

Borrower Name : 160 MADISON AVE OWNERS CORP

PLA # : 7540381701

## THIRD PARTY PLEDGE AGREEMENT

This Third Party Pledge Agreement ("Pledge Agreement") is executed by each person signing below (each, a "Third Party Pledgor") in favor of Morgan Stanley Bank, N.A., a national banking association ("Bank"), and is effective as of the effective date of the Portfolio Loan Account described on Schedule A hereto ("Effective Date").

### RECITALS

- A. Third Party Pledgor, either individually or with another Person, is an account holder on the Collateral Account.
- B. Third Party Pledgor desires to pledge the Collateral Account as collateral for a credit facility made available by Bank to a Person other than Third Party Pledgor.

NOW, THEREFORE, the Parties hereby agree as follows:

### 1. DEFINITIONS. The following terms shall have the following meanings when used in this Pledge Agreement:

- A. **"Advance"** means an advance under the Portfolio Loan Account made, or to be made, to a Borrower or on a Borrower's behalf.
- B. **"Affiliate"** means, as to any Person, any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person or is a director or officer of such Person. For purposes of this definition, the term "control" (including the terms "controlling," "controlled by" and "under common control with") of a Person means the possession, direct or indirect, of the power to vote five percent (5%) or more of the voting stock (or equivalent) of such Person or to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting stock (or the equivalent thereof), by contract or otherwise.
- C. **"Bank"** shall have the meaning set forth in the preamble above.
- D. **"Borrower"** shall mean the Person set forth on Schedule A hereto; if there is more than one such Person, the term shall refer to each such Person individually and to all such Persons collectively.
- E. **"Broker"** means Morgan Stanley & Co. Incorporated and/or Morgan Stanley Smith Barney LLC and, as applicable, their successors and assigns.
- F. **"Collateral"** shall have the meaning set forth in Section 4.A.
- G. **"Collateral Account"** means individually and collectively, each securities brokerage account maintained with the Broker identified on Schedule A hereto that is pledged to Bank as collateral pursuant to this Pledge Agreement, together with the successors to those identified accounts, irrespective of whether the successor account bears a different name or account number.
- H. **"Effective Date"** shall have the meaning set forth in the preamble above.
- I. **"Facility Limit"** means the credit limit established by Bank when a Portfolio Loan Account is opened, and adjusted from time to time, that is also used to determine the interest rate on a Portfolio Loan Account.
- J. **"Financial Assets"** means all investment property, financial assets, securities, and security entitlements (as such terms are defined in the Uniform Commercial Code enacted in Utah) now owned or hereafter acquired by Third Party Pledgor, and all property held now or in the future by any and all Securities Intermediaries for or on behalf of Third Party Pledgor. Without limiting the generality of the foregoing, the term "securities" shall be used in its broadest sense, and shall include without limitation all common and preferred stocks, equity securities, debt securities, investment securities, mutual funds, money market funds, repurchase agreements, banker's acceptances, bonds (including without limitation Eurodollar bonds, "Yankee bonds," dollar-pay

Canadian bonds and non-dollar denominated bonds), commercial paper, other evidences of corporate indebtedness, foreign currency contracts, obligations of the U.S. Treasury or U.S. agencies (including without limitation bills, notes and bonds), and negotiable or non-negotiable certificates of deposit, and the term "security entitlements" shall include without limitation all rights with respect to any securities as such term is used herein.

- K. **"Lien"** means any lien, security interest or other charge or encumbrance of any kind, or any other type of preferential arrangement having the effect of a lien or security interest.
- L. **"Obligations"** shall have the meaning set forth in Section 4.A.
- M. **"Other Collateral"** shall mean any collateral provided to Bank to secure performance of the Obligations, other than the Collateral provided by Third Party Pledgor under this Pledge Agreement.
- N. **"Other Obligor"** shall mean any Person that is liable to Bank for all or a portion of the Obligations, other than a Borrower, including any guarantor of all or a portion of the Obligations.
- O. **"Parties"** means Bank and Third Party Pledgor collectively.
- P. **"Party"** means Bank or Third Party Pledgor.
- Q. **"Person"** means an individual, partnership, corporation (including a business trust), joint stock company, trust, unincorporated association, joint venture, limited liability company or other entity, or a government or any political subdivision or agency thereof.
- R. **"Pledge Agreement"** shall have the meaning set forth in the preamble above.
- S. **"Portfolio Loan Account"** shall mean a credit facility provided by Bank, commonly known as a "Portfolio Loan Account," with respect to which Bank may make advances and provide letters of credit to or for the benefit of Borrower.
- T. **"PLA Agreement"** means the agreement between Bank and Borrower that sets forth the terms and conditions of the Portfolio Loan Account, as amended, modified or supplemented from time to time.
- U. **"Securities Intermediary"** and **"Securities Intermediaries"** shall mean securities intermediaries and/or financial intermediaries as defined in the Uniform Commercial Code enacted in Utah.
- V. **"Security Interest"** means, without limitation, any and all types of collateral security, present and future, whether in the form of a lien, charge, encumbrance, mortgage, deed of trust, security deed, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever whether created by law, contract, or otherwise.
- W. **"State"** means any state in the United States or the District of Columbia.
- X. **"Third Party Pledgor"** shall have the meaning set forth in the preamble above; provided that if there is more than one Third Party Pledgor, the term shall refer to each such Person individually and to all such Persons collectively.

