

04/19/2007

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-8109

NAME AND ADDRESS: MK PLAZA TRUST
C/O AMERICAN RESURGENS MANAGEMENT CORP
720 PARK BLVD STE 100
BOISE ID 83712

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.870 CFS
70.600 AFY

PRIORITY DATE: 04/07/1975

POINT OF DIVERSION:

T03N R02E S11 SWSW Lot 5 Within ADA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
INDUSTRIAL	01/01 12/31	0.800 CFS 55.70 AFY
IRRIGATION	03/01 11/15	0.070 CFS 14.90 AFY

PLACE OF USE: IRRIGATION in ADA County

T03N R02E S11 Lot 5 SWSW 0.50 T03N R02E S11 Lot 6 SESW 1.80

T03N R02E S14 Lot 5 NWNW 1.00

INDUSTRIAL in ADA County

T03N R02E S11 Lot 5 SWSW T03N R02E S14 NWNW

3.3 ACRES TOTAL

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

Right includes accomplished change in purpose of use pursuant to Section 42-1425, Idaho Code.

This claim represents an accomplished transfer in purpose of use pursuant to 42-1425, Idaho Code. The change from industrial use to the irrigation of 3.3 acres occurred prior to November 19, 1987 as shown on the affidavit in the file.

There are a total of 8.3 acres of irrigated lawns and landscaping around the commercial buildings on this site. Water right 63-7170 provides for the irrigation of 5 acres. This claim for irrigation represents the additional 3.3 irrigated acres around the buildings.



Idaho Department of Water Resources

SRBA Recommendation:

63-8109

(Irrigation)

Legend

- Point of Diversion
- Place of Use
- Townships
- PLS Sections
- Quarter Quarters



Ada County
IDWR Basin 63



Prepared by S. Egbert
On Thursday, April 19, 2007
1987/88 Aerial Photography

Department of Water Resources

License of Water Right No. 63-8109 Priority April 7, 1975 Amount .87 cfs

THIS IS TO CERTIFY, that EMKAY DEVELOPMENT COMPANY, INC.

Beneficial Use	Period of Use	Rate of Diversion	Annual Volume
Industrial	from January 1 to December 31	at 87 cfs and	70.6 acre feet
	from		
	from		

Subject, however, to the condition that no more than .87 cfs of water be diverted at any one time, and that the amount of water so diverted and to which such right is entitled and confirmed is for the purpose aforementioned and is limited to the amount which can actually be beneficially used and shall not exceed 70.6 acre feet per year, said waters to be diverted within the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 11, Twp. 3N, Rge. 2E, S.M. in the County of Ada

Description and location of place of use:

[illegible]

Total number of acres irrigated _____

Industrial is cooling for air conditioning.

NOTE: Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho Law. This right may be forfeited by five years of non-use.

