

6.4 Prior to actual entry into and taking possession of the Mortgaged Premises by the Assignee, this Assignment shall not operate to place upon the Assignee any responsibility for the operation, control, care, management or repair of the Mortgaged Premises, and the execution of this Assignment by the Assignor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Premises is and shall be that of the Assignor prior to such actual entry and taking of possession.

7. <u>Exercise of Reinedies</u>. Failure of the Assignee to avail itself of any of the terms, covenants and conditions of this Assignment for any period of time, or at any time or times, shall not be construed or deemed to be a waiver of any of its rights hereunder. The rights and remedies of the Assignee under this Assignment are cumulative and are not in lieu of but are in addition to any other rights and remedies which the Assignee

shall have under or by virtue of any other of the Obligations. The rights and remedies of the Assignee hereunder may be exercised from time to time and as often as such exercise is deemed expedient.

8. <u>Assignment by Assignee</u>. The Assignee shall have the right to assign to any subsequent holder of the Mortgage, or to any person acquiring title to the Mortgaged Premises, the Assignor's rights, title and interest in any lease hereby or hereafter assigned, subject, however, to the provisions of this Assignment. After the Assignor shall have been barred and foreclosed of all right, title and interest and equity of redemption in said Mortgaged Premises, no assignee of the Assignor's interest in said leases shall be liable to account to the Assignor for any rents, income, revenue, issues or profits thereafter accruing.

9. <u>Termination of this Assignment</u>. Upon payment in full of all the indebtedness secured by the Mortgage, as evidenced by a recorded satisfaction or release of Mortgage, as well as any sums which may be payable hereunder, this Assignment shall become and be void and of no effect and, in that event, upon the request of the Assignor, the Assignee covenants to execute and deliver to the Assignor instruments effective to evidence the termination of this Assignment and/or the reassignment to the Assignor of the rights, power and authority granted herein.

10. <u>No Merger of Assigned Leases</u>. As against the Assignee, at all times during which this Assignment shall be in effect, there shall be no merger of the Assigned Leases or the leasehold estate created thereby with the fee estate in the Mortgaged Premises by reason of the fact that the Assigned Leases or any interest therein may be held by or for the account of any person, firm or corporation which may be or become the owner of said fee estate, unless the Assignee shall consent in writing to said merger.

11. <u>Notice</u>. Any notice, demand, request or other communication given hereunder or in connection herewith (hereinafter "Notices") shall be deemed sufficient if in writing and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the party to receive such Notice at the following addresses:

Assignor:	Rechter Holdings, Inc. Rechter Progresso 835, LLC Attn: Michael R. Rechter 241 East Prospect Road Ft. Lauderdale, FL 33332
Assignee:	Stonegate Bank Attn: Heather Zatik, Vice President 2400 North Commerce Parkway, Suite 200 Weston, Florida 33326

Any party may change said address by giving the other parties hereto notice of such change of address. Notices shall be deemed given when mailed. Notwithstanding the foregoing, routine communications such as ordinary distribution checks, copies of documents, etc. may be sent by ordinary first-class mail.

12. <u>Further Assurances</u>. At any time, upon completion of the improvements to be erected on the Mortgaged Premises or thereafter, Assignor will make, execute and deliver or cause to be made, executed and delivered all instruments or documents of any kind necessary to assign any and all leases of all or part of the Mortgaged Premises and the rights to rents and all payments due thereunder which assignments shall be subject to the terms and conditions of this Agreement.

13. <u>Subordination of Leases</u>. All leases, subleases, tenancies and other agreements affecting the use of the Mortgaged Premises now or hereafter existing shall be subordinate to the Mortgage of even date herewith.

14. <u>Security Agreement</u>. This instrument also creates a security interest in favor of Assignee under the Florida Uniform Commercial Code, and Assignee shall also have all of the rights and remedies of a secured party under the Florida Uniform Commercial Code, and without limitation upon or in derogation of the rights and remedies created and accorded to Assignee by this Agreement pursuant to the common law or any other laws of the State of Florida Uniform Commercial Code shall be cumulative and in addition to all of the rights and remedies of Assignee arising under the common law or any other law of the State of Florida Uniform Commercial Code shall be cumulative and in addition to all of the rights and remedies of Assignee arising under the common law or any other law of the State of Florida or any other jurisdiction.

#### 15. Miscellaneous Provisions.

15.1 Whenever the context so requires, reference herein to the neuter gender shall include the masculine and/or feminine gender, and the singular number shall include the plural.

15.2 All of the provisions of this Agreement shall be deemed and construed to be "conditions" and "covenants" as though the words specifically expressing or importing covenants and conditions were used in each separate provision hereof.

15.3 This is being delivered and is intended to be performed in the State of Florida and shall be construed and enforced in accordance with and governed by the laws of such state.

15.4 No change, amendment, modification, cancellation or discharge hereof, or of any part hereof, shall be valid unless the Assignee shall have consented thereto in writing.

15.5 In the event there is any conflict between the terms and provisions of the Mortgage and the terms and provisions of this Agreement, the terms and provisions of this Agreement shall prevail.

15.6 The terms, covenants and conditions contained herein shall inure to the benefit of, and bind the Assignee and the Assignor and their respective successors and assigns or executors, administrators, successors and assigns, as the case may be.

15.7 The captions of this Agreement are for convenience and reference only and neither in any way define, limit, or describe the scope or interest of this Agreement nor in any way affect this Assignment.

15.8 In case any one or more of the provisions contained in this Agreement are, or shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, but each shall be construed as if such invalid, illegal or unenforceable provision had never been included.

IN WITNESS WHEREOF, the Assignor has caused these presents to be executed by its officers, thereunto duly authorized, on the day and year first above written.

(remainder of page left blank - signature page to follow)

Signature Page Collateral Assignment of Leases, Rents and Contract Rights

ASSIGNOR:

Signed, sealed and delivered

in the presence of:

Print Name: Robert M. Schwartz. Christine Proeter

Print Name: Christine Procte

RECHTER HOLDINGS, INC. a Florida corporation

By: Michael R. Rechter, President

RECHTER PROGRESSO 835, LLC A Florida limited liability company

By: Michael R. Rechter, Manager

# STATE OF FLORIDA COUNTY OF PALM BEACH

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgements, the foregoing instrument was acknowledged before me by Michael R. Rechter, as President of Rechter Holdings, Inc., a Florida corporation, and as Manager of Rechter Progresso 835, LLC, a Florida limited liability company, who does so freely and voluntarily under authority duly vested in him by said companies. He is personally known to me or produced as identification.

WITNESS by hand and official seal in the County and State last aforesaid this 20 day of September,

2017.

CHRISTINE PROCTER MY COMMISSION # FF 983338 CHRISTINE PROCTER MY COMMISSION # FF 983338 CHRISTINE PROCTER MY COMMISSION # FF 983338 CHRISTINE PROCTER

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NOTARY PUBLIC Print Name: My Commission Expires

# STATE OF FLORIDA UNIFORM COMMERCIAL CODE FINANCING STATEMENT FORM

 FINANCING STATEMENT FORM

 A. NAME & DAYTIME PHONE NUMBER OF CONTACT PERSON

 Joseph B. Heimovics, Esq., 15951 SW 41<sup>st</sup> Street, Suite 800,

 Davie, FL 33331, Tel: 954-626-3402

 B. Emnil Address: joe@heimovicslaw.com

 C SEND ACKNOWLEDGEMENT TO

 Name
 Stonegate Bank

 Address
 2400 N. Cominerce Parkway, Suite 200

 City/State/Zip Weston, FL 33326

	THE A	BOVE SPAC	E IS FOR F	FILING OFFICE US	SE .
ONLY					
1. DEBTOR'S EXACT FULL LEGAL NAME - INSERT ONL	Y ONE DEBTOR NAME (1a OR 1b) - Do	Not Abbreviat	e or Combi	ne Names	
La ORGANIZATION'S NAME					
Rechter Holdings, Inc.					
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3. SECURED PARTY'S NAME (or NAME of TOTAL ASS	IGNEE of ASSIGNOR S/P) - INSERT ONL	Y ONE SECU	RED PART	Y (3a OR 3b)	
3.1 ORGANIZATION'S NAME STONEGATE BAN	XZ .				
3.5 INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITI	ONAL NAM	ME(S)/INITIAL(S)	SUFFIX
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See Rider Attached hereto.					
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Florida Documentary Stamp Tax is not required.					
7. OPTIONAL FILER REFERENCE DATA 6016869	<u></u>			·····	
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STANDARD FORM - FORM UCC-1 (REV.05/2013)	Filiag Office Copy A	pproved by th	ie Secretary	of State, State of Fl	01101

# RIDER TO FINANCING STATEMENT

This Financing Statement covers the following types and items of property:

All property rights of any kind whatsoever, whether real, personal, mixed or otherwise, and whether tangible or intangible, and whether owned or in the possession of the Debtor, encumbered by that certain Mortgage and Security Agreement ("Mortgage") of even date herewith, in favor of the Secured Party, and encumbering those certain parcels of real estate situate in Broward County, Florida, located at 716-718 NE 2<sup>nd</sup> Avenue, Ft. Lauderdale, FL 33304 (Property "A" – owned by Rechter Holdings, Inc.), 913 NE 4<sup>th</sup> Avenue, Ft. Lauderdale, FL 33304 (Property "B" owned by Rechter Holdings, Inc.), and 835 NE 2<sup>nd</sup> Avenue, Ft. Lauderdale, FL 33304 (Property "C" owned by Rechter Progresso 835, LLC) (collectively all three referred to as the "Land"):

Property A: Lots 4, 5 and 6, Block 257 of PROGRESSO, according to the Plat thereof, as recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida; said land situate, lying and being in Broward County, Florida.

and

Property B: Lots 17-21, LESS the East 10 feet thereof, of Block 214 of PROGRESSO, and all that part of Block 214 of PROGRESSO lying South of said Lot 21 and East of the alley running North and South through said Block 214, according to the Plat thereof, as recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida; said lands situated, lying and being in Broward County, Florida, all LESS that portion of land dedicated to Broward County, as described in Instrument Number 113500871.

and

Property C: Lots 33 and 34, Block 289 of PROGRESSO, according to the Plat thereof, as recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida; said lands situated, lying and being in Broward County.

including the following:

- (a) <u>Appurtenances</u>. The benefit of all easements and other rights of any nature whatsoever, if any, appurtenant to the Land or the Improvements, or both, the benefit of all rights-of-way, strips and gores of land, streets, alleys, passages, drainage rights, sanitary sewer and potable water rights, stormwater drainage rights, rights of ingress and egress to the Land and all adjoining property, and any improvements of Debtor now or hereafter located on any of such real property interests, water rights and powers, oil, gas, mineral and riparian and littoral rights, whether now existing or hereafter arising, together with the reversion or reversions, remainder or remainders, rents, issues, incomes and profits of any of the foregoing (the "Appurtenances").
- (b) <u>Improvements</u>. All buildings, structures, betterments and other improvements of any nature now or hereafter situated in whole or in part upon the Land or on the Appurtenances, regardless of whether physically affixed thereto or severed or capable of severance therefrom (the "Improvements").
- (c) Tangible Property. All of the Debtor's right, title and interest, if any, in and to all fixtures, equipment and tangible personal property of any nature whatsoever that is now or hereafter (i) attached or affixed to the Land, the Appurtenances or the Improvements, or (ii) situated upon or about the Land, the Appurtenances and/or the Improvements, regardless of whether physically affixed thereto or severed or capable of severance therefrom, or (iii) used, regardless of where situated, if used, usable or intended to be used, in connection with any present or future use or operation of or upon the Land. The foregoing includes without limitation: all goods and inventory, all heating, air conditioning, lighting, incinerating and power equipment; all engines, compressors, pipes, pumps, tanks, motors, conduits, wiring, and switchboards; all plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating; and communications and public address apparatus; all signage and recreational amenities including, without limitation, swimming pools, exercise equipment, tennis courts, clubhouse furnishings or saunas; all boilers, furnaces, oil burners, vacuum cleaning systems, elevators and escalators; all stoves, ovens, ranges, disposal units, dishwashers, water heaters, exhaust systems, refrigerators, cabinets, and partitions; all rugs, draperies and carpets; all laundry equipment; all building materials; all furniture (including, without limitation, any outdoor furniture), furnishings, office equipment and office supplies; and all additions, accessions, renewals, replacements and substitutions of any or all of the foregoing. The property interests encumbered and described by this Paragraph are called the "Tangible Property".