## 2. GENERAL

- A. **Schedule A** to this Pledge Agreement describes with particularity: (a) each Collateral Account subject to this Pledge Agreement; (b) the Portfolio Loan Account for which Third Party Pledgor is executing this Pledge Agreement; (c) each Borrower on the Portfolio Loan Account; and (d) the initial Facility Limit for the Portfolio Loan Account. **Section 11 below (Dispute Resolution) includes a waiver of a number of rights, including the right to bring a lawsuit in court, to serve as a representative in a class action and the right to a jury trial. That section describes the procedure Third Party Pledgor must follow if Third Party Pledgor desires to reject the Dispute Resolutions section.**
- B. **Third Party Pledgor acknowledges and agrees as follows:**
  - (1) **Using securities as collateral for a loan involves a high degree of risk that is not for everyone. For example, if the securities in the Collateral Account decline in value, Bank can take action, without**

**prior written notice to Third Party Pledgor, such as selling assets in the Collateral Account to protect or maintain value in the Collateral Account. Third Party Pledgor should not enter into this Pledge Agreement unless Third Party Pledgor has independently determined that this transaction, including the risks involved, is suitable for Third Party Pledgor.**

- (2) **Bank, in its sole discretion, may determine whether the value and type of Collateral in the Collateral Account is sufficient collateral for the Portfolio Loan Account. While Bank may attempt to notify Third Party Pledgor regarding any deficiency with respect to the Collateral in the Collateral Account, Bank is not obligated to do so. Bank may, in its sole discretion, liquidate Collateral in the Collateral Account to satisfy the collateral requirements for the Portfolio Loan Account, without notice to Third Party Pledgor and without requesting additional Collateral from Third Party Pledgor or Borrower.**
- (3) **Liquidation of Collateral in the Collateral Account may cause Third Party Pledgor to recognize taxable income or to report losses for tax purposes. Bank may perform such transactions without prior notice or advertisement on the market where such business is usually transacted, at a public auction or in a private sale, including transactions with Bank, Broker or their affiliates for their own account. Third Party waives any right of redeeming the proceeds of such transactions without Bank's consent and agrees not to hold Bank liable for taking such actions. Without limiting the foregoing, Third Party Pledgor waives any right to the notice of sale of Collateral, advertisement of such sale and any related provisions of applicable law, including, but not limited to Article 9 of the New York Lien Law.**
- (4) **Bank, Broker and Third Party Pledgor's financial advisor ("Financial Advisor") or investment representative ("Investment Representative"), as applicable, do not provide tax or legal advice.** Third Party Pledgor should consult Third Party Pledgor's personal attorney, tax advisor or accountant for matters involving taxation, tax planning, personal trusts and estate planning or the legal consequences of entering into this Pledge Agreement.
- (5) Notwithstanding any advisory relationship that Third Party Pledgor may have with Broker in connection with the Collateral Account, Third Party Pledgor will not have an advisory relationship with Broker with respect to the Portfolio Loan Account or Pledge Agreement or Third Party Pledgor's decision to permit the Collateral Account to be pledged as collateral to secure the Obligations of Borrower. Neither Broker nor Third Party Pledgor's Financial Advisor or Investment Representative, as applicable, is acting as an investment adviser in connection with the decision to pledge the Collateral Account and Third Party Pledgor is solely responsible for the decision to enter into this Pledge Agreement and to pledge assets in the Collateral Account.
- (6) Third Party Pledgor understands that actions taken by Bank as lender regarding the Collateral Account, and Broker, acting in its capacity as Securities Intermediary, may be directly contrary to Third Party Pledgor's interests as owner of the Collateral Account and that Bank's and/or Broker's actions, including selling securities in the Collateral Account, may have adverse consequences for Third Party Pledgor, including realizing taxable gains as a result of any such sale and affecting asset allocation, cash flow, trading activity and investment strategy.
- (7) After considering the risks and benefits of entering into this Pledge Agreement, Third Party Pledgor has determined that it is appropriate based on Third Party Pledgor's financial situation and investment objectives.
- (8) Third Party Pledgor acknowledges that the Collateral Account will not have margin privileges, including overdraft, or check writing or debit card privileges while the Collateral Account is subject to this Pledge Agreement.