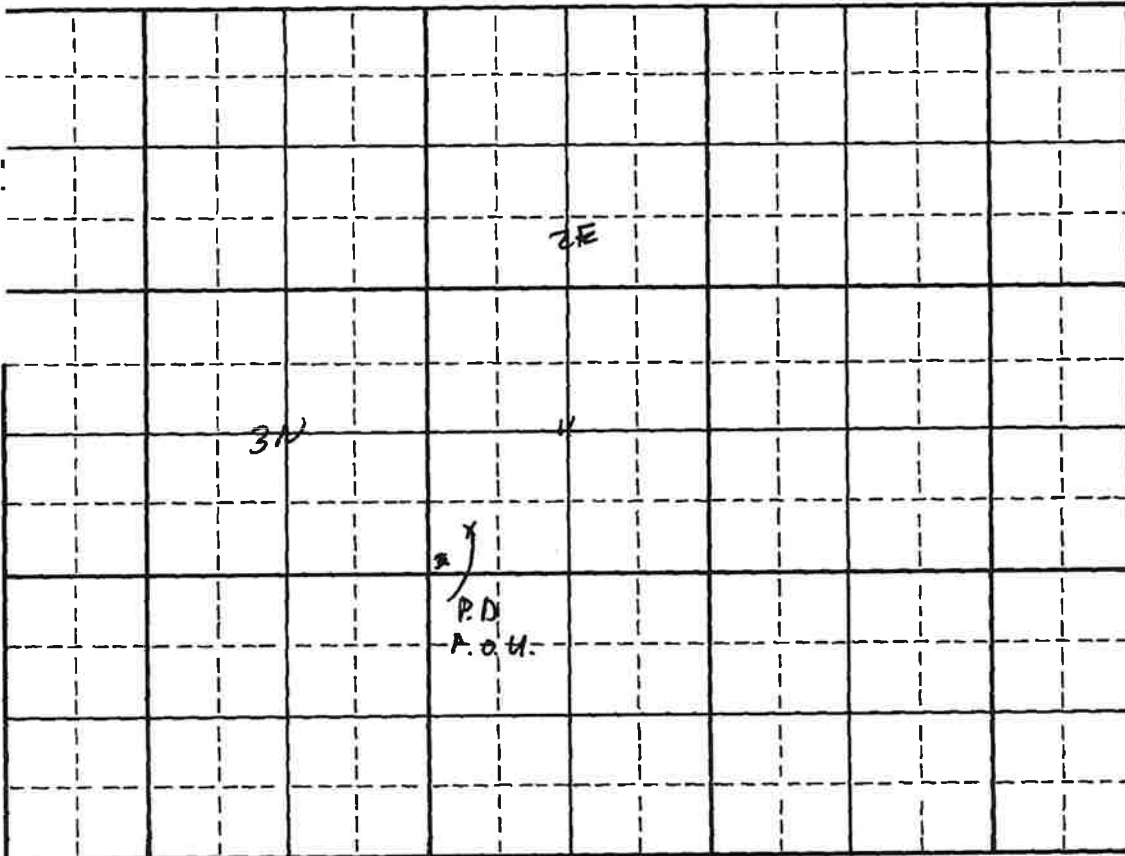
The right to the use of the water hereby confirmed is restricted and appurtenant to the lands or place of use hereinafter described, as provided by the laws of Idaho.

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 26th day of June, 19 81.

Director

SEE ATTACHED MEMO TO FILE DATED 6/25/81 FOR CALCULATION
OF VOLUME USED PER GNUM1 Jim
6/25/81

MAP (Attach Aerial Photo)



SCHEMATIC DIAGRAM OF SYSTEM

(Include distance from pump to measuring device, if applicable.)

Point(s) of diversion: SW SW S. 11 3N 2E

Place(s) of Use

TWP.	RGE.	SEC.	NE%				NW%				SW%				SE%				TOTALS
			NE%	NW%	SW%	SE%	NE%	NW%	SW%	SE%	NE%	NW%	SW%	SE%	NE%	NW%	SW%	SE%	
3N	2E	11											X						

Recommended Amendments:

- ☐ Change P.D. as reflected above
☐ Change P.U. as reflected above

- ☐ Add P.D. as reflected above ☒ None
☐ Add P.U. as reflected above ☐ Other

Examiner's Signature Carl E. Morris

Date 9 Oct 1980

Checked by DBS

Date 10/11/80

Approved by Rolyn

Date 5/21/81

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number 63-8109
Date Received: 11/29/2006
Receipt No: W034918
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

MK PLAZA TRUST Phone: (208)333-2586
C/O AMERICAN RESURGENS MANAGEMENT CORP
720 PARK BLVD STE 100
BOISE ID USA 83712

2. Date of Priority: 04/07/1975

3. Source: GROUND WATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
03N	02E	11	SW SW 5	ADA	

5. Description of diverting works:

MK Plaza 2 well and pump.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	03/15	11/15	0.07	14.9
INDUSTRIAL	01/01	12/31	0.8	55.7

7. Total Quantity Appropriated is:
0.87 C.F.S. and/or 70.6 A.F.A.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4	of 1/4	Lot	Use	Acres
03N	02E	11	SW	SW	5	INDUSTRIAL	
			SW	SW	5	IRRIGATION	0.5
			SE	SW	6	IRRIGATION	1.8
						Section Acres	2.3
03N	02E	14	SE	SW	5	IRRIGATION	1
			SW	SW		INDUSTRIAL	
						Section Acres	1
						Total Acres	3.3

11. Place of use in counties: ADA

12. Do you own the property listed above as place of use? Yes

13. Other Water Rights Used: 63-7170

14. Remarks:

This claim represents an accomplished transfer in purpose of use pursuant to 42-1425, Idaho Code. The change from industrial use to the irrigation of 3.3 acres occurred prior to November 19, 1987 as shown on the attached affidavit.

