

**MODERN REAL ESTATE FINANCE AND LAND TRANSFER:
A TRANSACTIONAL APPROACH**

DOCUMENTS MANUAL

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PREFACE

This Documents Manual is to be used in conjunction with MODERN REAL ESTATE FINANCE AND LAND TRANSFER: A TRANSACTIONAL APPROACH by Bender, Hammond, Madison, and Zinman. The purpose of this manual is to provide professors and students with examples of the actual documents used in many real estate transactions. In several instances, students will use these documents to complete the Problems in the main text.

Observe that some of the documents in this manual are not standard forms but are documents that have been used in and tailored to deal-specific transactions and may show the effects of extensive negotiation. These documents have been included for teaching purposes and should not be used as models or prototypes without taking into account the suitability and enforceability of their provisions under local law and the other deal-specific facts of a particular transaction.

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A GLOSSARY OF REAL ESTATE ECONOMIC TERMS*

The following compilation of defined real estate economic terms is provided for both the beginning and the experienced real estate attorney. Having a better understanding of the words should help the lawyer comprehend the transactions behind them more easily:

Absorption The rate at which land or buildings will be sold or leased in the marketplace during a predetermined period of time, usually a month or a year. Also called “market absorption.”

Accelerated Depreciation A method of calculating depreciation in which greater amounts of depreciation are charged off in the earlier years rather than in the later years of the life of the asset. Contrast with “straight-line depreciation.” *See* Straight-Line Depreciation.

Accelerated Clause A clause in a mortgage or trust deed that gives the lender the right to cause the outstanding balance to become immediately due and payable upon the occurrence of a certain event, usually a payment default or the sale of the property.

Accommodation Party One who guarantees the note of another without receiving valuable consideration.

Accrued Interest Interest earned but not yet paid.

Ad Valorem According to value. Used in reference to general property tax, which is usually based on the official valuation of property.

AIREA *See* American Institute of Real Estate Appraisers.

All-Cash Value The price of a property for which a cash payment is made in full upon transfer of title, as opposed to the price for the same property when payment is made in installments after a down payment.

All Inclusive Trust Deed *See* Wraparound Mortgage.

American College of Real Estate Consultants (AREC) A national professional and trade association of individuals involved in real estate consultation, sales, accounting, law, education, finance, and government. Designations include Certified Real Estate Consultant (CREC).

American Institute of Real Estate Appraisers (AIREA) A national professional and trade association of appraisers. Designations include Member Appraisal Institute (MAI) and Residential Member (RM).

American Society of Real Estate Counselors (ASREC) A national professional and trade association of Realtors whose members provide counseling services for a fee rather than for a commission. Affiliated with the **National Association of Realtors**. Designations include Counselor of Real Estate (CRE). *See also* Realtors.

Amortization The liquidation of a financial debt through regular periodic installment payments; for tax purposes, the periodic deduction of capitalized expenses, such as organization costs.

Amortization Schedule A schedule listing the due dates of required payments on a debt obligation and the reduction in principal accompanying each payment. Also called “curtail

*Nellis and McMahan, A Glossary of Real Estate Economic Terms, 3 Prac. Real Estate Law. 7 (Nov. 1987)

schedule.”

Annual Constant Rate *See* Constant.

Annuity An amount payable annually or at other regular intervals that is a part of a series of periodic payments.

Anticipation Theory The real estate theory that the worst property in an area will accrue greater appreciation because it is surrounded by properties of greater value. Often used with reference to houses in specific neighborhoods.

Appraisal The estimation and opinion of value placed on a piece of property by a qualified expert; the process of estimation and the report itself.

Appraiser A qualified person hired to estimate the value of real and personal property.

Appreciation An increase in value.

Assessed Value A valuation (usually a fraction of the market value) placed on property by a public official (usually the tax assessor) as a basis for taxation.

Assumption Agreement An agreement in which a party agrees to assume or take over the obligations originally incurred by another.

Assumption of Mortgage The taking of title to a property by a grantee who assumes liability for the payment of an existing note secured by a trust deed or a mortgage, thereby becoming personally liable for payment of the note and performance of the trust deed or mortgage. Also called “loan assumption.” *See also* **Subject to Mortgage; Substitution of Liability.**

Balloon Payment The last installment payment (whose amount is substantially larger than prior installments) that terminates a debt.