- (d) <u>Rents.</u> All rents, issues, incomes and profits in any manner arising from the Land, Improvements, Appurtenances or Tangible Property, or any combination thereof, including Debtor's interest in and to all leases of whatsoever kind or nature, licenses, franchises and concessions of or relating to all or any portion of the Land, Appurtenances, Improvements or Tangible Property, or the operation thereof, whether now existing or hereafter made, including all amendments, modifications, replacements, substitutions, extensions, renewals or consolidations thereof. The property interests encumbered and described in this subparagraph are called the "Rents".
- (e) <u>Secondary Financing</u>. All of Debtor's right, power or privilege to further encumber any of the Collateral described herein, it being intended by this provision to divest Debtor of the power to encumber or to grant a security interest in any of the Collateral as security for the performance of any other obligation.
- (f) <u>Proceeds.</u> All proceeds of the conversion, voluntary or involuntary, of any of the property encumbered hereby into cash or other liquidated claims, or that are otherwise payable for injury to or the taking or requisitioning of any such property, including all judgments, settlements and insurance and condemnation proceeds.
- (g) <u>Contract Rights.</u> All of Debtor's right, title and interest in and to any and all contracts or leases, written or oral, express or implied, now existing or hereafter entered into or arising, in any matter related to the improvement, use, operation, sale, conversion or other disposition of any interest in the Land, Appurtenances, Improvements, Tangible Property or the Rents, or any combination thereof, including all tenant leases, sales contracts, reservation deposit agreements, any and all deposits, prepaid items, and payments due and to become due thereunder; and including, without limitation, contracts pertaining to maintenance, on-site security service, elevator maintenance, landscaping services, building or project management, marketing, leasing, sales and janitorial services; Debtor's interests as lessee in equipment leases, including telecommunications, computers, vending machines, model furniture, televisions, laundry equipment; and Debtor's interests in construction contracts or documents (including architectural drawings and plans and specifications relating to the Improvements), service contracts, use and access agreements, advertising contracts and purchase orders. The property interests encumbered and described in this subparagraph are called the "Contract Rights". Notwithstanding the foregoing, Secured Party will not be bound by any of Debtor's obligations under any of the foregoing contracts unless and until Secured Party elects to assume any of such contracts or leases in writing.
- (h) <u>Name</u>. All right, title and interest of Debtor in and to all trade names, project names logos, service marks, trademarks, goodwill, and slogans now or hereafter used in connection with the operation of the referenced Property.
- (i) <u>Other Intangibles</u>. All contract rights, commissions, money, deposits, certificates of deposit, letters of credit, documents, instruments, chattel paper, accounts, and general intangibles [as such terms from time to time are defined in the Uniform Commercial Code as adopted by the State of Florida (the "Uniform Commercial Code")], in any manner related to the construction, use, operation, sale, conversion or other disposition (voluntary or involuntary) of the Land, Appurtenances, Improvements, Tangible Property or Rents, including all construction plans and specifications, architectural plans, engineering plans and specifications, permits, governmental or quasi-governmental approvals, licenses, developer rights, vested rights under any Planned Unit Development or Development of Regional Impact or other project, zoning, or land use approval, insurance policies, rights of action and other choses in action.

Together with all additions, replacements, and after-acquired items falling within the category of any of the foregoing.

THE DEBTOR IS THE FEE SIMPLE OWNER OF THE PROPERTY

Signature of Debtors, indicating agreement:

RECHTER HOLDINGS, INC,

A Florida corporation

1234 By:

Michael R. Rechter, President

Dated: September 19, 2017

RECHTER PROGRESSO 835, LLC, a Florida limited liability company

By:

Michael R. Rechter, Manager

Dated: September 19, 2017

This Instrument Prepared by and to be Returned to: Robert Marc Schwartz, Esquire ROBERT MARC SCHWARTZ, P.A. 4700 NW Boca Raton Boulevard, Suite 104 Boca Raton, FL 33431-4860

#### NOTICE OF TERMINATION OF NOTICE OF COMMENCEMENT

THE UNDERSIGNED hereby informs all concerned that the undersigned hereby terminates that certain Notice of Commencement recorded May 18, 2017 as Instrument #114391986 in the Public Records of Broward, Florida in favor of A&M Roofing, Iuc., and in accordance with Section 713.132, Florida Statutes, the following information is provided:

1. The date and recording information concerning the Notice of Commencement being terminated is as described above, and all information contained therein is hereby expressly incorporated into this Notice of Termination.

2. In accordance with Section 713.132, the Notice of Commencement shall be terminated as of 30 days after the date upon which this Notice of Termination is recorded in the Public Records of Broward County, Florida.

3. This Notice of Termination applies to all the real property subject to the Notice of Commencement, located at 913 NE 4<sup>th</sup> Avenue, Ft. Landerdale, FL 33334, as more particularly described on the Contractor's Affidavit attached hereto and incorporated herein by reference.

4. In accordance with Florida Statute Section 713,132(2), the Owner is relying upon the attached Contractor's Affidavit given under Section 713.06(3)(d) that all lienors have been paid in full and no lienors have given notice.

5. The Owner has served a copy of the Notice of Termination on the Contractor, and on each lienor who has a direct contract with the Owner or who has served a Notice to Owner.

OWNER: Rechter Holdings, Inc. a Florida corporation By:

R. Rechter, President

STATE OF FLORIDA COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 28 day of August, 2017 by Michael R. Rechter, as President of Rechter Holdings, Inc., a Florida corporation, on behalf of the company, who is personally known to me.

Notary Public

3/2017

My Commission Expires:



CAM # 17-1390 Exhibit 5 Page 97 of 135

#### FINAL CONTRACTOR'S AFFIDAVIT

#### STATE OF FLORIDA COUNTY OF BROWARD

Before me, a Notary Public, appeared  $\underline{CHAQUE Tox}$ , who upon being duly sworn, deposes and says:

1. That affiant is the <u>PRESIDENT</u> (Title) of A&M Roofing, Inc., hereinafter referred to as Contractor, and that the Contractor entered into a direct Contract with the owner of the following described property located at 913 NE 4<sup>th</sup> Avenue, Ft. Lauderdale, FL 33334, as described in the Notice of Commencement recorded May 18, 2017 as Instrument #114391986 in the Public Records of Broward County, Florida, and more particularly described as:

Lots 17-21, LESS the East 10 feet thereof, of Block 214 of PROGRESSO, and all that part of Block 214 of PROGRESSO lying South of said Lot 21 and East of the alley running North and South through said Block 214, according to the Plat thereof, as recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida; said lands situated lying, and being in Broward County, Florida, all LESS that portion of land dedicated to Broward County as described in Instrument Number 113500871.

2. That the improvements which the Contractor agreed to install on the property pursuant to said Contract are fully complete as of this date.

3. That in compliance with Section 713.06(3)(d)(1), Florida Statutes (1990), the undersigned states that all lienors contracting directly with or employed by the Contractor for services or materials supplied for the improvements to the property have been paid in full for services and materials supplied to the date hereof except:

#### <u>Lienor</u> NONE

Amount Due NONE

4. That Contractor has received full payment for all work performed and materials furnished to the above-described property to the date hereof, and does hereby release and discharge the property from any and all claims of lien, and waives and relinquishes all rights to any liens, claims or demands resulting from the performance of the obligations of the Contractor pursuant to said Contract.

5. That this Affidavit is being given for the purpose of inducing Old Republic National Title Insurance Company to issue its policy of title insurance without exceptions for mechanics' liens.

A&M Roofing, Inc., a Florida corporation

By: Name: CHARLIE Fox

### Name: CHARLIE FO Title: PRESIDENT

#### STATE OF FLORIDA COUNTY OF BROWARD

	The	foreg	oing instrumer	it was	acknowledged be	efore me	this	28	day of A	August	, 2017, by
CHAR	UE	Fox.	as Pile	5106	r (Title	) of A&M	Roo	ling, lr	ic., a Florid	la com	oration, on
					is personally						
			a	identi	fication and who	uid/did no	51 Iul	c ap o	ath.	-	· /
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Notary Public 12/03/2017 My Commission Expires: 12/03/2017

YACLIENTS/Rechter StonegateMtg716,835,913/Comractor's Affwpd



Thank you for your business and we look forward to providing for your banking needs!

# **IMPORTANT**

This is a friendly reminder that annually (or more often if required for your loan) we will be contacting you to provide us with timely updated financial information that is required under the terms of your loan. These requests also will include notices to all Guarantors as well as for the Borrowers.

The information is also required in order for us to meet federal banking regulations and must be complied with to ensure that your credit standing with Stonegate Bank is not adversely affected.

Thanks for your cooperation!

Acknowledged:

Borrowers: **RECHTER HOLDINGS, INC.** a Florida corporation

By:

Michael R. Rechter, President

**RECHTER PROGRESSO 835, LLC** a Florida limited liability company

Michael R. Rechter, Manager

Guarantor:

By:

By:

Michael R. Rechter, individually



# ACKNOWLEDGEMENT OF INITIAL ESCROW PAYMENT AMOUNT

BORROWERS: RECHTER HOLDINGS, INC. RECHTER PROGRESSO 835, LLC

LOAN NUMBER: 6016869

- LENDER: Stonegate Bank
- DATE: September 20, 2017

The undersigned Borrowers acknowledge that the initial escrow payment amount for the above referenced loan due and payable with regular billed payments commencing October 20, 2017 will be \$2,059.78. Borrowers understand that said escrow payment amount is subject to change from time to time at the Lender's discretion.

Borrowers: RECHTER HOLDINGS, INC. a Florida corporation

Ull The second second By:

Michael R. Rechter, President

**RECHTER PROGRESSO 835, LLC** a Florida limited liability company

Cher ger Cr. Ster Bγ:

Michael R. Rechter, Manager

# AGREEMENT TO PROVIDE INSURANCE

Principal \$3.200.000.0	Loan Date 9-20-2017	9-20-2027	Loan No 6016869	Call /		Account	Officer HZ	Initials
Reference	s in the boxes above An	are for Lender's use only item above containing	y and do not limit the app "***" has been omitted do	blicability of t ue to text len	his docun gth limita	nent to any partic tions.	ular loan or it	em.
Recl 241 Ft. L INSURANCE company (co financial accor and extended and be accep further stipul	lectively "Grantor"), un mmodations to Grante coverage as well as table in all respects to thing that coverage w	Grantors, Rechter Holdi Inderstand that insurance or by Lender. These rea windstorm) must be for the Lender prior to clos	ngs, Inc., a Florida corpo e coverage is required in quirements are set forth i the full insurable replac sing. The policy(s) must diminished without a m tice.	connection v n the securit ement value include the fo	400 Noi Pompa 954-876 with the e y docume of the mo plowing e	rogresso 835, LL extending of a loa ents for the loan. ortgaged property endorsement: Sto	062 C, a Florida II n or the provi Insurance cc r(s) and musi negate Bank.	ding of other verages (fire be provided ISAOA; and
COLLATERA REAL ESTA		913 NE 4h Avenue	venue, Ft. Lauderdale, FL e, Ft. Lauderdale, FL e, Ft. Lauderdale, FL					

INSURANCE COMPANY, Granter may obtain insurance from any insurance company Granter may choose that is reasonably acceptable to Lender. Granter understands that credit may not be denied solely because insurance was not purchased through Lender.

FLOOD INSURANCE. If the subject properties are in a flood zone, Borrower shall be obligated to obtain and maintain flood insurance for the Collateral securing this loan.

INSURANCE MAILING ADDRESS. All documents and other materials relating to insurance for this loan should be mailed, delivered or directed to the following address:

Stonegate Bank Loan Operations 400 N. Federal Highway, Pompano Beach, FL 33062

FAILURE TO PROVIDE INSURANCE. Grantor agrees to deliver to Lender, prior to closing, evidence of the required insurance as provided above. Grantor acknowledges and agrees that if Grantor fails to provide any required insurance or fails to continue such insurance in force, Lender may do so at the Grantor's expense as provided in the applicable security document. The cost of any such insurance, at the option of Lender, shall be added to the indebtedness as provided in the security document. GRANTOR ACKNOWLEDGES THAT IF LENDER SO PURCHASES ANY SUCH INSURANCE, THE INSURANCE WILL PROVIDE LIMNITED PROTECTION AGAINST PHYSICAL DAMAGE TO THE COLLATERAL, UP TO AN AMOUNT EQUAL TO THE LESSER OF (1) THE UNPAID BALANCE OF THE DEBT, EXCLUDING ANY UNEARNED FINANCE CHARGES, OR (2) THE VALUE OF THE COLLATERAL; HOWEVER, GRANTOR'S EQUITY IN THE COLLATERAL MAY NOT BE INSURANCE. IN ADDITION, THE INSURANCE MAY NOT PROVIDE ANY PUBLIC LIABILITY OR PROPERTY DAMAGE INDENMIFICATION AND MAY NOT MEET THE REQUIREMENTS OF ANY FINANCIAL RESPONSIBILITY LAWS.

AUTHORIZATION. For purposes of insurance coverage on the Collateral, Grantor authorizes Lender to provide to any person (including any insurance agent or company) all information Lender deems appropriate, whether regarding the collateral, the loan or other financial accommodations, or both.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT TO PROVIDE INSURANCE AND AGREES TO ITS TERMS, THIS AGREEMENT IS DATED SEPTEMBER 20, 2017.