C. Third Party Pledgor acknowledges and agrees that: (1) Bank may share information with Borrower regarding the value of assets in and status of the Collateral Account; and (2) that Bank and Broker may share information with respect to the Portfolio Loan Account, the Collateral Account, and Third Party Pledgor: (i) in the ordinary course of administering the Portfolio Loan Account and Collateral Account; (ii) to protect and enforce Bank's rights with respect to such Accounts, this Pledge Agreement and the PLA Agreement; and (iii) as otherwise related to the Bank's or Broker's business with Third Party Pledgor or Borrower.

D. If there is more than one Third Party Pledgor, the obligations of such Persons under this Pledge Agreement shall be joint and several.

### 3. CONSENT TO THE PORTFOLIO LOAN ACCOUNT

A. Third Party Pledgor hereby consents to Borrower obtaining and maintaining the Portfolio Loan Account, and entering into the PLA Agreement with Bank.

B. Third Party Pledgor hereby acknowledges receipt of a copy of the PLA Agreement between Bank and Borrower, and agrees to retain a copy of such PLA Agreement for Third Party Pledgor's records. Third Party Pledgor acknowledges that Third Party Pledgor has reviewed and understands the PLA Agreement and consents to Borrower being bound to all terms and conditions of such PLA Agreement. **Third Party Pledgor acknowledges that Bank may at any time amend, supplement or modify the PLA Agreement, including, but not limited to, by changing the interest rate, fees and other charges payable in connection with the Portfolio Loan Account.**

C. **Without limiting the foregoing, Third Party Pledgor acknowledges that the Portfolio Loan Account is a demand credit facility and that Bank may demand at any time that Borrower repay any and all credit extended to Borrower under the Portfolio Loan Account.**

### 4. SECURITY INTEREST

A. To secure payment or performance by Borrower of its obligations under the PLA Agreement ("Obligations"), Third Party Pledgor assigns, transfers and pledges to Bank, and grants Bank a first priority Lien and Security Interest, in the following assets and rights of Third Party Pledgor in, wherever located and whether owned now or acquired or arising in the future:

- (1) the Collateral Account;
- (2) any and all money, credit balances, certificated and uncertificated securities, security entitlements, commodity contracts, certificates of deposit, instruments, documents, partnership interests, general intangibles, Financial Assets and other investment property now or in the future credited to or carried, held or maintained in the Collateral Account;
- (3) any and all supporting obligations and other rights ancillary or attributable to, or arising in any way in connection with, any of the foregoing; and
- (4) any and all interest, dividends, distributions and other proceeds of any of the foregoing (collectively, "Collateral").

B. Third Party Pledgor will take all actions reasonably requested by Bank to evidence, maintain and perfect Bank's first priority Security Interest in, and to enable Bank to obtain control over, the Collateral, including, but not limited to, making, executing, recording and delivering to Bank financing statements and amendments thereto, control agreements, notices, assignments, listings, powers, consents and other documents regarding the Collateral and Bank's Security Interest in the Collateral in a form as Bank reasonably may require. Third Party Pledgor irrevocably authorizes and appoints Bank as collateral agent, to act as Third Party Pledgor's agent and attorney-in-fact to file any documents or to execute any documents in Third Party Pledgor's name, with or without designation of authority.

C. **If at any time, Bank in its sole discretion determines that:**

- (1) **the value of the Collateral is insufficient; or**
- (2) **the types of Financial Assets in the Collateral Account are not acceptable to Bank, then Bank shall have the right to liquidate any or all of the Financial Assets in the Collateral Account and maintain the Collateral in the Collateral Account in the form of cash balances.**

D. Bank's sole duty for the custody, safe keeping and physical preservation of any Collateral in its possession will be to deal with the Collateral in the same manner as Bank deals with similar property for its own account. Third Party Pledgor agrees that Bank will have no responsibility to act on any notice of corporate actions or events provided to holders of securities or other investment property included in the Collateral. Third Party Pledgor agrees to:

- (1) notify Bank promptly upon receipt of any communication to holders of the investment property disclosing or proposing any stock split, stock dividend, extraordinary cash dividend, spin-off or other corporate action or event as a result of which Third Party Pledgor would receive securities, cash (other than ordinary cash dividends) or other assets in respect of the investment property; and
- (2) immediately upon receipt by Third Party Pledgor of any of these assets, cause them to be credited to the Collateral Account or deliver them to or as directed by Bank as additional Collateral.