There are a total of 8.3 acres of irrigated lawns and landscaping around the commercial buildings on this site. Water right 63-7170 provides for the irrigation of 5 acres. This claim for irrigation represents the additional 3.3 irrigated acres around the buildings.

15. Basis of Claim: License

RECEIVED

NOV 29 2006

WATER RESOURCES
WESTERN REGION

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number 63-8109
Date Received: 11-29-06
Receipt No:
Received By: W034918

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

MK Plaza Trust Phone: (208) 333-2586
c/o American Resurgens Management Corp.
720 Park Blvd., Suite 100
Boise, ID 83712

2. Date of Priority: April 7, 1975

3. Source: Ground water Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
03N	02E	11	SW SW 5	Ada	

5. Description of diverting works:

MK Plaza II well and pump

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
Irrigation	03/15	11/15	0.07	14.9
Industrial	01/01	12/31	0.80	55.7

7. Total Quantity Appropriated is: 0.87 cfs

8. Total consumptive use: n/a

9. Non-irrigation uses: Heating and air conditioning system in MK Plaza Building

10. Place of use:

TWP	RNG	SEC	NE ¼				NW ¼				SW ¼				SE ¼				total
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
03N	02E	11											0.5 (L5)	1.8 (L6)					2.3
													I (L5)						
		14						1.0 (L5)					I						1.0

Total number of acres irrigated: 3.3

11. Place of use in counties: Ada

12. Do you own the property listed above as place of use? Yes

13. Other Water Rights Used: 63-7170

14. Remarks: This claim represents an accomplished transfer in purpose of use pursuant to §42-1425, Idaho Code. The change from industrial use to the irrigation of 3.3 acres occurred prior to November 19, 1987 as shown on the attached affidavit.

There are a total of 8.3 acres of irrigated lawns and landscaping around the commercial buildings on this site. Water right 63-7170 provides for the irrigation of 5.0 acres. This claim for irrigation represents the additional 3.3 irrigated acres around the buildings

15. Basis of Claim: License

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not ☒ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: aerial photo of irrigated area

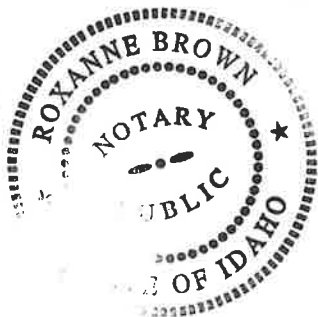
For Organizations:

I do solemnly swear or affirm that I am Project Manager of American Resurgens Mgmt Corp, that I have signed the foregoing document in the space below as Project Manager of American Resurgens Mgmt Corp and that the statements contained in the foregoing document are true and correct.

Tom Houston
Signature of Authorized Agent
Project Manager - American Resurgens Mgmt. Corp.
Title and Organization
11/28/06
Date

State of Idaho)
County of Ada) SS.

Subscribed and sworn (or affirmed) before me this 28th of December 2006.



Roxanne Brown
Notary Public
Residing at Boise, Idaho
My commission Expires 5/11/08

IN THE MATTER OF: Civil Case 39576)
)
Snake River Basin Adjudication)
)
State of Idaho)
)
County of Ada)

AFFIDAVIT

I, Ron Youngblood, have personal knowledge of the wells and water system serving the Washington Group Plaza buildings in Boise, Idaho (see Figure 1).

The MK Plaza I well irrigated 5.0 acres of landscaping at the time it was licensed under 63-7170 (in 1975). The MK Plaza II well was licensed under 63-8109 in 1981. As water needs changed, an additional 3.3 acres of landscaping was planted and irrigated from the MK Plaza II well. I can attest these changes occurred prior to November 19, 1987.