BORROWERS & GRANTOR:

RECHTER HOLDINGS, INC.

a Florida corporation e. and the By:

Michael R. Rechter, President

RECHTER PROGRESSO 835, LLC a Florida limited liability company

Cel Contra - Conto By:

Michael-R. Rechter, Manager

CAM # 17-1390 Exhibit 5 Page 101 of 135

CORD	CERTI	FICA	TE	OF	LIA	BILITY	INSU	RANCE		(MLUBD/YYYY) )/18/2017
THIS CERTIFICATE IS IS CERTIFICATE DOES NOT BELOW. THIS CERTIFIC/ REPRESENTATIVE OR PR	AFFIRMATIN	VELY OR HANCE D	NEGAT	IVELY AM	IEND, E	XTEND OR ALT	ER THE CO	VERAGE AFFORDED B	Y THE	POLICIES
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ODUCES Phone: (772) 492-818	7 Fax: (772) 492-8	192			C	CONTACT Trusted	Insurance P	rofessionals, LLC		
RUSTED INSURANCE PRO	FESSIONALS	, LLC			18		92-8187	FAX (A/C, No):	(772) 4	92-8192
ROYAL PALM POINTE					10		@trustedins	urancellc.com		• •
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						INSURERA : Scotle	dale Insuran	ce Company		
RED CHTER HOLDINGS, INC.						NSURER 8 :	l.			
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EXCESS LIAD	CLAIMS-MADE							AGGREGATE	s	
DED RETENTION \$			<b>.</b>						\$	
WORKERS COMPENSATION					;			WC STATU TORY LIMITS ER	\$	
AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXE								E.L. EACH ACCIDENT	\$	
OFFICER/MEMBER EXCLUDED? (Mondatory in NH)		11/A					ļ	E.L. DISEASE-EA EMPLOYEE	\$	
I yes, describe under DESCRIPTION OF OPERATIONS belo	. uu						· ·	E.L. DISEASE-POLICY LIMIT	\$	
	<u> </u>						-		<u>.</u>	
							;			
HIPTION OF OPERATIONS / LO	CATIONS / VEHIC	LES (Alloch	ACORD 10	1, Additional F	Tomarks So	chodule, if more space	e is required)			
RTIFICATE HOLDER ADD	DED AS ADDIT	IONAL IN	SURED (	DNLY AST	HEIR IN	FERESTS MAY	APPEAR.			
NE 4th Avenue, Fort Lau	Iderdale, FL 3	3304					•			
5-718 NE 2nd Avenue, Ft	Lauderdale F	L								
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TIFICATE HOLDER		· · · · · · · · · · · · · · · · · · ·		······	0	ANCELLATION		· · · · · · · · · · · · · · · · · · ·		
	······				1-				······	
STONEGATE BANK ISA( ATTN: RIS	DA/ATIMA					THE EXPIRATIO	N DATE THE	ESCRIBED POLICIES BE CA REOF, NOTICE WILL BE		
P.O. BOX 294343	<b>`</b>					ACCORDANCE W		T PHONISIONS.		
EWISVILLE TX 75029	1				A	UTHORIZED REPRESE	NIANVE		0	
		*							>	
Attention: LOAN#6	016869						,	Jacqueline k	Savo	11
000 05 (0040/00)			· · · · ·		I	64	000 0010 001			
CORD 25 (2010/05)		The ACO	RD nam	and loce	aro ronic	© 1 tered marks of		ORD CORPORATION. All	•	reserved.

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# CERTIFICATE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY) SEP 18 2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW, THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER. If this certificate is being prepared for a party who has an insurable interest in the property, do not use this form. Use ACORD 27 or ACORD 28. CONTACT NAVE: PHONE IAIC No. EN E-MAIL ADDRESS: PRCOUCEP Phone: (772) 492-8167 Fax: (772) 492-8192 Trusted Insurance Professionals, LLC PRODUCER FAX (772) 492-8192 TRUSTED INSURANCE PROFESSIONALS, LLC (772) 492-8187 ciranco@trustedinsurancellc.com **87 ROYAL PALM POINTE** VERO BEACH FL 32960

		CUSTOMER 10:						
		INSURER(S) AFFORDING COVERAGE	NAIO.#					
NSURED		INSURERA WESTERN WORLD INSURANCE COMPANY						
RECHTER HOLDINGS, INC.		INSURER B						
		UNSUAER C						
241 E PROSPECT RD FORT LAUDERDALE FL 33334		INSURER D						
ONT CHORENDALE TE OBOT		INSURER E						
		INSURER F						
COVERAGES	CERTIFICATE NUMBER: 5270	REVISION NUMBER:						

**CERTIFICATE NUMBER: 5270** COVERAGES

LOCATION OF PREMISES / DESCRIPTION OF PROPERTY (Attach ACORD 101, Additional Romarks Schedule, If more apace is required) 716-718 NE 2ND AVENUE, Fort Lauderdale FL 33316

LOAN # 6016869

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

ngr Ltr		TYPE OF I	ISUHANCE	POLICY NUMBER	DATE (MWDD/YYYY) DATE (MWDD/YYYY)		COVERED PROPERTY	LIMITS
A	X	PROPERTY		NPP8319879	JUL 17 2017	JUL 17 2018	BUILDING	\$ 300,000
	CA	AUSES OF LOSS DEDUCTIBLES					PERSONAL PROPERTY	\$
		BASIC	BUILDING		1		BUSINESS INCOME	\$
	<u> </u>	BROAD	2,500				EXTRA EXPENSE	\$
		SPECIAL	CONTENTS			3	HENTAL VALUE	\$
		EARTHQUAKE					BLANKET BUILDING	\$
	x	WIND	5% deductible				BLANKET PERS PROP	\$
	<u></u>	FLCOD				*	BLANKET BLDG & PP	\$
						•		\$
							<sup>1</sup>	\$
		INLAND MARINE	۱ <del>_</del>	TYPE OF POLICY				s
	CAL	CAUSES OF LOSS						\$
		NAMED PERILS		POLICY NUMBER	-			s
		In the party of th						s
	┝╍┝━	CRIME		<u> </u>				\$
		? PE OF POLICY				2 3		5
	i.i.e					:		\$
		BOILER & MACIN	NERY f	<u> </u>				\$
		EQUIPMENT BRE	AKOOWN	· ·		5		S
				······································				\$
						4 -		\$
SPEC	IAL.	CONDITIONS ( OT	HER COVERAGES (A	utach ÁCORD 101, Additional Hemarks Schedul	it more space is reput	(red)	L. I.	1
CER	TIFIC	CATE HOLDER	ADDED AS ADDITI	ONAL INSURED ONLY AS THEIR INTERE	STS MAY APPEAR.	, -		

CERTIFICATE HOLDER	CANCELLATION	······
ATTENTION: STONEGATE BANK, ISAOA/ATIMA ATTN: RIS P.O. BOX 294343	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CA THE EXPIRATION DATE THEREOF, NOTICE WILL BE ACCORDANCE WITH THE POLICY PROVISIONS.	
LEWISVILLE TX 75029	AUTHORIZED REPRESENTATIVE	<u> </u>
	Jacqueline K. Savell	A232709
ACODD 24 (2000/00)	© 1995-2009 ACORD CORPORATION, All r	ants reserved.



# CERTIFICATE OF PROPERTY INSURANCE

DATE (MANDDAYYYY) SEP 18 2017

C B	ERTIFICATE DOES NOT AFFIRM BELOW. THIS CERTIFICATE OF I	A MATTER OF INFORMATION C ATIVELY OR NEGATIVELY AME INSURANCE DOES NOT CONSTIT A, AND THE CERTIFICATE HOLD	ND, EXTEND OR UTE A CONTRAC	ALTER THE CO	VERAGE AFFORDED B	Y THE	POLICIES
H	If this certificate is being prepared	for a party who has an insurable intere	ist in the property, do	o not use this form.	Use ACORD 27 or ACOR	D 28.	
PAD		Phone: (772) 492-8187 Fax (772) 492-8192		ted Insurance Pro	ofessionals, LLC		-
	USTED INSURANCE PROFESSION		PHONE (77	2) 492-8187		772) 49	2-8192
	ROYAL PALM POINTE		17017 190. 2011	ranco@trustedins			
VE	RO BEACH FL 32950			708	······		
			LANSIGMENTICS		DING COVERAGE		NAIO#
NSUF	RE0	······································	INSURER A Ban	kers Insurance G			
	CHTER HOLDINGS, INC.	¥	INSURER B				
	DINTEGRA		INSURER C	<u>; ,</u>			
	E PROSPECT RD		INSÚREA D	<u> </u>			
FOF	RT LAUDERDALE FL 33334		INSURER E		· · · · · · · · · · · · · · · · · · ·		
			INSURER F	·			
	VERAGES	ERTIFICATE NUMBER: 5271			REVISION NUMBER:		·
100 913 LO/	CATION OF PREMISES / DESCRIPTION OF PROF 3 NE 4th Ave, Fort Lauderdale FL 33304 AN # 6016859	BERTY (Atlaon ACORD 101, Addulonal Romarks		4 		pol to	
IN C	NDICATED, NOTWITHSTANDING ANY	DIES OF INSURANCE LISTED BELOW REQUIREMENT, TERM OR CONDITIO Y PERTAIN, THE INSURANCE AFFOR H POLICIES, LIMITS SHOWN MAY HAVE	n of any contra Ided by the poly Been reduced by	ACT OR OTHER DO CIES DESCRIBED I / PAID CLAIMS.	DOUMENT WITH RESPECT	то wh	ICH THIS
ISR TR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MR/DD/YYYY)	COVERED PROPERTY		LIMITE
A		09 0410007413 2 03	JUL 4 2017	OCT 4 2017	BUILDING	\$	600,000
<u> </u>	CAUSES OF LOSS DEDUCTIBLES				PERSONAL PROPERTY	\$	
	BASIC BUILDING			à à	BUSINESS INCOME	\$	
	BROAD 2,500			4. *	EXTRA EXPENSE	\$	
	SPECIAL CONTENTS			1	RENTAL VALUE	\$	
	EARTHOUAKE				BLANKET BUILDING	\$	
	X WIND 5% WIND HAIL				BLANKET PERS PROP	\$	
	FLOOD			5 erlen	BLANKET BLOG & PP	\$	-
				÷	<u>}</u> −−1	Ś	
				a A	<u> </u>	\$	
	Í Í Í	TYPE OF POLICY	1	-		Ş	
	CAUSES OF LOSS					S	
		POLICY NUMBER	1	2		Ś	
						ŝ	·····
	CRIME		·  ·····		<u>  </u>	s	
					<b>├</b>	\$	
	TYPE OF POLICY	x				s	
	BOLER & MACHRIERY /		+	*		s	
	EOUPMENT BREAKDOWN			-		\$	
	-}					s	
						\$	
;PE( )ER	LICIAL CONDITIONS / OTHER COVERAGES (AL RTIFICATE HOLDER ADDED AS ADDITIC	lach ACORD 101, AddRional Romarks Schedu DNAL INSURED ONLY AS THEIR INTERE	I le, il moro space is requi ESTS MAY APPEAR.	ired)	1	I <u>×</u>	
CE	RTIFICATE HOLDER		CANCELLATI	ON	· · · · · · · · · · · · · · · · · · ·		
A ST AT	TTENTION: ONEGATE BANK, ISAOA/ATIMA TN: RIS D. BOX 294343		SHOULD ANY THE EXPIRA	OF THE ABOVE DI	ESCRIBED POLICIES BE CA REOF, NOTICE WILL BE Y PROVISIONS.		
	WISVILLE TX 75029		AUTHORIZED REP	RESENTATIVE		$\leq$	
					eline K. Saveli RD CORPORATION, All ri	abto P	A232709
	ORD 24 (2009/09) 024 (20090s)	The ACORD name and logo a	wre registered mark	s of ACORD	nu vuncunktivn: Alta		CAM # 17-1390

CAM # 17-1390 Exhibit 5 Page 104 of 135

FRONTLine 185084404

TRUSTED INSURANCE PROFESSIONALS LLC 87 ROYAL PALM POINTE VERO BEÄCH, FL 32980 NFIP Policy Number:0000082358Company Policy Number:F-2017-12-10897-82358Agent:JACQUELINE SAVELL

Policy Term: Renewal Billing Payor: 01/21/2017 12:01 AM through 01/21/2018 12:01 AM INSURED

To report a claim, call: (877) 254-6819 Agency Phone: (772) 492-8187

#### FLOOD INSURANCE POLICY DECLARATIONS STANDARD POLICY - GENERAL PROPERTY FORM INSURED NAME(S) AND MAILING

RECHTER HOLDINGS INC. 241 E PROSPECT RD FORT LAUDERDALE, FL 33334 INSURED NAME(S) AND MAILING ADDRESS RECHTER HOLDINGS INC. 241 E PROSPECT RD FORT LAUDERDALE, FL 33334