E. Third Party Pledgor agrees that all principal, interest, dividends, distributions, premiums or other income and other payments received by Bank or credited to the Collateral Account in respect of any Collateral may be held by Bank as additional Collateral or applied by Bank to the Portfolio Loan Account. Bank may create a security interest in any of the Collateral and may, at any time and at its option, transfer any securities or other investment property constituting Collateral to a securities account maintained in its name or cause any Collateral Account to be redesignated or renamed in the name of Bank.

## 5. CONTROL

For the purpose of giving Bank control over the Collateral Account and in order to perfect Bank's Security Interest in the Collateral, Third Party Pledgor consents to compliance by any Securities Intermediary maintaining the Collateral Account with entitlement orders and instructions from Bank (or from any assignee or successor of Bank) regarding the Collateral Account without the further consent of Third Party Pledgor. Without limiting the foregoing, Third Party Pledgor acknowledges, consents and agrees that, pursuant to a control agreement entered into between Bank and the Securities Intermediary:

- A. The Securities Intermediary will comply with entitlement orders originated by Bank regarding the Collateral Account without further consent from Third Party Pledgor. The Securities Intermediary will treat all assets credited to the Collateral Account, including money and credit balances, as financial assets for purposes of Article 8 of the Uniform Commercial Code enacted in Utah.
- B. In order to enable Third Party Pledgor to trade Financial Assets that are from time-to-time credited to the Collateral Account, the Securities Intermediary may comply with entitlement orders originated by Third Party Pledgor (or if so agreed by Bank, by an investment adviser designated by Third Party Pledgor and acceptable to Bank and the Securities Intermediary) regarding the Collateral Account, but only until the time that Bank notifies the Securities Intermediary, that Bank is asserting exclusive control over the Collateral Account. After the Securities Intermediary has received a notice of exclusive control and has had a reasonable opportunity to comply, it will no longer comply with entitlement orders originated by Third Party Pledgor (or by any investment adviser designated by Third Party Pledgor) concerning the Collateral Account. **Notwithstanding the foregoing, however, and irrespective of whether it has received any notice of exclusive control, the Securities Intermediary will not comply with any entitlement order originated by Third Party Pledgor (or by any investment adviser designated by Third Party Pledgor) to withdraw any Financial Assets from the Collateral Account or to pay any money, free credit balance or other amount owing on the Collateral Account, or to trade any Financial Asset that would cause the Collateral in the Collateral Account to not satisfy Bank's requirements (including with respect to the value or type of such Collateral), without the prior consent of the Bank.**
- C. Third Party Pledgor acknowledges that Broker is an intended third party beneficiary of this Section 5 and shall be entitled to rely on it to such degree and with the same force and effect as if Broker were a party to the Pledge Agreement.

## 6. WAIVER OF DEFENSES; THIRD PARTY PLEDGOR ACKNOWLEDGEMENTS

- A. Notwithstanding any provision of this Pledge Agreement, to the fullest extent permitted by applicable law, Third Party Pledgor hereby waives the right to assert any defense that might be available to Third Party Pledgor under law or equity to enforcement of Bank's rights under this Pledge Agreement, including, without limitation, any defense available to a surety or guarantor, and any defense based on any of the following events:

- (1) Bank makes or agrees to a change in any term of the Portfolio Loan Account, such as extending the time for repayment of an Advance, increasing the interest rate applicable to an Advance or increasing the amount of credit extended to Borrower under the PLA Agreement or the Facility Limit;
- (2) Bank releases or exchanges any Collateral or Other Collateral, or Bank does not fully establish or perfect its Security Interest in any Collateral or Other Collateral;
- (3) Bank sells any Collateral or Other Collateral, whether at a public or private sale and whether the purchaser is Bank, an Affiliate of Bank, or another Person;
- (4) a law, regulation, or order of any public authority affects Bank's right with respect to any of the Obligations, Borrower, an Other Obligor, the Collateral or any Other Collateral;
- (5) the absence of any attempt by Bank to collect any of the Obligations from a Borrower, an Other Obligor, the Collateral or any Other Collateral, or the absence of any other enforcement action by Bank with respect to any of the foregoing or the Portfolio Loan Account;
- (6) the disallowance of all or a portion of Bank's claim for repayment of the Obligations under any provision of the United States Bankruptcy Code, any successor statute, or any other law, rule or regulations relating to insolvency or debtor relief;
- (7) Bank delays in enforcing or waives any of its rights under this Pledge Agreement or the PLA Agreement;
- (8) Bank seeks to enforce this Pledge Agreement without first seeking payment from a Borrower or an Other Obligor, or first trying to realize on any Other Collateral;
- (9) Bank fails to notify Third Party Pledgor of any information known to Bank as to a Borrower's financial condition or other circumstances bearing on repayment of the Obligations or the nature, scope and extent of the risks in connection with this Pledge Agreement; or
- (10) Any other act or omission by Bank with respect to the Portfolio Loan Account, a Borrower, an Other Obligor, the Collateral or any Other Collateral. For avoidance of doubt, Third Party Pledgor acknowledges and agrees that none of the events described in this Section 6.A shall affect the rights of Bank or the obligations of Third Party Pledgor under this Pledge Agreement.

B. Third Party Pledgor acknowledges and agrees that:

- (1) Bank has or will provide the Portfolio Loan Account to Borrower and extend credit with respect thereto in reliance on Third Party Pledgor's waivers and agreements in Section 6.A;
- (2) Bank may, in its sole discretion and without notice to Third Party Pledgor, change the initial or any subsequent Facility Limit and determine the amount (if any) of credit to extend Borrower with respect to the Portfolio Loan Account;
- (3) the Obligations secured by the Collateral are not limited to a specified dollar amount (including the initial or any subsequent Facility Limit) and, accordingly, the entire amount of the Collateral may be applied in respect of the Obligations;
- (4) Bank has advised Third Party Pledgor that Third Party Pledgor should seek independent legal advice to protect Third Party Pledgor's own interests (which may be different from those of Borrower) before signing this Pledge Agreement; and
- (5) Bank has no duty to inform Third Party Pledgor at any time of any fact or circumstance relating to Borrower, an Other Obligor, the Collateral, any Other Collateral, or the Portfolio Loan Account, including any prospective or actual failure of Borrower to perform the Obligations.

## 7. BANK ACKNOWLEDGEMENTS

Bank acknowledges and agrees that by executing this Pledge Agreement:

A. Third Party Pledgor is not providing a personal guaranty of performance of the Obligations by any Borrower;

- B. Third Party Pledgor is not personally liable for the Obligations; and
- C. The Obligations shall not be satisfied from any property owned by Third Party Pledgor other than the assets in which Third Party Pledgor grants a Security Interest under this Pledge Agreement.

## **8. WAIVER OF SUBROGATION AND REIMBURSEMENT RIGHTS**

- A. Despite any enforcement of this Pledge Agreement by Bank, Third Party Pledgor unconditionally agrees that Third Party Pledgor will not be entitled to be subrogated to any of the rights of Bank against Borrower, any Other Obligor, or any collateral or security for the Obligations until termination of the Portfolio Loan Account and PLA Agreement and the payment and satisfaction in full, as determined by Bank, of all of the Obligations.
- B. Third Party Pledgor further agrees that Third Party Pledgor will not seek any contribution or reimbursement from Borrower or any Other Obligor, and will not exercise any right or remedy arising by reason of any enforcement by Bank of its rights under this Pledge Agreement against Borrower or any Other Obligor, or any collateral or security for the Obligations, until termination of the Portfolio Loan Account and the PLA Agreement and the payment and satisfaction in full of all of the Obligations.

## **9. REPRESENTATIONS AND WARRANTIES**

Third Party Pledgor represents and warrants to Bank, as of the Effective Date and each Advance on and issuance of a letter of credit under the Portfolio Loan Account, that:

- A. Except for Bank's rights under this Third Party Pledge Agreement, Third Party Pledgor owns the Collateral free of any interest or lien in favor of any third party or any other impediment to transfer;
- B. Third Party Pledgor will not pledge any of the Collateral or grant a security interest in the Collateral to any third party, or permit the Collateral to become subject to any liens or encumbrances (other than Bank's security interest), until the Portfolio Loan Account is terminated and all of Borrower's obligations with respect to the Portfolio Loan Account are paid and performed in full;
- C. Third Party Pledgor: (1) if a natural Person, is of the age of majority in the State in which the Borrower resides; (2) is not an employee benefit plan, as that term is defined by the Employee Retirement Income Security Act of 1974, or an Individual Retirement Account (and none of the Collateral is an asset of a plan or account); and (3) unless Third Party Pledgor advises Bank to the contrary, in writing in connection with this Pledge Agreement, and provides Bank with a letter of approval, where required, from its employer, is not an employee or member of any exchange or of any corporation or firm engaged in the business if dealing, either as a broker or as principal, in securities, bills of exchange, acceptances or other forms of commercial paper;
- D. Third Party Pledgor is authorized to execute and deliver this Pledge Agreement and to perform the Third Party Pledgor's obligations hereunder;
- E. Third Party Pledgor has not filed or recorded any documents or filings relating to assumed business names and Third Party Pledgor does not use any assumed business names;
- F. Third Party Pledgor's execution, delivery and performance of this Pledge Agreement does not conflict with, or result in a violation of, or constitute a default under: (1) any provision of any agreement or other instrument binding upon Third Party Pledgor or the Collateral; or (2) any law, governmental regulation, court decree, or order applicable to Third Party Pledgor or to the Collateral;
- G. This Pledge Agreement constitutes a legal, valid and binding obligation of Third Party Pledgor enforceable against Third Party Pledgor in accordance with the terms hereof;
- H. Third Party Pledgor has not used, or filed a financing statement under, any name other than the name used in this Pledge Agreement for at least the last five (5) years; and
- I. Third Party Pledgor is not insolvent nor will it become insolvent as a result of entering into this Pledge Agreement.

## 10. REMEDIES; LIMITATION OF LIABILITY

- A. Bank shall have all the rights and remedies provided in this Pledge Agreement and the PLA Agreement, and/or available at law, in equity, or otherwise, if Bank does not receive full and complete performance of the Obligations. Except as may be prohibited by applicable law, all of Bank's rights and remedies shall be cumulative and may be exercised singularly or concurrently. Election by Bank to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Borrower shall not affect Bank's right to exercise its rights and remedies.
- B. **Neither Bank nor Morgan Stanley Smith Barney LLC or Morgan Stanley & Co. Incorporated will be liable to Third Party Pledgor or any Person for any special, indirect, consequential or punitive damages arising out of any act or omission by either of them with respect to this Third Party Pledge Agreement, the Portfolio Loan Account, or the Collateral Account.**

## 11. DISPUTE RESOLUTION

- A. **ARBITRATION PROVISION. PLEASE READ THIS ARBITRATION PROVISION CAREFULLY. THIRD PARTY PLEDGOR AGREES THAT ANY PAST, PRESENT OR FUTURE LEGAL DISPUTE OR CLAIM OF ANY KIND, INCLUDING STATUTORY AND COMMON LAW CLAIMS AND CLAIMS FOR EQUITABLE RELIEF, THAT RELATES IN ANY WAY TO THIS PLEDGE AGREEMENT OR THIRD PARTY PLEDGOR'S RELATIONSHIP WITH BANK WILL BE RESOLVED BY BINDING ARBITRATION IF THIRD PARTY PLEDGOR OR BANK ELECTS TO ARBITRATE.**

**Right to Reject Arbitration: Third Party Pledgor may reject this arbitration provision, in which event neither Third Party Pledgor nor Bank will have the right to require arbitration.** Rejection will not affect any other aspect of these terms. To reject the arbitration provision, Third Party Pledgor must send Bank a notice within 60 days after the Portfolio Loan Account is opened. The notice must include Third Party Pledgor's name, address, and account number and be mailed to: Morgan Stanley Bank, N.A., One Utah Center, 201 S Main St, 5th Floor, Salt Lake City, Utah 8411, Attention: Portfolio Loan Account Administration. This is the only method Third Party Pledgor can use to reject the arbitration provision.

As used in this Section 11 "Bank" means Bank and all of its respective parents, subsidiaries, affiliates, predecessors, successors, assigns, employees, officers and directors.

This arbitration provision covers all claims, except that Bank will not elect to arbitrate an individual claim brought by Third Party Pledgor in small claims court or its equivalent if the claim does not exceed five thousand dollars (\$5,000), unless that claim is transferred, removed, or appealed to a different court.