(Signature)

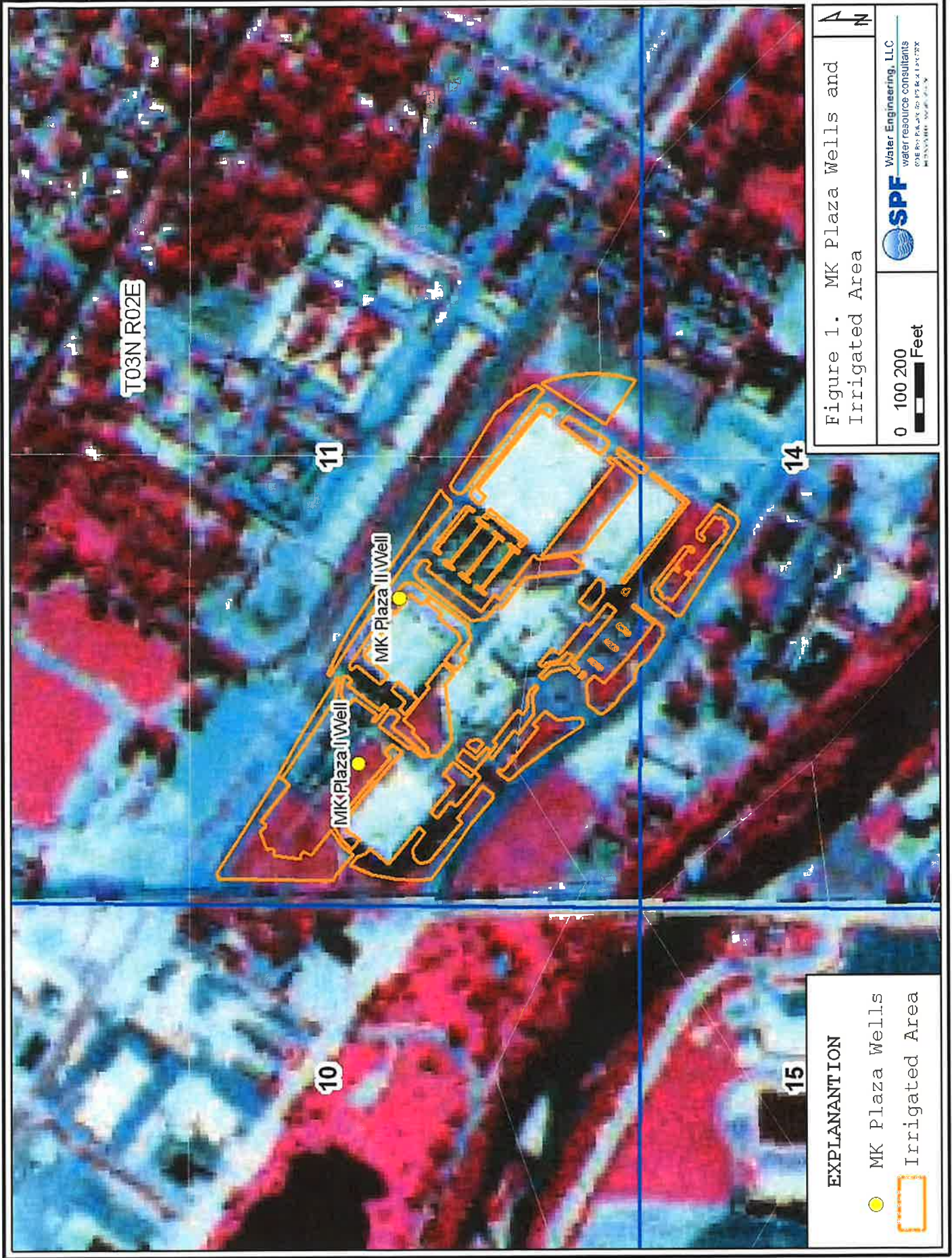
Subscribed and sworn before me this 22 day of November, 2006.