COMPANY MAILING ADDRESS FIRST PROTECTIVE INSURANCE PO BOX 912094 DENVER, CO 80291-2094

DELIVERY ADDRESS

PROPERTY LOCATION 913 NE 4TH AVE FORT LAUDERDALE, FL 33304-1941

DESCRIPTION: MULTI OCCUPANCY INCLUDING RETAIL AND OFFICE

RATING INFO	RMATION W BUSINESS DA	· ·	01/21/2015		DAT		Neton	TION	03/12/1958		
REINSTATEM		1151				ATE OF CONSTRUCTION:			125105 0369 H REGULAR PROGRAM		
SUILDING OC	and the second se		· · · · · ·			COMMUNITY NAME:			FORT LAUDERDALE, CITY OF		
	MINDICATOR:		······································			CURRENT FLOOD ZONE:			AH		
UMBER OF						ANDFATHERED:			NO		
	ROFONICE NO FLOOD RISK						RATED	ZONE:	AH		
ADDITIONS/E			N/A		ELE	VATION	DIFFERE	NCE:	0		
BUILDING TY	PE:		ONE FLOOR		ELE	EVATED E	BUILDING	TYPE:	NON-ELEVATED		
BASEMENTIE	NCLOSURE/CRA	WLSPACE TYP	E: NO BASEMENT								
MORTGAGEE	ADDITIONAL I	NTEREST INFOR	RMATION			ډ					
RST MORTO	SAGEE: LAN	DMARK BANK N	A						LOAN NUMBER:	33837	
	6300	NE 1ST AVEST	E 300 FORT LAUDERE	DALE, FL 33334-	1932			1			
SECOND MOR	RTGAGEE;								LOAN NUMBER:	N/A	
DDITIONAL	INTEREST:							•	LOAN NUMBER:	N/A	
DISASTER AG	ENCY:								CASE FILE NUMBER		
				The first				1	DISASTER AGENCY		
PREMION			FIRM Elevation				· · · · · · · · · · · · · · · · · · ·		Prefirm Elevati		
			BASIC COVERAGE		ADD'L COVERAG				SCOUNT/SURCHARGE	PREMIUM	
BUILDING	\$450,000 \$0	\$15,000	\$175,000	0.230 0.230	\$275,00		0.080 0.130	5 . A	(\$187.00)	\$436,00 \$0.00	
		\$0	\$D			50	0.130	<u>}</u>	\$0.00		
Coverage	limitations	may apply.	See your polic	y form for (	details.	(	(NODE		ANNUAL SUBTOTAL:	\$436.00	
								1	IG DISCOUNT: 20%	\$5,00 {\$88.00}	
								4 4 4	SSESSMENT: 15.0%	\$53.00	
			٠						BATION SURCHARGE:	\$0.00	
						,			ANNUAL PREMIUM;	\$406.00	
	1								HFIAA SURCHARGE:	\$250.00	
							FI	DERAL	OLICY SERVICE FEE:	\$50,00	
			,			Ę.			TOTAL	\$706.00	
IN WITNESS W	HEREOF, I have sign	ied this policy belo	w and hereby enter Into I	this insurance Agr	eement						
Le c	Part							;	Zero Balance	Due	
	ppell, fll / Vice Pres	Ident of Graduat A	Annan t					2	This Is Not A	Bill	
·			andard Flood Insur	sance Boliev E	arm canetitutor	vour fl.	and ince				
	inous hede gin	and and the of		ance roncy r	orn constitutes	your m	oou mat	a ance h	unuy.		

Policy issued by FIRST PROTECTIVE INSURANCE

File: 8293033

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Company NAIC: 10897

Page 1 of 2 DoclD: 57147163

Printed 02/02/2017



# CERTIFICATE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY) SEP 18 2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

If this certificate is b	eing prepared for a party who has an insurable interes	st in the property, do not use this form. Use AGOHD 27 of ACOHD 28	•					
PRODUCER	Plione: (772) 492-8187 Fax: (772) 492-8192	CONTACT Trusted Insurance Professionals, LLC						
TRUSTED INSURANCE P	-		192-8192					
37 ROYAL PALM POINTE		ELIAL cfranco@trustedinsurancellc.com						
VERO BEACH FL 32960		PRODUCER 170B						
		INSURER(S) AFFORDING COVERAGE	NAIC #					
NSURED		INSURER A First Protective Insurance						
RECHTER HOLDINGS; IN	С.	INSUREA B						
2/0 INTEGRA		INSURER G						
FORT LAUDERDALE FL 3333	33334	INSURER D						
		INSURER É	}					
		INSURER F						
COVERAGES	CERTIFICATE NUMBER: 5272	REVISION NUMBER:						

LOCATION OF PREVISES / DESCRIPTION OF PROPERTY (Altach ACORD 101, Additional Romatics Schodulo, If more space is required)

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES, LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

ISR .TR			SURANCE	POLICY NUMBER	DATE (MM/DD/YYY)	DATE (MU/DD/YYY)		COVERED PROPERTY	LIMITS
A		PROPERTY	[					BUILDING	\$ 300,000
	CAUSES OF LOSS DEDUCTIBLES		DEDUCTIBLES					PERSONAL PROPERTY	\$
		BASIC	BUILDING					BUSINESS INCOME	:\$
		BROAD	CONTENTS					EXTRA EXPENSE	\$
		SPECIAL	COMENTS					RENTAL VALUE	\$
		EARTHQUAKE						BLANKET BUILDING	\$
		WIND						BLANKET PERS PROP	\$
	X	FLOOD	3,000	00092988	SEP 20 2017	SEP 20 2018		BLANKET BLDG & PP	\$
						1			\$
									\$
		INLAND MARINE	· · · · · · · · · · · · · · · · · · ·	TYPE OF POLICY			1		ş .
	CAUSES OF LOSS								\$
				POLICY NUMBER		1.			\$
	<i>*</i>								\$
•••••		CRIME				5			\$
	TYPE OF POLICY					-	-		\$
									\$
		BOILER & MACIS		**************************************		*	1		\$
		EQUIPMENT BRE	AKDOM(I	·		+ *			\$
A		······································		000092988	SEP 20 2017	SEP 20 2018	1		\$
						÷			\$
IPEC	IAL (	CONDITIONS / OTI	HER COVERAGES (A	ltach ACORD 101, Additional Remarke Schedul	a, Il more space is requi	rad)		· · · · · · · · · · · · · · · · · · ·	

CERTIFICATE HOLDER	CANCELLATION
ATTENTION:	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE
	A232709
(CORD 24 (2009/09)	© 1995-2009 ACORD CORPORATION. All rights reserved.

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# CERTIFICATE OF PROPERTY INSURANCE

DATE (MN/0D/YYYY) SEP 18 2017

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If this certificate is u	eng prepared for a party who has an inscretore mere	st in the property, do not too the	
RODUCEN	Phone: (772) 492-8187 Fax: (772) 492-8192	CONTACT Trusted Insurance Professionals, LLC	
		FHONE (772) 492-9197 FAX (772) 492-919	32
7 ROYAL PALM POINTE	URANCE PROFESSIONALS, LLC     FNONE (MC, No. Ent)     (772) 492-8187     (MC, No)E     (772) 492-8192       LM POINTE FL 32960     FAMAL ADDRESS: CISTOMER ID     ofranco@trustedinsurancellc.com     (772) 492-8192       VINSURER(S) AFFORDING COVERAGE     NAIC //       VINSURER(S) AFFORDING COVERAGE     NAIC //       VINSURER(S) AFFORDING COVERAGE     NAIC //       VINSURER A     LLOYDS OF LONDON       OGRESSO 835 LLC     INSURER A       PROGRESSO 837 LLC     INSURER C       OSPECT ROAD     INSURER C       RDALE FL 33334     INSURER D       INSURER F     INSURER F		
ERO BEACH FL 32960			
			NAIC II
SURED		INSUMER A LLOYDS OF LONDON	
ECHTER PROGRESSO		WSUAER B	
1 - 1	•	Fax: (772) 492-8192       CONTACT NAME: NAME: CONTACT NAME: INC. No. Edit (772) 492-8187       IPAX (AC. No): (AC. NO	
41 EAST PROSPECT R			
ONT CAUDENDACE 1 C	56554	INSUAER E	
OVERAGES	CERTIFICATE NUMBER: 5273	REVISION NUMBER:	

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OCATION OF PREAMES / DESCRIPTION OF PROPERTY (Ausch ACORD 101, Additional Remorks Schidule, II more space is required) 338 NE 2ND AVENUE, FT LAUDERDALE FL

LOAN # 3016869

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS. EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

SR TR			POLICY NUMBER	POLICY EFFECTIVE DATE (MMOD/YYYY)	POLICY EXPIRATION DATE (MU/DD/YYYY)	COVERED PROPERTY	LIMITS
A	X PROPERTY CAUSES OF LOSS BASIC BROAD X SPECIAL EARTHQUAKE X WIND FLOOD	DEDUCTIBLES BUILDING CONTENTS 5% DE		SEP 20 2017	MAR 20 2018	BUILDING PERSONAL PROPERTY BUSINESS INCOME EXTRA EXPENSE RENTAL VALUE BLANKET BUILDING BLANKET PERS PROP BLANKET BLDG & PP	\$ 500,000 5 \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$
	INLAND MARINE CAUSES OF LOSS NAMED PERILS	3	TYPE OF POLICY POLICY NUMBER				\$ \$ \$ \$ \$
	DOILER & MACHINERY / EQUIPMENT DREAKDOWN						\$ \$ \$
	IAL CONDITIONS / OI	THER COVERAGES (/	Mach ACORD 101, Additional Remarks Schedu	le, il more space is requ	Irad)		\$ \$ \$
			IONAL INSURED ONLY AS THEIR INTER				

CERTIFICATE HOLDER	CANCELLATION		
ATTENTION: STONEBATE BANK ISAOA/ATIMA ATTN: RIS P.O. BOX 294343 LEWISVILLE TX 75029	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELL THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIV ACCORDANCE WITH THE POLICY PROVISIONS.		
	Jacqueline K. Savell	A232709	
© 1995-2009 ACORD CORPORATION, All rights re			

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ACORD'	CERTI	FIC	ATE	OF	LIABI	LITY	INSUR	ANCE		(MM/00/YYY) 19/18/2017
THIS CERTIFICATE IS CERTIFICATE DOES I BELOW. THIS CERTIFICATION OF THE SECTION O	NOT AFFIRMATI	VELY IRANC D THE	OR NEGA E DOES N CERTIFIC	TIVELY AME IOT CONSTIN	ND, EXTEN IUTE A CO	D OR ALTE NTRACT BE	R THE COV	ERAGE AFFORDED E ISSUING INSURER	BY THE S), AU	E POLICIES
IMPORTANT: If the certifithe terms and conditions certificate holder in ileu of	of the policy, ce	rtain p	TIONAL INSU officies may	IRED, the poli require an end	icy(les) must lorsement. A	be endorsed statement on	. If SUBROG	ATION IS WAIVED, subj e does not confer rights	ect to to the	
HODLICER Phone: (772) 492-	8187 Fax: (772) 492-6	192			CONTACT NAME:	Trusted Ir	surance Pro	ofessionals, LLC		
RUSTED INSURANCE P		i, LLC			PHONE (A/C, No.	Fell (772) 492	2-8187	FAX (A/C, No)	(772)	492-8192
7 ROYAL PALM POINTE					E-MAIL LADDRES	cfrancold	otrustedinsu	rancelic.com		
ERO BEACH FL 32960					Contraction of		URER(S) AEFOR	IDING COVERAGE		NAIC #
					INSUREI	A : NAUTIL	US INSURAN	ICE COMPANY		
SURED	935110				INSURE	18 ;	4			
% RECHTER PROGRE					INSUREI		•	· · · · · · · · · · · · · · · · · · ·		
41 EAST PROSPECT R					INSUBE				`	
ORT LAUDERDALE FL					INSURE				-, · · ·	
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STONEGATE BANK, ISAOA/ATIMA ATTN: RIS P.O. BOX 294343	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
LEWISVILLE TX 75029	AUTHORIZED REPRESENTATIVE
Attention:	Jacqueline K. Saveli
ACORD 25 (2010/05)	© 1988-2010 ACORD CORPORATION. All rights reserved.

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#### STATEMENT OF ANTI-COERCION REGARDING HAZARD INSURANCE ON PROPERTY SECURING THE CREDIT

Made Pursuant to Rules 69B-124.002 and 69B-124.013 of the Rules and Regulations Promulgated by the Chief Financial Officer Relative to Anti-Coercion, as amended

IMPORTANT

DO NOT SIGN THIS FROM UNTIL YOU HAVE CAREFULLY READ IT AND UNDERSTAND ITS CONTENT

The following statement is required under Rule 69B-124,002, F.A.C., of the rules and regulation promulgated by the Chief Financial Officer relative to anti-coercion:

The Insurance Laws of this state provide that the Lender may not require the Borrower to take insurance through any particular insurance agent or company to protect the mortgaged property.