Band of Investment A method of establishing a capitalization rate by determining the percentage of the total rate that relates to each investment return element. For example:

Equity .20 of total investment x .30 earning rate	=	.06
Loan as percent of investment .80 x loan rate .09	=	<u>.072</u>
Capitalization rate, band of investment method	=	.132 or 13.2%

Basis *See* **Tax Basis.**

Basis Points One one-hundredth of one percentage point (.001 %).

Benefit-Cost Analysis *See* **Cost-Benefit Analysis.**

Bid Bond A bond that compensates the owner for the difference between the low bid and the next lowest bid if the low bidder fails to enter into a contract.

Blanket Mortgage A single mortgage that covers two or more parcels of real estate.

Blighted Area An area of seriously declining property values.

Board Foot A unit of measure used for lumber; any combination of thickness, width, and length, using nominal dimensions, that equals 144 cubic inches (*e.g.* 2 x 6 x 12 inches or 1 x 12 x 12 inches).

BOMA *See* **Building Owners and Managers Association International.**

Boot Dissimilar property (or cash) included as part of the consideration in an exchange of real property to compensate for a difference in value.

Breaker In shopping-center leases, the level of tenant sales required for landlords to begin receiving overage rents, taking into consideration minimum rents paid and offsets for tenant expenses, such as taxes and insurance. Often calculated on a square-foot basis. Also called “break point.”

Building Owners and Managers Association International (BOMA) A national trade association of office and apartment building owners and managers.

Burn Off To amortize any front-end payments, such as prepaid interest. *See* **Front-End Money**.

Buyer’s Closing Costs The costs of completing a purchase transaction that are the responsibility of the buyer. *See also* **Proration**.

Buy-Out Estimate An estimate of the total cost of a structure based on the costs of contracts for work that already has been awarded.

Capitalization A process of determining the value of real property in which project income is divided by a predetermined annual rate (capitalization rate). For example, a building with annual project income of \$100,000 is worth \$1,000,000 at a 10 percent capitalization rate ($\$100,000/10\% = \$1,000,000$). *See* **Capitalization Rate**.

Capitalization Rate The rate that is considered a reasonable return on and of investment (on the basis of both the investor’s alternative investment possibilities and the risk of the investment). Used to determine the value of real property through the capitalization process. Also called “free and clear return.” *See* **Capitalization; Return of an Investment; Return on an Investment**.

Carrying Charges Various costs that are incidental to property ownership (*e.g.*, taxes, insurance costs, and maintenance expenses).

Cash Flow Cash received during a certain time period from an investment after all cash operating expenses, debt service, and an allowance for income taxes have been deducted from the gross income. *Cf.* **Equity Income**.

Cash-On-Cash Return *See* **Simple Return**.

Ceiling Price The maximum price that a buyer is willing to pay for a piece of property.

Certificate of Reasonable Value A certificate granted by a federal employee after physical inspection of a property. Required for FHA and VA loans to determine the loan/value ratio.

Commingled Fund A fund of investment capital, normally sponsored by an insurance company or commercial bank, that offers pension and profit-sharing trust accounts an opportunity to invest in real estate equities on a “pooled” basis.

Commitment Fee A fee paid by a potential borrower to a potential lender who agrees to make a loan at some future time. Most often expressed as a percentage of the future loan amount and referred to as “points.” *See* **Points**.

Comparables Recently sold or leased properties similar to a property being appraised. Used in establishing a fair market value under the market approach to value. *See* **Fair Market Value; Market Approach to Value**.

Compensating Balance A percentage of the original principal of a loan that must remain in the borrower’s account. A compensating balance requirement reduces the funds available for use and raises the effective interest rate. *See also* **Link Financing**.

Completed Contract Method A method of reporting income only upon completion of a construction contract. Contrast with the **Percentage of Completion Method**.

Compound (Compound Interest) To provide an interest (or earning) rate on a periodic basis and to periodically add the earnings to the fixed amount already invested. In other words, interest is paid not only on the original investment but also on any amounts added to that original amount through previous interest payments.

Constant The annual payment, including both principal and interest, expressed as a percentage of the total loan value required to amortize a loan in a given period of time at a given rate. For example, the constant required to amortize an eight percent 30-year loan is 8.81. Also called “annual constant rate.”

Construction Costs The costs associated with the improvement of raw land but not including costs of the land, financing, or sales.

Construction Loan A form of interim financing, usually disbursed in installments. Used to finance the actual construction of improvements upon a piece of land. *See* **Gap Financing; Interim Financing; Takeout Loan**.

Consumer Price Index (CPI) An index, published by the federal government, measuring the change in the cost of a variety of goods and services. Often used in loans and purchase agreements to adjust future rent payments or purchase prices for the effects of inflation. Also called “cost-of-living index.”