The following describes the arbitration procedure, and its implications:

- **Notice:** If Third Party Pledgor or Bank elects to arbitrate, the other party must be notified. Third Party Pledgor must send notice to Bank at the following address: Morgan Stanley Bank, N.A., One Utah Center, 201 S Main St, 5th Floor, Salt Lake City, Utah 8411, Attention: Portfolio Loan Account Administration. Notice can be given after a lawsuit has been filed, in which case it can be made in papers in the lawsuit.
- **Administrator:** The person who starts the arbitration proceeding must choose an administrator, which can be either the National Arbitration Forum, P.O. Box 50191, Minneapolis, MN 55405, [www.arb-forum.com](http://www.arb-forum.com) (800) 474-2371; or the American Arbitration Association, 335 Madison Avenue, New York NY 10017, [www.adr.org](http://www.adr.org), (800) 778-7879. The actual arbitrator will be selected under the administrator's rules, and must be a lawyer with at least ten years of experience.
- **Applicable Law:** These terms involve interstate commerce and this arbitration provision is governed by the Federal Arbitration Act, 9 U.S.C. §§1 et seq. (the "FAA"). Utah law shall apply to the extent state law is relevant under Section 2 of the FAA in determining the validity of this provision. The arbitrator has to follow: (1) the substantive law, consistent with the FAA, that would apply if the matter had been brought in court; (2) this arbitration provision; and (3) the administrator's rules. The arbitrator is authorized to award remedies that would apply if the individual action were in a court (including, without limitation, punitive damages, which shall be governed by the constitutional standards employed by the U.S. Supreme Court).

- **Location/Fees:** The arbitration will take place in a location reasonably convenient to Third Party Pledgor. If Third Party Pledgor asks Bank, Bank will pay all filing, administrative, hearing and/or other fees the administrator or arbitrator charges up to \$2,500. If the cost is higher, Third Party Pledgor can ask Bank to pay more and Bank will consider Third Party Pledgor's request in good faith. Under all circumstances Bank will pay all amounts Bank is required to pay under applicable law.
- **Judgment/Appeals:** A court may enter judgment upon the arbitrator's award. The arbitrator's decision will be final and binding except for: (1) any appeal right under the FAA; and (2) any party may appeal decisions relating to Claims of more than \$100,000 to a three-arbitrator panel appointed by the administrator, which will reconsider all over again any aspect of the appealed award. If Third Party Pledgor appeals, Bank will consider in good faith a request that Bank pay any additional fees of the administrator or arbitrator.

**IMPORTANT LIMITATIONS AND RESTRICTIONS: IF A CLAIM GOES TO ARBITRATION, NEITHER PARTY WILL HAVE THE RIGHT TO: (1) HAVE A COURT OR A JURY DECIDE THE CLAIM; (2) ENGAGE IN DISCOVERY (I.E., THE RIGHT TO OBTAIN INFORMATION FROM THE OTHER PARTY) TO THE SAME EXTENT THAT THE PARTY COULD IN COURT; (3) PARTICIPATE IN A CLASS ACTION IN COURT OR IN ARBITRATION, EITHER AS A CLASS REPRESENTATIVE OR A CLASS MEMBER; (4) ACT AS A PRIVATE ATTORNEY GENERAL IN COURT OR IN ARBITRATION; OR (5) JOIN OR CONSOLIDATE THE PARTY'S CLAIM(S) WITH CLAIMS OF ANY OTHER PERSON. THE RIGHT TO APPEAL IS MORE LIMITED IN ARBITRATION THAN IN COURT. OTHER RIGHTS THAT THE PARTY WOULD HAVE IF THE PARTY WENT TO COURT MAY ALSO NOT BE AVAILABLE IN ARBITRATION. ONLY A COURT MAY DETERMINE THE VALIDITY AND EFFECT OF PARTS 3, 4 AND 5 OF THIS PARAGRAPH. IF A COURT SHOULD HOLD SUCH PART(S) TO BE INVALID, THEN THE ENTIRE PROVISION SHALL BE NULL AND VOID. HOWEVER, THIS WILL NOT LIMIT THE RIGHT TO APPEAL SUCH HOLDING. IF A COURT SHOULD HOLD ANY OTHER PART(S) OF THIS ARBITRATION PROVISION TO BE INVALID, THE REMAINING PARTS SHALL BE ENFORCEABLE.**

This arbitration provision will survive the termination of the Portfolio Loan Account, and payment and performance in full of all obligations secured by this Pledge Agreement, and will remain in force no matter what happens to Third Party Pledgor or the Portfolio Loan Account. If the administrator's rules conflict with the rules described in this provision, this provision will apply.