The Borrower, subject to the rules adopted by the Chief Financial Officer, has the right to have the insurance placed with an insurance agent or company of his choice, provided the company meets the requirements of the Lender. The Lender has the right to designate reasonable financial requirements as to the company and the adequacy of the coverage.

We have read the foregoing statement, or the rules of the Chief Financial Officer relative thereto, and understand our rights and privileges and those of the Lender relative to the placing of such insurance.

Trusted Insurance Professionals, Insurance Agency, or selected the I have Insurance Company to write the

hazard insurance covering the commercial properties located at: (a) 716-718 NE 2<sup>nd</sup> Avenue, Ft. Lauderdale,

FL 33304, (b) 913 NE 4h Avenue, Ft. Lauderdale, FL 33304 and (c) 835 NE 2<sup>nd</sup> Avenue, Ft. Lauderdale, FL 33304.

**GRANTORS:** 

RECHTER HOLDINGS, INC. a Florida corporation

Bv

Michael R. Rechter, President

RECHTER PROGRESSO 835, LLC a Florida limited liability company

reed By:

Michael R. Rechter, Manager



September 20, 2017

Mr. Michael R. Rechter Rechter Holdings, Inc. Rechter Progresso 835, LLC 241 East Prospect Rd. Ft. Lauderdale, FL 33332

Re: Loan for 3 commercial properties in Ft. Lauderdale Loan No. 6016869

Dear Mr. Rechter:

You have requested a copy of the real estate appraisal completed for Stonegate Bank on the above referenced property. The Bank has agreed to provide you with a copy of the appraisal subject to the disclaimers, terms and conditions set forth in this letter.

Although the Bank is providing a copy of the appraisal to you, the appraisal is the product of the Bank's relationship with the appraiser and you are not authorized to contact the appraiser, either directly or indirectly, regarding any aspect of the appraisal. Any questions or communications relating to the appraisal must be directed to the Bank.

Appraisals are prepared and furnished to the Bank by appraisers for many reasons depending on instructions given to the appraiser and such instructions can and do affect the valuation of the property and the method used to determine such value. Values may vary significantly based upon the method utilized and the assumptions made by the appraiser. The appraisals represent the opinion of the appraiser and not of the Bank at a discrete moment in time and the opinions are based upon assumptions stated in the appraisal.

The appraisal is but one of many factors that the Bank uses in assigning a value to the property and the value of the property is only one factor out of many factors that the Bank uses in making a decision regarding any aspect of the transaction. The Bank independently reviews the appraisals and the methods used in producing the appraisal and the Bank may utilize a different approach or value in its assessment of the property than that set forth in the appraisal. In no event shall the Bank be bound by any statement or opinion contained in the appraisal.

Neither the Bank nor the appraiser makes any representations or warranties regarding the accuracy or completeness of the appraisal or with respect to any other matter relating thereto. In no event shall the Bank or the appraiser have any liability to you or any other third party on account of, or relating to, the appraisal. You agree that you will not disclose all or any portion of the appraisal to any third party without such party having first agreed in writing to be bound by the disclaimers, terms and conditions of this letter as if it were the party to whom this letter was originally addressed.

Appraisal Disclaimer Letter Page 2

Please acknowledge your acceptance and agreement to the foregoing by signing and returning the enclosed copy of this letter. Upon receipt of a signed copy of this letter we will provide you with a copy of the appraisal.

Very truly yours,

STONEGATE BANK

By: Heather Zatik,

The undersigned hereby acknowledge their acceptance and agreement to the foregoing.

El al

Michael R. Rechter, As President of Rechter Holders, Inc. and As Manager of Rechter Progresso 835, LLC



August 15, 2017

Mr. Michael Rechter Integra Corporations 241 East Prospect Road Ft. Lauderdale, FL 33332 Heather Zatik, VP 2400 N. Commerce Parkway Suite 200 Weston, FL 33326 (954) 377-0916 (954) 888-9075 Fax hzatick@stonegatebank.com

Re: Refinance of 3 commercial investment properties

Dear Mr. Rechter,

We are pleased to advise you that Stonegate Bank ("Bank") has approved the following loan ("Loan"), and by your acceptance of this commitment on behalf of the Borrowers and the Guarantor, you agree to accept the loan on behalf of the Borrowers and Guarantor based upon the terms and conditions outlined below:

Borrowers:	Rechter Holdings, Inc. & Rechter Progresso 835, LLC (hereinafter sometimes collectively referred to as "Borrower")
Lender/Bank:	Stonegate Bank
Loan Amount:	up to \$3,200,000.00
Purpose:	To refinance an existing commercial loan with Landmark Bank in the principal amount of approximately \$450,000, with the balance of the funds to be used for future investment.
Maturity:	Ten years from date of closing.
Interest Rate and Repayment Terms:	The first sixty consecutive monthly payments of principal and interest shall be fixed at the interest rate of 4.5% per annum. The rate will then adjust once to the then prevailing 5 year US Treasury Note rate plus 2.50%, with a minimum interest rate of no less than 4.50%, which shall be fixed for the remaining monthly payments until date of maturity, wherein a balloon payment will be due. The payments are based on a 25 year amortization schedule.

Security/ Collateral:	<ul> <li>A commercial first mortgage, assignment of rents and UCC-1 on the following three parcels of commercial real property in Broward County, Florida (collectively the "Property"):</li> <li>716-718 NE 2<sup>nd</sup> Avenue, Ft. Lauderdale, FL</li> <li>913 NE 4h Avenue, Ft. Lauderdale, FL</li> <li>835 NE 2<sup>nd</sup> Avenue, Ft. Lauderdale, FL (adjacent lot located at NE 2<sup>nd</sup> Ave)</li> </ul>
Guarantor(s):	Michael Rechter, and any other individual or entity maintain at least a 20% ownership interest in either Borrower.
Bank Fee And Closing Costs:	Borrower shall pay a Commitment Fee of \$16,000.00, which is equal to 0.50% of the principal balance, collected at closing. In addition, Borrower shall be responsible for the payment of all closing costs incurred with respect to the Loan, including, but not limited to all recording fees, documentary stamps, intangibles taxes, mortgage title insurance premiums, survey fees, appraisal fees, credit reports, title abstracting fees, construction inspection fees, Bank's attorney's fees and all other expenses incurred by the Bank in connection with the issuance of this Commitment and the closing of the Loan. The Borrower recognizes and accepts the legal responsibility for the payment of all such costs, whether or not the Loan is actually closed or funded. Additionally, with the acceptance of this commitment letter, the Borrower acknowledges that the Bank fee stated in the commitment letter is earned and due to the Bank whether or not the Loan is actually closed or funded.
Closing Date:	The loan described herein shall be closed by the Bank no later than 60 days from the date this commitment letter is accepted by Borrowers and Guarantor, unless extended in writing by the Bank in its sole discretion.
Prepayment Penalty:	None.

#### Other Terms and Conditions:

- 1. The Loan will be evidenced by a Promissory Note ("Note"), Loan Agreement and related loan documents, including, but not limited to, a Commercial First Mortgage, Collateral Assignment of Rents on the Property, UCC-1 Financing Statement, personal guarantees, and such other documents as the Bank or Bank Counsel may require.
- 2. The closing attorney for the Bank will be:

Joseph B. Heimovics, P.A. Joseph B. Heimovics, Esq. 15951 SW 41<sup>st</sup> Street, Suite 800 Davie, Florida 33331 (954) 626-3402 (954) 626-3403 Facsimile joe@heimovicslaw.com

- 3. For the loan, the Borrower shall furnish an ALTA Mortgagee Title Commitment which indicates that marketable record fee simple title to the property is vested in the Borrower, that the mortgage will be a first lien on the Property, and that the property is free of encumbrances and restrictions which would prevent or hinder its economic use or development. Additionally, following closing of the loan, the Bank shall be furnished an ALTA Mortgagee Title Insurance policy from the title company insuring the enforceability and priority of the Mortgage encumbering the property subject only to those exceptions specifically approved by the Bank. The Bank shall be under no obligation to fund the Loan until such time as the Bank has received the ALTA Mortgage Title Commitment in form acceptable to the Bank and Bank Counsel. The Bank requires receipt of all recorded documents and title insurance policy within 30 days of closing.
- 4. Borrower shall provide satisfactory municipal lien searches for the Property, to include there being no open permits, code violations or fines or unapproved fees on the Property.
- 5. Borrower shall furnish to the Bank or its counsel prior to closing of the Loan a survey of the Property. The survey shall be prepared by a licensed surveyor and shall meet the requirements of the minimum technical standards set forth in Chapter 21HH-6 of the Florida Administrative Code and shall be satisfactory in all respects to the Bank and its Counsel. In addition, the survey shall be certified to the Bank, Bank's Counsel, Borrower and Title Attorney and shall contain, on its face, a flood hazard certification and such other certification as the Bank or its counsel may require.
- 6. Borrower shall certify or furnish evidence to Bank that the property does not contain (a) asbestos in any form; (b) urea formaldehyde foam insulation; (c) transformers or other equipment containing polychlorinated biphenyls in amounts that exceed acceptable standard levels; (d) any other materials or substances that are prohibited or regulated by federal, State or local laws or that are known to pose a hazard to the environment or human health. In addition, Bank will require receipt of a Phase I environmental report or evaluation prior to closing. Said report or evaluation must be satisfactory in all respects to Bank in its sole discretion. The cost for the report/evaluation shall be the responsibility of the Borrower.
- 7. Five days prior to closing the Borrower shall furnish to the bank a fire, extended coverage, hazard, windstorm and other perils insurance policy(s) for the full replacement cost of the property. A flood insurance policy is also required if the Property is located in a designated flood hazard area. Borrower will also provide public liability insurance insuring against all claims for personal or bodily injury, death, or property damage occurring upon, in or about the Land, in an amount of not less than Two Million Dollars (\$2,000,000.00) single limit coverage for the Land. Such policy shall include an additional insured endorsement naming the Lender. Said policies shall be issued by an insurer acceptable to Bank, in an amount not less than the fully insurable value of the properties (improvements and personal property only). Policies must include provisions for a thirty (30) day advance written notice to the Bank of any intended policy cancellation or non-renewal and must designate Bank as mortgagee and loss payee as follows:

Stonegate Bank, ISAOA/ATIMA Attn: RIS P.O. Box 294343 Lewisville, Texas 75029

- 8. On an annual basis, no later than 15 days after filing, the Borrower and Guarantors (including affiliated business entities) shall submit to the Bank Federal Tax returns. Also on an annual basis, within 90 days of year end, the Borrower will provide any other property information including but not limited to rent rolls, leases, and operating statements for the collateral property as required by the Bank in form and substance acceptable to the Bank. Borrower hereby authorizes the Bank, at its option, to request receipt of updated financial information directly from Borrower's accountant as required above.
- 9. The Borrower shall furnish to Bank Counsel such other documents, exhibits, and opinions of Borrower's counsel as Bank and its counsel may require. Borrower shall deliver to Lender a letter of opinion from Borrower's and Guarantor's counsel, which shall include all of the following, subject to reasonable limitation and qualifications:

(a) that all loan documents and instruments, including, but not limited to, the Guaranty, required to be delivered have been duly authorized, executed and delivered and are valid, binding and enforceable in accordance with their terms;

(b) that Borrower is in compliance with all laws, regulations, ordinances and orders of all governmental authorities, including, but not limited to, if applicable, all applicable federal and state securities laws, and all laws of the State of Florida applicable to the type of developments contemplated;

(c) that there are no provisions of any existing mortgage, indenture, contract or agreement known to such counsel that is binding on Borrower or that is affecting the Premises which would conflict with or in any way prevent the execution, delivery and carrying out of the terms of the Loan, including the guarantee thereof;

(d) that there are no proceedings pending or threatened before any court or administrative agency which will materially adversely affect the financial condition or operation of Borrower or Guarantor, or the Land, including but not limited to bankruptcy, reorganization or insolvency proceedings or any other debtor-creditor proceedings under the bankruptcy code or any similar statute, nor to counsel's knowledge, which could lead to such proceedings;

(e) that the lien of the Mortgage is a valid perfected lien on the Premises, and the security interests described in the financing statement(s) filed and/or recorded in connection therewith are good and valid perfected security interests;

(f) that the Note and the interest provided for therein does not violate any usury laws or any other laws of the State of Florida; and

- (g) such other matters as Lender may reasonably require.
- 10. The mortgage shall provide that the placing of subordinate financing or the sale, transfer, or conveyance of all or any portion of the collateral property without the Bank's prior written consent shall constitute a default and shall be grounds for the acceleration of any and all sums due and unpaid under the Loan.
- 11. The occurrence of any one of the following events shall, at the option of the Bank, constitute an "event of default" under this Commitment: (a) the failure of the Borrower to comply with any terms or conditions of this Commitment; (b) the dissolution, merger or consolidation of the

Borrower; (c) the filing by or against the Borrower of a petition in bankruptcy or the adjudication or insolvency or bankruptcy under any reorganization arrangement, readjustment of debt, dissolution, liquidation or similar proceeding under any federal or state statute; (d) the suspension or discontinuance of the Borrower's business as a going concern; (e) the failure of the Borrower to take all action necessary for it to close the Loan on or before closing date, or (f) any material changes in Borrower's financial condition as determined by the Bank in its sole discretion using credit reports or any other information it deems relevant including, but not limited to, lawsuits, attachments, liens and foreclosures. Upon the occurrence of any "event of default" prior to the closing of the Loan, the Bank may, at its option, cease review of the proposed loan request and terminate this Commitment without notice to the Borrower.