Contingent Interest Mortgage A mortgage whose interest rate is tied to the economic performance of the property.

Contract Documents Working drawings and specifications indicating to the contractor the exact manner by which a project should be built. *See* **Preliminary Design; Schematic; Specifications; Working Drawings**.

Contractor’s Overhead Costs The costs of construction incurred by a contractor that are not direct costs (*i.e.*, labor or materials), including office expenses and equipment. **Contract Rent** The rental payments stipulated in a lease or rental agreement. *See also* **Economic Rent**.

Conventional Loan A mortgage loan that is privately financed without governmental insurance or guarantees (*i.e.*, a loan other than an FHA or a VA loan).

Correspondent An agent of a financial institution who analyzes and services loans originating in the agent’s local area.

Cost Approach To Value *See* **Replacement Approach to Value**.

Cost-Benefit Analysis An analytic technique that weighs the costs of a proposed project against the expected benefits. Also called “benefit-cost analysis.”

Cost Certification An audited statement required from FHA-insured housing projects.

Cost-Of-Living (COL) Index *See* **Consumer Price Index**.

Cost-Plus-Fixed-Fee Contract A construction contract in which the contractor is reimbursed for actual costs incurred and also receives a predetermined fixed fee, usually used when the exact nature of the project is not known. *See also* **Fixed-Price Contract; Guaranteed-Maximum-Price Contract**.

CPI *See* **Consumer Price Index**.

CPM *See* **Critical Path Method; Institute of Real Estate Management - CPM**.

CRE *See American Society of Real Estate Counselors*

Critical Path Method (CPM) A management tool for scheduling and monitoring construction activity based on the step-by-step breakdown of a job into its component parts, the plotting of sequential relationships, and the time and lead time required for all operations. Can be done manually or with a computer, depending upon the job's complexity. *See also Program Evaluation and Review Technique.*

Crossover Phenomenon The situation that occurs in connection with highly leveraged properties when the increasing principal payments finally exceed the decreasing depreciation and interest charges. From this point on, taxable income will normally exceed cash flow.

Curable Depreciation The deterioration of property due either to physical wearing out or obsolescence. Can and should be corrected by the owner through repair and replacement.

Curtail Schedule *See Amortization Schedule.*

Curtain Walls Exterior walls not providing major structural support, usually composed of glass, aluminum, ceramics, or other light building materials.

DCF *See Discounted Cash Flow.*

Debenture A form of, or another name for, a bond that is not secured by any specific mortgage or lien but rather is based on the credit of the issuing authority.

Debt Service The periodic payments consisting of principal and interest required to amortize a loan. *See also Constant.*

Declining Balance A form of accelerated depreciation that allows the owner to apply a uniform rate to the unrecovered basis in the property. The rate used cannot exceed double the straight-line rate, and the property cannot be depreciated below its salvage value. For example, a property with an economic life of 50 years would have a straight-line depreciation rate of two percent. Assuming a depreciable basis of \$100,000, the maximum annual depreciation using the declining balance method would be as shown in the following table:

<i>Year</i>	<i>Rate(%)</i>		<i>Unrecovered Basis</i>	<i>Annual Depreciation</i>
1	4	x	\$100,000	\$4,000
2	4	x	96,000	3,840
3	4	x	92,160	3,686
4	4	x	88,474	3,539
5	4	x	84,935	3,397

The same approach can be used in calculating depreciation at lesser multiples of straight-line depreciation such as 125 percent or 150 percent. *See Accelerated Depreciation.*

Deep Shelter Tax shelter in excess of project income used to offset taxable income from other sources. Generally produced by deducting expense items associated with future income production (*e.g.*, accelerated depreciation or prepaid interest) or construction period write-offs of property taxes and interest. Its use is severely restricted by recent tax legislation.

Deferred Maintenance Maintenance or repair of property that is postponed or neglected.

Deficit Financing Financing arranged when the net income from a piece of income property is not sufficient to cover the costs of financing the purchase.

Demography The statistical study of the characteristics of populations, such as size, distribution, density, age, and income.

Depreciation In real terms, a loss in the usefulness, and therefore value, of an asset. Most commonly used to describe a tax-deductible expense (although not cash expenditure) that is intended to approximate the actual loss in usefulness overtime. *See also Accelerated Depreciation; Straight-Line Depreciation.*

Design Efficiency The trade-off between a more merchandisable product and higher costs of structural construction; the analysis needed to achieve the highest ratio of net rentable area to gross building area. *See Gross Building Area; Net Rentable Area.*

Deterioration A decrease in the value of property due to wear and tear.