- B. Attorneys' Fees; Expenses.** Third Party Pledgor agrees to pay upon demand all of Bank's costs and expenses, including Bank's reasonable attorneys' fees and Bank's legal expenses, incurred in connection with the enforcement of this Pledge Agreement. Bank may hire or pay someone else to help enforce this Pledge Agreement, and Third Party Pledgor shall pay the costs and expenses of such enforcement. Costs and expenses include Bank's reasonable attorneys' fees and legal expenses, whether or not of Bank's salaried employees and whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post judgment collection services. Third Party Pledgor also shall pay all court costs and such additional fees as may be directed by the court.
- C. Bank's Expenditures.** If any action or proceeding is commenced that would materially affect Bank's interest in the Collateral or if Third Party Pledgor fails to comply with any provision of this Pledge Agreement, Bank may (but shall not be obligated to) take any action that Bank deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on any Collateral and paying all costs for insuring, maintaining and preserving any Collateral. All such expenditures incurred or paid by Bank for such purposes will become a part of the Obligations secured by the Collateral and shall bear interest at the rate provided for in the PLA Agreement for a Variable Rate Advance.
- D. Nothing in this Section 11 will be deemed to alter any agreement to arbitrate any controversies that may arise between Third Party Pledgor and Broker, and any claims between Third Party Pledgor and Broker will be arbitrated as provided in any agreement between Third Party Pledgor and Broker.

## 12. MISCELLANEOUS

- A. Notices.** Unless otherwise provided by applicable law, any notice required to be given under this Pledge Agreement or required by law shall be given in writing, and shall be effective when actually received by the

intended recipient. Notices to Third Party Pledgor shall be sent to the address of Third Party Pledgor shown on the Collateral Account records at Broker. Notices to Bank shall be sent to the address in Section 11 or such other address identified by the Bank from time to time.

- B. No Waiver by Bank.** Bank shall not be deemed to have waived any rights under this Pledge Agreement unless such waiver is given in writing and signed by Bank. No delay or omission on the part of Bank in exercising any right shall operate as a waiver of such right or any other right. A waiver by Bank of a provision of this Pledge Agreement shall not prejudice or constitute a waiver of Bank's right otherwise to demand strict compliance with that provision or any other provision of this Pledge Agreement. No prior waiver by Bank nor any course of dealing between Bank and Third Party Pledgor shall constitute a waiver of any of Bank's rights or of any of Third Party Pledgor's obligations as to any future transactions. Whenever the consent of Bank is required under this Pledge Agreement, the granting of such consent by Bank in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Bank.
- C. Assignment.** Bank may assign to one or more Persons all or a portion of its rights and obligations under this Pledge Agreement without notice to, or the consent of, Third Party Pledgor.
- D. Governing Law.** This Pledge Agreement will be governed by, construed and enforced in accordance with federal law and, to the extent state law applies, the laws of the State of Utah, without reference to the choice of law provisions of Utah law.
- E. Fax Delivery.** Delivery of an executed copy of this Pledge Agreement by fax shall be effective as delivery of an original executed copy of this Pledge Agreement.
- F. Severability.** If a court of competent jurisdiction finds any provision of this Third Party Pledge Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Pledge Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Pledge Agreement shall not affect the legality, validity or enforceability of any other provision of this Pledge Agreement.
- G. Interpretation.** Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Pledge Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code enacted in Utah. Accounting words and terms not otherwise defined in this Pledge agreement shall have the meanings assigned to them in accordance with GAP in effect on the Effective Date.
- H. Headings.** Section headings in this Pledge Agreement are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose.
- I. Final Agreement.** This Pledge Agreement constitutes the entire understanding and agreement of the Parties as to the matters set forth in this Pledge Agreement, is the final expression of the agreement between the Parties, and may not be contradicted by evidence of any alleged oral agreement.

Morgan Stanley Bank, N.A.

IN WITNESS WHEREOF, each Third Party Pledgor has executed and delivered this Pledge Agreement to be executed and delivered as of the date written below.

**Third Party Pledgor**

By: Claude Simon  
(SIGNATURE)

11/1/2012  
(Date)

**Third Party Pledgor**

By: \_\_\_\_\_  
(SIGNATURE)

\_\_\_\_\_  
(Date)

CLAUDE SIMON  
(PLEASE PRINT NAME)

\_\_\_\_\_  
(PLEASE PRINT NAME)

SCHEDULE A

**Borrower(s) : 160 MADISON AVE OWNERS CORP**

**Portfolio Loan Account No. : 7540381701**

**Initial Facility Limit : \$ 400,000.00**

**Collateral Account(s) :**

<b>Account Title</b>	<b>Account Number</b>
1) <u>CLAUDE SIMON</u>	<u>052-132424-853</u>

Each Collateral Account is held at Morgan Stanley & Co. Incorporated.