### 12. Unless otherwise extended in writing by the Bank, this Commitment, if not accepted and returned to Bank within seven (7) days of the date of this Commitment, shall terminate.

- 13. Borrower understands and acknowledges that the law firm of the Bank's choice represents the Bank, and does not represent the Borrower in this transaction. The services performed on behalf of the Bank by Bank's Counsel are performed for the Bank only.
- 14. The Bank and the Borrower confirm that this Commitment contains their complete understanding concerning this transaction as of the date hereof and it supersedes all prior agreements between the Bank and Borrower. No provisions of this Commitment shall be amended, waived or modified except by written instruments signed by Bank and Borrower. This Commitment shall be governed by the laws of the State of Florida.
- 15. This Commitment will become effective and binding upon Borrower's acceptance, and the terms and conditions hereof shall survive the closing of the Loan, except as may be expressly modified in any of the Loan closing documents. The Borrower must comply with the terms and conditions of this Commitment throughout the term of the Loan, including any extension thereof, except to the extent that the Commitment may conflict with or be superseded by any document executed by both Borrower and Bank subsequent to the date hereof.
- 16. The Borrower shall not assign this Commitment without the prior written consent of the Bank. Any assignment or conveyance without such authorization shall be null and void.
- 17. Borrower shall look solely to the Bank and not to any officer, director or employee or any loan participant for performance under this Commitment.
- 18. Borrower agrees that their primary deposit relationship for itself and operating company shall be maintained at the Bank for the life of the loan.
- 19. Borrower shall maintain an auto debit monthly payment plan with the Lender.
- 20. Borrower acknowledges that this loan is for commercial purposes and that no portion of the collateral property is used for the Borrower's "homestead".
- 21. Closing is subject to receipt of an "as is" appraisal representing a maximum combined loan to value of 75% of the Property. Appraisals to verify pro-forma rental rates and support 1.25X DSCR as noted in Par. 22 below.

- 22. At all times during the Term of the Loan, Borrower shall maintain a minimum stand alone Debt Service Coverage Ratio ("DSCR") of not less than 1.25X. For purposes hereof, DSCR shall mean the ratio of (a) EBITDA of Borrower to (b) annual principal and interest payments on all indebtedness of Borrower, calculated using the actual interest rate then in effect and the then remaining amortization schedule. As used herein, "EBITDA" shall mean the sum of earnings before interest, taxes, depreciation and amortization less 5% vacancy, 4% management fees and 2% reserve. This covenant shall be measured for compliance annually upon Lender's receipt of the financial statements and other supporting documentation of Borrower required herein. Failure to maintain this minimum amount will require a reduction of the principal balance of the Loan, resulting in a pay down by Borrower to reduce the balance of the new limit.
- 23. The Bank will require escrow of real estate taxes.
- 24. <u>Waiver of Jury Trial</u>: LENDER, BORROWERS AND GUARANTOR HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE THE RIGHT ANY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS COMMITMENT LETTER AND ANY AGREEMENT TO BE CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER ENTERING INTO THIS COMMITMENT LETTER.
- 25. As the collateral consists of multiple properties, the Bank will agree to a partial release for each particular property in exchange for the bank receiving an amount equal to 120% of the original valuation placed on the property being released, with DSCR (1.25X) and LTC (max. 75%) parameters to be maintained.
- 26. The commitment is subject to receipt of satisfactory 40 year inspection report or building condition report(s) approved by the Bank.
- 27. The commitment is subject to verification of costs paid to date by Borrowers for property improvements.

Kindly acknowledge your acceptance of this Commitment and return the original to the undersigned. The Bank and Borrowers mutually agree that, in the absence of the original document, facsimile signatures will be acceptable. The undersigned officer/managers of Borrowers and Guarantor each acknowledge that each have the authority to sign and accept this commitment letter on behalf of the Borrowers and Guarantor. A fax or copy of this commitment letter containing the signature of the parties shall be considered an original for all purposes, and it may be signed in counterparts.

We appreciate the opportunity to provide this financing and to provide for your banking needs.

Very truly yours,

Stonegate Bank

Heather Zatik, Vice President

Acknowledged and accepted this 20% day of August, 2017.

**Borrowers:** 

Rechter Holdings, Inc. A Florida corporation,

Section of the sectio 6.480 COR Accepted:

By: Michael Rechter, President

Rechter Progresso 835, LLC A Florida limited liability company,

. E. st Accepted:

By: Michael Rechter, Manager

**Guarantor:** 

Accepted: \_\_\_\_\_\_\_\_\_\_ By: Michael Rechter, Manager

# BANK

#### **COOPERATION AGREEMENT**

BORROWERS: RECHTER HOLDINGS, INC. RECHTER PROGRESSO 835, LLC

LOAN NUMBER: 6016869

LENDER: Stonegate Bank

DATE: September 20, 2017

The undersigned Borrowers have received a loan (the "Loan") from Stonegate Bank secured, in part, by the collateral described in that certain Bank Loan Agreement dated effective as of the same date hereof by and between Borrower and Stonegate Bank (as the same may be amended or modified from time to time, the "Loan Agreement"). In consideration thereof, Borrowers and the undersigned Guarantor agree to cooperate promptly with Stonegate Bank and its agents in the correction or completion of the loan closing documents if deemed necessary or desirable by Stonegate Bank. Borrowers and Guarantor understand that this may include correction or execution of a new note, loan agreement, collateral assignment, security agreement, guaranty or any other document necessary to reflect the agreed terms of the Loan.

Borrowers: RECHTER HOLDINGS, INC. a Florida corporation

By:

Michael R. Rechter, President

RECHTER PROGRESSO 835, LLC a Florida limited liability company

By:

Michael R. Rechter, Manager

Guarantor:

the first By:

Michael R. Rechter, individually

CAM # 17-1390 Exhibit 5 Page 119 of 135

#### ENVIRONMENTAL INDEMNIFICATION AGREEMENT Loan Number 6016869

THIS ENVIRONMENTAL INDEMNIFICATION AGREEMENT (this "Agreement") is made and entered into this the made as of the 20<sup>th</sup> day of September, 2017, by **RECHTER HOLDINGS**, INC., a Florida corporation and **RECHTER PROGRESSO 835**, LLC, a Florida limited liability company, both having an address of 241 East Prospect Road, Ft. Lauderdale, FL 33332, and **MICHAEL R. RECHTER**, jointly and severally (and collectively all three shall be referred to as the "Indemnitor"), for the benefit of **STONEGATE BANK**, a Florida banking corporation, whose address is 400 North Federal Highway, Pompano Beach, Florida 33062 ("Lender").

#### RECITALS:

A. Concurrently herewith Lender has made a loan (the "Loan") to **RECHTER HOLDINGS**, **INC.** and **RECHTER PROGRESSO 835**, LLC, in the amount of Three Million Two Hundred Thousand and 00/100 Dollars (\$3,200,000.00), as evidenced by that certain Promissory Note of even date herewith (as the same may be amended, restated, replaced or extended from time to time, the "Note"). The Loan and Note are secured by, among other things, that certain Mortgage, Assignment of Rents and Security Agreement (as the same may be amended or modified from time to time, the "Mortgage") of even date herewith, in favor of Lender encumbering certain real property located at 716-718 NE 2<sup>nd</sup> Avenue, Ft. Lauderdale, FL 33304 (Property "A" – owned by Rechter Holdings, Inc.), 913 NE 4<sup>th</sup> Avenue, Ft. Lauderdale, FL 33304 (Property "B" owned by Rechter Holdings, Inc.), and 835 NE 2<sup>nd</sup> Avenue, Ft. Lauderdale, FL 33304 (Property "C" owned by Rechter Progresso 835, LLC), and as more particularly described as:

Property A:

Lots 4, 5 and 6, Block 257 of PROGRESSO, according to the Plat thereof, as recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida; said land situate, lying and being in Broward County, Florida.

and

Property B:

Lots 17-21, LESS the East 10 feet thereof, of Block 214 of PROGRESSO, and all that part of Block 214 of PROGRESSO lying South of said Lot 21 and East of the alley running North and South through said Block 214, according to the Plat thereof, as recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida; said lands situated, lying and being in Broward County, Florida, all LESS that portion of land dedicated to Broward County, as described in Instrument Number 113500871.

and

Property C:

Lots 33 and 34, Block 289 of PROGRESSO, according to the Plat thereof, as recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida; said lands situated, lying and being in Broward County. Hereinafter Property A, Property B and Property C shall collectively be referred to as the "Real Property").

B. Michael R. Rechter has executed and delivered to the Lender that certain Guaranty of Payment and Performance Agreements dated of even date herewith.

C. Lender has required the execution and delivery of this Agreement as a condition precedent to Lender's making of the Loan and Lender would not be willing to make the Loan in the absence of the execution and delivery by Indemnitor of this Agreement.

NOW, THEREFORE, Indemnitor as an inducement to Lender to make the Loan hereby covenants and agrees with Lender, in consideration of Ten Dollars and other good and valuable consideration, receipt of which is acknowledged, as follows:

1. <u>Recitals</u>. The recitals set forth above are true and correct and are by this reference incorporated herein.

2. <u>Hazardous Substances</u>. As used in this Agreement, the term "Hazardous Substances" means any hazardous or toxic substances, materials or wastes, including, but not limited to solid, semi-solid, liquid or gaseous substances which are toxic, ignitable, corrosive, carcinogenic or otherwise dangerous to human, plant or animal health or well-being and those substances, materials, and wastes listed in the United States Department of Transportation Table (49 CFR 972.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto or such substances, materials and wastes which are or become regulated under any applicable local, state or federal law including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251 et seq (33 U.S.C. Section 1321) or listed pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903), (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601), or (vii) solvent mixtures.

3. <u>Compliance with Laws and Regulations</u>. Indemnitor hereby represents, warrants, covenants and agrees to and with Lender that all operations or activities upon or related to, or any use or occupancy of the Real Property, or any portion thereof, by Indemnitor, any tenant or other occupant of the Real Property, or any portion thereof, is presently and shall throughout the term of the Loan be in all material respects in compliance with all state, federal and local laws and regulations governing or in any way relating to the generation, handling, manufacturing, treatment, storage, use, transportation, spillage, leakage, dumping, discharge or disposal (whether legal or illegal, accidental or intentional) of any Hazardous Substances; and that Indemnitor has not at any time engaged in or permitted, nor to the best of Indemnitor's knowledge after due inquiry has any tenant or occupant of the Real Property, or any portion thereof, engaged in or permitted any material dumping, discharge, disposal, spillage or leakage (whether legal or illegal, accidental or intentional) of such Hazardous Substances, at, on, in, about, or related to the Real Property, or any portion thereof.

4. <u>Indemnification</u>. Indemnitor, jointly and severally if more than one, agree to indemnify, protect, defend (with counsel approved by Lender) and hold Lender, and the directors, officers, shareholders, employees and agents of Lender harmless from any claims (including, without limitation, third party claims for personal injury or real or personal property damage), actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities (including sums paid in settlement of claims), interest or losses including reasonable attorneys' and paralegals' fees and expenses (including any such fees and expenses incurred in enforcing this Agreement or collecting any sums due

hereunder), consultant fees and expert fees, together with all other costs and expenses of any kind or nature (collectively, the "Costs") that arise directly or indirectly from or in connection with the presence, suspected presence, release or suspected release of any Hazardous Substance in or into the air, soil, surface water, groundwater or soil vapor at, on, about, under or within the Real Property, or any portion thereof. The indemnification provided in this paragraph shall specifically apply to and include claims or actions brought by or on behalf of employees of Indemnitor or Indemnitor, and Indemnitor hereby expressly waives any immunity to which indemnitor may otherwise be entitled under any industrial or worker's compensation laws. In the event Lender shall suffer or incur any such Costs, Indemnitor shall pay to Lender the total of all such Costs suffered or incurred by Lender upon demand therefor by Lender. Without limiting the generality of the foregoing, the indemnification provided by this paragraph 4 shall specifically cover Costs, including capital, operating and maintenance costs, incurred in connection with any investigation or monitoring of site conditions, any clean-up, containment, remedial, removal or restoration work required or performed by any federal, state or local governmental agency or political subdivision or performed by any nongovernmental entity or person because of the presence, suspected presence, release or suspected release of any Hazardous Substance in or into the air, soil, groundwater, surface water or soil vapor at, on, about, under or within the Real Property (or any portion thereof), and any claims of third parties for loss or damage due to such Hazardous Substance. In addition, the indemnification provided by this paragraph 4 shall include, without limitation, all loss or damage sustained by Lender (including, without limitation, any loss or damage sustained by Lender arising from any claim asserted by any third party against Lender) due to any Hazardous Substance. (i) that is present or suspected to be present in the air, soil, groundwater, surface water or soil vapor at, on, about, under or within the Real Property (or any portion thereof) on or before the date of this Agreement, or (ii) that migrates, flows, percolates, diffuses or in any way moves onto, into or under the air, soil, groundwater, surface water or soil vapor at, on, about, under or within the Real Property (or any portion thereof) after the date of this Agreement, irrespective of whether such Hazardous Substance shall be present or suspected to be present in the air, soil, groundwater, surface water or soil vapor at, on, about, under or within the Real Property (or any portion thereof) as a result of any release, discharge, disposal, dumping, spilling, or leaking (accidental or otherwise) onto the Real Property (or any portion thereof) occurring before, on or after the date of this Agreement or caused by any person or entity (except to the extent caused by the gross negligence of Lender, its employees, agents or representatives).