(Signature of Notary)

Residing at Boise Id

My commission expires 12/6/08



MANAGEMENT AGREEMENT

by and between

AMERICAN RESURGENS MANAGEMENT CORP.

and

MK PLAZA TRUST

July 1, 1996

- (ii) receiving tenant proposals for improvements and alterations and tenant requests for supplemental services,
- (iii) maintaining current certificates of required tenant insurance,
- (iv) giving and receiving complaints regarding tenant or landlord performance, and
- (v) taking action with respect to such matters as may be required by the terms of this Agreement or by specific or standing instructions of Owner.
- (vi) Manager shall maintain a plan book of the Project listing all Vacant Space, occupied space and expansion option space and the dimensions thereof, asking rents and proposed tenant improvements to be paid for by Owner, including the estimated cost thereof.

Performance Of Owner's Obligations. Manager shall perform or caused to be performed all duties and obligations of Owner relating to the operation, maintenance, repair, replacement and day-to-day management of the Property so that the Tenant Leases remain in full force and effect and the services required to be provided by Owner under the Tenant Leases are in fact provided. Notwithstanding any provision in this Agreement which may be construed to the contrary, however, Manager shall not be required to perform any of the duties, services or obligations imposed upon Manager under this Agreement unless adequate funds for the same have been provided or made available to Manager by Owner.

3.5 On-Site Property Management.

- (a) General Responsibilities. Manager shall be the exclusive management representative of Owner for the Property, with the exclusive authority to make all

decisions relating to the management, operation and maintenance of the Property, subject to the terms, conditions and limitations herein provided, and shall arrange for and supervise the performance of all duties relating thereto. Manager shall cause the Property to be maintained in such condition as similar properties in the respective geographic area of the Property are maintained, including cleaning, maintenance, repair and replacement of common areas and facilities and maintenance, repair and replacement of building systems and equipment, subject to and in compliance with the terms, conditions and provisions contained in this Agreement, in the Tenant Leases and in the Operative Agreements. In connection with the maintenance and operation of the Property, Manager shall take all reasonable steps, including legal action when authorized by Owner, to enforce all maintenance, service and supply contracts, guarantees, warranties, bonds and other contractual undertakings, if any.

- (b) Collections. Manager shall cause all rents and other sums due from tenants of the Property to be promptly paid. If not timely paid, Owner authorizes Manager to request, demand, collect, receive and give receipts for all rent and other sums due to Owner, and, if specifically instructed to do so by Owner, to institute legal procedures through counsel approved by Owner in the name of Owner to enforce and protect Owner's rights and property in connection therewith.
- (c) Compliance with Governmental Orders. Manager shall cause the Property to comply with any and all laws, orders, rules and regulations affecting the Property of any federal, state, county, municipal or local authorities having jurisdiction thereof, and orders of any board of fire underwriters (or other body exercising similar functions), subject to and in

compliance with the terms, conditions and provisions contained in this Agreement, the Operative Agreements and the Term Loan documents. Manager shall obtain all necessary permits, licenses and other approvals required for Owner by any governmental authority having jurisdiction over the Property, and shall pay any fees associated with such permits, licenses or approvals. In addition, Manager shall use its best efforts to deliver to Owner within ninety (90) days from the date of this Agreement all licenses, certificates of occupancy, and other required certificates and agreements relating to the operation of the Property (other than those set forth on Exhibit B attached hereto and made a part hereof), and maintain complete and up to date files of the same.

(d) Utilities Services and Supplies.

- (1) Subject to the limitations set forth in subparagraphs (2) and (3) of this paragraph (d), Manager shall enter into or renew in the name of the Owner, and shall supervise the performance of, agreements for cleaning, painting, landscaping, maintenance, repair and replacement, vermin extermination, security, electricity, gas, steam, telephone, fuel oil and other services and utilities in connection with the Ownership, operation, leasing of the Property, and shall purchase all necessary maintenance, repair and replacement, cleaning, utility, security and other supplies, materials, equipment, tools and appliances as are necessary to properly maintain and operate the Property. All such agreements for services shall require that the party rendering the services obtain insurance in such amounts and affording such coverages as Owner reasonably requires, and shall require that such party