Remedial Work. In the event any investigation or monitoring of site conditions or any 5. clean-up, containment, restoration, removal or other remedial work (collectively, the "Remedial Work") is required under any applicable federal, state or local law or regulation, by any judicial order, or by any governmental entity, or in order to comply with any agreements affecting the Real Property because of, or in connection with, any occurrence or event described in paragraph 4 above, Indemnitor shall perform or cause to be performed the Remedial Work in compliance with such law, regulation, order or agreement; provided that Indemnitor may withhold such compliance pursuant to a good faith dispute regarding the application, interpretation or validity of the law, regulation, order, or agreement, subject to the requirements of paragraph 6 below. All Remedial Work shall be performed by one or more contractors, selected by Indemnitor and approved in advance in writing by Lender, and under the supervision of a consulting engineer, selected by Indemnitor and approved in advance in writing by Lender. All costs and expenses of such Remedial Work shall be paid by Indemnitor including, without limitation, the charges of such contractor(s) and the consulting engineer, and Lender's reasonable attorneys' and paralegals' fees and costs incurred in connection with monitoring or review of such Remedial Work. In the event Indemnitor shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Lender may, but shall not be required to, cause such Remedial Work to be performed, and all costs and expenses thereof, or incurred in connection therewith, shall be Costs within the meaning of paragraph 4 above. All such Costs shall be due and payable upon demand therefor by Lender.

3

Permitted Contests. Notwithstanding any provision of this Agreement to the contrary, 6. Indemnitor will be permitted to contest or cause to be contested, subject to compliance with the requirements of this paragraph, by appropriate action, any Remedial Work requirement and Lender shall not perform such requirement on its behalf, so long as no "Event of Default" has occurred and is continuing under the Mortgage or other instruments evidencing or securing the Loan (the "Loan Documents") and Indemnitor has given Lender written notice that Indemnitor is contesting or shall contest or cause to be contested the same and Indemnitor actually contests or causes to be contested the application, interpretation or validity of the governmental law, regulation, order or agreement pertaining to the Remedial Work by appropriate proceedings conducted in good faith with due diligence; provided, such contest shall not subject Lender or any assignee of its interest (including any person having a beneficial interest) in the Loan or the Loan Documents to civil liability and does not jeopardize any such party's lien upon or interest in the Real Property or affect in any way the payment of any sums to be paid under the Loan. Indemnitor shall give such security or assurances as may be reasonably required by Lender, to insure compliance with the legal requirements pertaining to the Remedial Work (and payment of all costs, expenses, interest and penalties in connection therewith) and to prevent any sale, forfeiture or loss by reason of such nonpayment or compliance.

7. <u>Subrogation of Indemnity Rights</u>. If Indemnitor fails to perform its obligations under paragraph 4 above, Lender shall be subrogated to any rights Indemnitor may have under any indemnifications from any present, future or former owners, tenants or other occupants or users of the Real Property (or any portion thereof), relating to the matters covered by this Agreement.

8. <u>Assignment by Lender</u>. No consent by Indemnitor shall be required for any assignment or reassignment of the rights of Lender hereunder to one or more purchasers of the Loan, the Loan Documents or the Real Property, or any portion thereof.

9. <u>Merger, Consolidation or Sale of Assets</u>. In the event of a disposition involving Indemnitor of all or substantially all the assets of Indemnitor to one or more persons or other entities or the merger or consolidation of Indemnitor with another entity, the surviving entity or transferee of assets, as the case may be, shall (i) be formed and existing under the laws of a state, district or commonwealth of the United States of America, and (ii) deliver to Lender an acknowledged instrument in recordable form assuming all obligations, covenants and responsibilities of Indemnitor under this Agreement.

10. Independent Obligations: Survival. Notwithstanding anything to the contrary contained in any of the Loan Documents, including without limitation the note evidencing the Loan or the Mortgage, the obligations of Indemnitor under this Agreement shall survive the consummation of the Loan transaction described above; the repayment of the Loan and any assumption of the Loan by a successor to Indemnitor (whether or not the assumption was approved or disapproved or whether or not Indemnitor was released from liability on the loan); and reconveyance of title to the property or foreclosure of the Mortgage. The obligations of Indemnitor under this Agreement are separate and distinct from the obligations of Indemnitor under the Loan Documents. This Agreement may be enforced by Lender without regard to any other rights and remedies Lender may have against Indemnitor under the Loan Documents. Enforcement of this Agreement shall not be deemed to constitute an action for recovery of the Loan indebtedness nor for recovery of a deficiency judgment against Indemnitor following foreclosure of the Mortgage. Indemnitor expressly and specifically agrees that a separate action or actions may be brought and prosecuted against Indemnitor hereunder whether or not an action is brought against Indemnitor under the Loan Documents.

11. <u>Default Interest</u>. Any Costs and other payments required to be paid by Indemnitor to Lender under this Agreement which are not paid on demand therefor shall thereupon be considered "Delinquent." In addition to all other rights and remedies of Lender against Indemnitor as provided herein, or under applicable

law, Indemnitor shall pay to Lender, immediately upon demand therefor, Default Interest (as defined below) on any such payments which are or have become Delinquent. Default Interest shall be paid by Indemnitor from the date such payment becomes Delinquent through and including the date of payment of such Delinquent sums. As used herein, "Default Interest" shall be the maximum rate of interest permitted to be contracted for by law.

12. <u>Miscellaneous</u>. If there shall be more than one Indemnitor, each Indemnitor agrees that (i) the obligations of the Indemnitor hereunder are joint and several, (ii) a release of any one or more Indemnitor or any limitation of this Agreement in favor of or for the benefit of one or more Indemnitor, and (iii) a separate action hereunder may be brought and prosecuted against one or more Indemnitor. If any term of this Agreement or any application thereof shall be invalid, illegal or unenforceable, the remainder of this Agreement and any other application of such term shall not be affected thereby. No delay or omission in exercising any right hereunder shall operate as a waiver of such right or any other right. This Agreement shall be binding upon, inure to the benefit of and be enforceable by Indemnitor and Lender, and their respective successors and assigns, including (without limitation) any assignee or purchaser of all or any portion of the Loan Documents or the Real Property. This Agreement shall be governed and construed in accordance with the laws of the State of Florida.

13. <u>Statute of Limitations</u>. In any action, suit or proceeding relating to this Agreement, the Indemnitor and Lender waive the right to interpose a defense of the statute of limitations or laches or to assert any set-off or counterclaim.

14. WAIVER OF TRIAL BY JURY. INDEMNITOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONJUNCTION WITH THIS AGREEMENT, AND ANY OTHER AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY OTHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE LENDER MAKING THE LOAN TO INDEMNITOR.

(remainder of page left blank - signature page to follow)

Signature Page Environmental Indemnification Agreement

#### **INDEMNITORS:**

**RECHTER HOLDINGS, INC.** a Florida corporation

...... By:

Michael R. Rechter, President

RECHTER PROGRESSO 835, LLC a Florida limited liability company

ومصبحه المحملي By:

Michael R. Rechter, Manager

By:

Michael R. Rechter, Individually

STATE OF FLORIDA COUNTY OF PALM BEACH

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgements, the foregoing instrument was acknowledged before me by Michael R. Rechter, individually and as President of Rechter Holdings, Inc., a Florida corporation, and as Manager of Rechter Progresso 835, LLC, a Florida limited liability company, who does so freely and voluntarily under authority duly vested in him and by said companies. He is personally known to me or produced \_\_\_\_\_\_\_ as identification.

WITNESS by hand and official seal in the County and State last aforesaid this  $\frac{22^{4}}{2}$  day of September, 2017.

CHRISTINE PROCTER MY COMMISSION # FF 983338 EXPIRES: August 16, 2020 Bonded Thru Budget Notary Services OFFLO

Thristing Procter Expires 8/16/2020 NOTARY PUBLIC Print Name: My Commission Expires

### STONEGATE BANK

#### ERRORS AND OMISSIONS AGREEMENT

BORROWERS: RECHTER HOLDINGS, INC. RECHTER PROGRESSO 835, LLC

LOAN NUMBER: 6016869

LENDER: Stonegate Bank

DATE: September 20, 2017

For and in consideration of the Lender funding the closing of its loan and to ensure the accuracy of any and all documents of closing in this transaction, the undersigned agrees to cooperate, adjust, initial, re-execute and re-deliver any and all closing documents if deemed necessary or desirable in the reasonable discretion of the Lender. It is the intention of the undersigned that all documentation for this transaction and all payments of disbursements made shall be an accurate reflection of the parties' agreement and that each party should pay all costs and expenses contemplated by their agreement or agreements or dictated by custom and usage in this area.

The undersigned agrees and covenants to assure that this transaction and its documentation will conform to the parties' agreement of Lender's requirements and it is understood that Lender will rely upon this agreement and the covenants herein in closing this transaction.

Borrowers: RECHTER HOLDINGS, INC. a Florida corporation

By:

Michael R. Rechter, President

RECHTER PROGRESSO 835, LLC a Florida limited liability company

By:

Michael R. Rechter, Manager

Guarantor:

By:

Michael R. Rechter, individually

#### LENDER'S FEES

BORROWERS:	RECHTER HOLDINGS, INC. RECHTER PROGRESSO 835, LLC
LENDER:	STONEGATE BANK
CLOSING DATE:	SEPTERMBER 20, 2017
LOAN NUMBER:	6016869

	GROSS AMOUNT OF LOAN:	\$3,200,000.00
1.	LENDER FEES AND EXPENSES	
	Lender's Fee Lender's Attorney Fees to Joseph B. Heimovics, P.A. Tax Service Fee Flood Determination Fee Environmental – Land Science Environmental Review Fee Appraisal Review Fee (POC \$1,695.00) Appraisal Fee (POC \$6,250.00) GPM Real Estate Inspections (POC \$1,850.00) Wire Fee	\$ 16,000,00 \$ 7,500,00 \$ 395,00 \$ 60,00 \$ 3,000,00 \$ 225,00 \$ \$ \$ \$ \$ \$ \$ 15,00
2.	LENDER HOLDBACK Escrow holdback for 2017 property taxes (12 months + 2-month cushion) 716-718 NE 2 <sup>nd</sup> Ave. (\$768.58/mo)* 835 NE 2 <sup>nd</sup> Ave. (\$608.19/mo)* 913 NE 4 <sup>th</sup> Ave (\$682.51/mo)* Holdback for CRA per Loan Agreement Holdback for Stabilization per Loan Agreement	\$ 28,836.79 \$ 125,000.00 \$ 242,000.00
	TOTAL FEES, EXPENSES AND HOLDBACK:	\$ 423,031.79
	NET DISBURSEMENT TO BORROWER:	\$2,776,968.21

\*The amounts set forth herein are based on the property tax due for 2016, and the actual amounts due for 2017 will likely cause an adjustment In the amount escrowed going forward.

> Joseph B. Heimovics, P.A. 15951 SW 41<sup>st</sup> Street, Suite 800 Davie, FL 33331

#### **CLOSING NOTES**

Borrower is responsible for all costs and expenses of the above-described Loan transaction, including, without limitation, insurances, surveys, appraisals, registration charges, Lender's attorney's fees and other matters required by the Lender. In the event the amounts above are insufficient to cover all costs and expenses, Borrower shall reimburse Lender for any such insufficiency upon demand.

Borrower acknowledges that Lender has retained Joseph B. Heimovics, P.A. ("Law Firm") as Lender's legal counsel in the subject Loan transaction for the exclusive and sole benefit of Lender. Notwithstanding that Law Firm's legal fees and costs are being charged to the Borrower as part of the Loan costs, Borrower acknowledges that Law Firm has only represented the Lender with respect to the Loan transaction. Borrower further acknowledges that Law Firm has made no legal representatives to Borrower with respect to the Loan or any matter connected with the Loan, and that Borrower has not relied upon Law Firm in any way whatsoever with respect to the Loan or any matter in connection with the Loan transaction.

The undersigned Borrower agrees to cooperate promptly with the Lender and its agents in the connection or completion of any of the loan documents after closing, if deemed necessary or desirable by Lender. Borrower understands that this may include the execution of additional or corrected documents consistent with the agreed upon loan terms.

Borrower has received a true copy of the above and hereby approves same and certifies that it is correct and hereby authorize Closing Agent to disburse the aforesaid costs.

BORROWERS:

**RECHTER HOLDINGS, INC.** 

Bv:

Michael R. Rechter, President

**RECHTER PROGRESSO 835, LLC** 

Bv:

Michael R. Rechter, Manager

Dated: September 20, 2017

Dated: September 20, 2017

Joseph B. Heimovics, P.A. 15951 SW 41<sup>st</sup> Street, Suite 800 Davie, FL 33331

## BANK

#### **AUTHORIZATION TO ADVANCE LOAN FEES**

Date: September 20, 2017

Loan Name:	Rechter Holdings, Inc. & Rechter Progresso 835, LLC (Co-Borrow	ers)
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Loan Number: \_\_\_\_\_6016869

Amount of Loan: \_\_\_\_\_\$3,200,000

Amount of Loan Fees: \_\_\_\_\_

I (we) hereby authorize Stonegate Bank to advance loan fees from the above line of credit.

XXXX I (we) hereby authorize Stonegate Bank to pay fees from proceeds of the above term loan.

I (we) have attached a check for the above loan fees.

Alecenses REOFERS

Authorized Signer (Print)

E.C.U

Signature

Authorized Signer (Print)

er Zatik-

Lender Name (Print)

Signature

Lender's Signature

#### FLORIDA AGREEMENT TO WAIVE GARNISHMENT PROTECTION Loan Number 6016869

IF YOU PROVIDE MORE THAN ONE-HALF OF THE SUPPORT FOR A CHILD OR OTHER DEPENDENT, ALL OR PART OF YOUR INCOME IS EXEMPT FROM GARNISHMENT UNDER FLORIDA LAW. YOU CAN WAIVE THIS PROTECTION ONLY BY SIGNING THIS DOCUMENT. BY SIGNING BELOW, YOU AGREE TO WAIVE THE PROTECTION FROM GARNISHMENT.

Guarantor:

9/20/17

Date

Michael R. Rechter, an individual

I have fully explained this document to the consumer.

Lender:

Stonegate Bank

Bγ

Authorized Signor

#### Resolution and Incumbency Certificate of RECHTER HOLDINGS, INC. a Florida corporation

I, Michael R. Rechter, as President of RECHTER HOLDINGS, INC., a Florida corporation (the "Corporation") hereby certify that:

1. The Corporation was organized under the laws of the State of Florida by virtue of the filing of its Articles of Incorporation with the Florida Department of State, Division of Corporations on August 30, 2005 under Document Number P05000120448 and continues to maintain its existence as a Florida For Profit Corporation.

2. As of the date of this Resolution and Incumbency Certificate, **Michael R. Rechter** is the sole officer, director, and shareholder of the Corporation, owning one hundred percent (100%) of the issued and outstanding stock of the Corporation.

3. The following is a true and correct recitation of the resolutions duly adopted by the officer, director, and shareholder which has not been amended, modified, rescinded, or revoked, and is in full force and effect on this date:

RESOLVED, that Michael R. Rechter as President of RECHTER HOLDINGS, INC., is hereby authorized and directed to execute any and all reasonably necessary documents for the \$3,200,000.00 loan from STONEGATE BANK, a Florida banking corporation to RECHTER HOLDINGS, INC., a Florida corporation, and to RECHTER PROGRESSO 835, LLC, a Florida limited liability company and to take such other action as may be necessary or desirable to carry out the purpose and intent of this resolution.

4. No resolution has been adopted by the officer, director, and shareholder nor has action been taken by the Corporation in contemplation of the dissolution of the Corporation.

IN WITNESS WHEREOF, I have set my hand and fixed the seal of the Corporation this 20<sup>th</sup> day of September, 2017.

**RECHTER HOLDINGS, INC.** 

a Florida corporation

lich fall By:

Michael R. Rechter, President

#### Resolution and Incumbency Certificate of RECHTER PROGRESSO 835, LLC a Florida limited liability company

I, Michael R. Rechter, as the sole Member of **RECHTER PROGRESSO 835**, LLC, a Florida limited liability company ("the Company"), hereby certify that:

1. The Company was organized under the laws of the State of Florida by virtue of the filing of its Articles of Organization with the Florida Department of State, Division of Corporations on May 8, 2017 under Document Number L17000100679 and continues to maintain its existence as a Florida limited liability company.

2. As of the date of this Resolution of Sale and Incumbency Certificate, Michael R. Rechter, is the sole Member of the Company, owning 100 percent of the Membership Interests in the Company, as well as the sole Manager of the Company.

3. The following is a true and correct recitation of the resolutions duly adopted by the officers, directors, and members which has not been amended, modified, rescinded, or revoked, and is in full force and effect on this date:

RESOLVED, that Michael R. Rechter as Manager of RECHTER PROGRESSO 835, LLC, is hereby authorized and directed to execute any and all reasonably necessary documents for the \$3,200,000.00 loan from STONEGATE BANK, a Florida banking corporation to RECHTER HOLDINGS, INC., a Florida corporation, and to RECHTER PROGRESSO 835, LLC, a Florida limited liability company and to take such other action as may be necessary or desirable to carry out the purpose and intent of this resolution.

4. No resolution has been adopted by the Member nor has action been taken by the Company in contemplation of the dissolution of the Company.

IN WITNESS WHEREOF, I have set my hand and fixed the seal of the Company this 20<sup>th</sup> day of September, 2017.

RECHTER PROGRESSO 835, LLC a Florida limited liability company

fult LA By:

Michael R. Rechter, Manager

## Closing Affidavit

Before me, the undersigned authority, personally appeared the undersigned ("Affiant"), who being by me first duly sworn, on oath, depose(s) and say(s) that:

1. Rechter Holdings, Inc., as to Parcels I and III, Rechter Progresso 835, LLC, a Florida limited liability company, as to Parcel II ("Borrower"), is refinancing the following described property, to wit:

Lots 4, 5, and 6, Block 257 of PROGRESSO, according to the Plat thereof, recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida; said land situate, lying, and being in Broward County, Florida; Property Control Number 4942 34 06 2510; with a street address of 835 NE 2nd Avenue, Ft. Lauderdale, FL 33304-1934.

and

Lots 33 and 34, Block 289 of PROGRESSO, according to the Plat thereof, recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida; said land situate, lying, and being in Broward County, Florida; Property Control Number 4942-34-07-1770; with a street address of 716-718 NE 2nd Avenue, Ft. Lauderdale, FL 33304.

and

Lots 17-21, LESS the East 10 feet thereof, of Block 214 of PROGRESSO, and all that part of Block 214 of PROGRESSO lying South of said Lot 21 and East of the alley running North and South through said Block 214, according to the Plat thereof, as recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida; said lands situated lying, and being in Broward County, Florida, all LESS that portion of land dedicated to Broward County as described in Instrument Number 113500871; Property Control Number 49434057050; with a street address of 913 NE 4th Avenue, Ft. Lauderdale, FL 33304.

- 2. The names and status of the Borrowing entities as reflected in this affidavit and the other closing documents are true and correct, and said entities are in good standing as of the date of the refinance. There are no matters pending against the Borrower that could give rise to a lien that would attach to the property prior to the recording of the interests to be insured, and Borrower has not and will not execute any instrument (nor permit any action to be taken) that would adversely affect the title or interests to be insured. There are no judgments or liens against Borrower and no bankruptcy proceedings are currently pending with respect to Borrower.
- 3. To the best of Borrower's knowledge, information, and belief: (a) within the past 90 days there have been no improvements, alterations, or repairs to the above described property for which the costs thereof remain unpaid, and that within the past 90 days there have been no claims for labor or material furnished for repairing or improving the same, which remain unpaid; and (b) there are no actual or potential mechanic's, materialmen's, or laborer's liens against the property.
- 4. There have been no documents recorded in the Public Records of Broward County subsequent to the Effective Date of the Title Insurance Commitment, which affect title to the Property and Borrower has not entered into any contracts for the sale, disposition or leasing of the Property since said date except as may have been disclosed to Robert Marc Schwartz, P.A. in writing, and Borrower has no knowledge of any matter affecting title to the Property.
- 5. Borrower knows of no violations of municipal ordinances pertaining to the property, or any action or proceeding relating to the property which is pending in any court, nor does the Borrower know of any judgment, tax lien, or matter of any nature whatsoever which could create a lien or charge upon the property. Borrower has no knowledge of any matters that could or does create a cloud on the title to the subject property.
- 6. There are no parties in possession of the above described property other than Borrower and other tenants, if any.

- 7. There are no matters pending against the Borrower that could give rise to a lien that would attach to the property between the effective date of commitment and the recording of the interest to be insured. Borrower has not and will not execute any instruments that would adversely affect the interest to be insured.
- Borrower is not aware of any disputes concerning the boundary lines of the property, and the operation of any buildings 8. on said property has been in compliance with the applicable building codes, ordinances, and statutes.
- 9. Affiant has not received a notice of any public hearing regarding assessment for improvements or changes in applicable zoning laws concerning said property within the past ninety (90) days.
- 10. There are no actions or proceedings now pending in any State or Federal Court to which the Borrower is a party, including but not limited to, proceedings in bankruptcy, receivership or insolvency, nor are there any judgments, bankruptcies, liens or executions of any nature which constitute or could constitute a charge or lien upon said property.
- 11. If Borrower is an entity, then the person signing the deed as Borrower's representative is not a debtor in bankruptcy and has not been a debtor in bankruptcy since becoming the representative of Borrower. If Borrower is one of a family or group of entities, then none of the other entities in this family or group of entities is a debtor in bankruptcy. If the person signing the closing documents as Borrower's representative is the sole proprietor, then no creditors have acquired or are attempting to acquire control of the entity by executing on or attaching or seizing the representative's interest in the entity.
- 12. The President or Manager authorizing the transaction or executing the loan documents has not become dissociated pursuant to Sec. 605.0302(11) F.S (by filing a statement of dissociation), Secs. 605.0212, 605.0601, or 605.0602 F.S., nor has that person wrongfully caused dissolution of the company.
- 13. This affidavit is given for the purpose of clearing any possible question or objection to the title to the above referenced property and, for the purpose of inducing Robert Marc Schwartz, P.A. and Old Republic National Title Insurance Company to issue title insurance on the subject property, with the knowledge that said title companies are relying upon the statements set forth herein.
- 14. Borrower hereby holds Robert Marc Schwartz, P.A. and Old Republic National Title Insurance Company harmless and fully indemnifies same (including but not limited to attorneys' fees, whether suit be brought or not, and at trial and all appellate levels, and court costs and other litigation expenses) with respect to the matters set forth herein. "Affiant". "Seller" and "Borrower" include singular or plural as context so requires or admits. Borrower is familiar with the nature of an oath and with the penalties as provided by the laws of the United States and the State of Florida for falsely swearing to statements made in an instrument of this nature. Borrower has read, or heard read, the full facts of this Affidavit and understands its context.

Under penalties of perjury, I declare that I have read the foregoing Affidavit and that the facts stated in it are true.

Rechter Holdings, Inc., a Florida corporation

de. By:

Michael R. Rechter, President

(Corporate Seal)

Rechter Progresso 835, LLC, a Florida limited liability company

Jule . By:

Michael R. Rechter, Manager

State of Florida County of Palm Beach

The foregoing Borrower's Affidavit was sworn to and subscribed before me this 20th day of September, 2017 by Michael R. Rechter, President of Rechter Holdings, Inc., a Florida corporation, a Florida corporation, on behalf of the corporation. He [X] is personally known to me or [\_] has produced a driver's license as identification.

[Notary Seal]

CHRISTINE PROCTER MY COMMISSION # FF 983338 EXPIRES: August 16, 2020

enter re e Notary Public

Printed Name: Christine Procter

My Commission Expires:

August 16, 2020

State of Florida County of Palm Beach

The foregoing Borrower's Affidavit was sworn to and subscribed before me this 20th day of September, 2017 by Michael R. Rechter, Manager of Rechter Progresso 835, LLC, a Florida limited liability company, on behalf of the limited liability company. He [X] is personally known to me or [] has produced a driver's license as identification.

[Notary Seal]

MY COMMISSION # FF 983338 MY COMMISSION # FF 983338 EXPIRES: August 16, 2020 For FLOW Bonded Thru Budget Notary Services

herter roben Notary Public

Printed Name: Christine Procter

My Commission Expires: August 16, 2020

Closing Affidavit (Buyer) - Page 3 File Number: RechterStonegat