Discount Assuming assets to be received in the future will have values lower than in the present, a discount is an estimate of the value today of a single amount or a series of periodic amounts to be received at a known time in the future. The difference between the current and future values of the asset is expressed as a percentage, also known as the “discount rate;” the sale of a note for less than its face value, thus providing an interest rate to the buyer that is higher than the stated rate.

Discounted Cash Flow (DCF) A method of analyzing investment opportunities by which future cash flows are discounted and cumulated to arrive at their net present value or internal rate of return. *See Internal Rate of Return; Net Present Value; Present Value.*

Disintermediation The removal of funds by savers from financial intermediaries (e.g., savings and loan associations, banks) for direct investment in financial instruments (government and corporate bonds). Occurs when the interest rates available on direct investments are significantly higher than the return offered by the financial intermediaries.

Economic Life The period over which a property will return a profit sufficient to justify its continued operation.

Economic Obsolescence The decline in a property’s value caused by external forces, such as zoning changes or the decline of the neighborhood. *See also Functional Obsolescence; Physical Obsolescence.*

Economic Rent The fair market rent that a property would earn at a particular point in time, usually during an appraisal. *See also Contract Rent.*

Effective Gross Revenue The actual rental receipts that a project receives; in pro forma statements, the amount of gross revenue after deducting an allowance for anticipated vacancy. Also called “gross receipts.” *See also Gross Revenue; Vacancy Factor.*

Effective Second Lien The difference between the amount of an all-inclusive trust deed (or wraparound mortgage) and the underlying first lien. *See Wraparound Mortgage.*

Equity The value of one’s interest in a property, consisting of its fair market value less any outstanding debt or other encumbrances.

Equity Income The amount of pretax cash accruing to equity investors. Calculated by subtracting monthly or annual debt service from project income for a similar period. Also called “net spendable income,” “pretax cash flow,” and “spendable income.”

Equity Kicker *See Equity Participation.*

Equity Participation The participation by a lender in the equity ownership of a project as one of the conditions for granting a loan. Used by financial institutions to partially offset the effects

of inflation. Also called “equity kicker.”

Escalation Clause *See Escalator Clause.*

Escalator Clause A clause in a lease or note that provides for an increase or decrease in rent or interest under specified conditions, such as changes in certain price or interest rate indices. Also called “escalation clause.”

Estoppel Certificate A statement concerning the status of an agreement and the performance of obligations under the agreement relied upon by a third party, including a prospective lender or purchaser; in the context of a lease, a statement by a tenant identifying that the lease is in effect and certifying that no rent has been prepaid and that there are no outstanding defaults by the landlord (except those specified).

Exculpatory Provision A provision in an agreement that frees a party from blame or recourse in the event of a default.

Expense Stop Provision in a lease establishing the maximum level of operating expense(s) to be paid by the landlord. Expenses beyond this level are to be reimbursed by the tenant. May be applied to specific expenses only (e.g., property taxes or insurance).

Extended First Mortgage *See Wraparound Mortgage.*

Fair Market Value The price that a certain piece of property would sell for, provided that both the buyer and the seller were knowledgeable, willing, and under no abnormal pressures and had a reasonable amount of time to complete the transaction. Also called “market value.”

Fannie Mae *See Federal National Mortgage Association.*

FAR *See Floor/Area Ratio.*

FDIC *See Federal Deposit Insurance Corporation.*

Feasibility Study An analysis to determine the desirability of proceeding with a proposed project.

Federal Deposit Insurance Corporation (FDIC) The federal agency created to insure deposits in federally chartered and state-chartered banks. ...

Federal Home Loan Bank A federal organization of 12 regional banks created in 1932 to provide short- and long-term credit to member savings and loan associations and similar institutions in connection with their home mortgage lending activities. [The Federal Home Loan Bank System was abolished under the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and its functions absorbed into the Department of the Treasury.]

Federal Home Loan Mortgage Corporation (FHLMC) A corporation established by the Federal Home Loan Bank to issue mortgage-backed securities. Nicknamed “Freddie Mac.”

Federal Housing Administration (FHA) The agency within the U.S. Department of Housing and Urban Development (HUD) that insures certain loans that qualify under FHA programs.

Federal National Mortgage Association (FNMA) A quasi-governmental corporation authorized to sell debentures to supplement private mortgage funds by buying and selling FHA and VA loans at market prices. Nicknamed “Fannie Mae.”

Federal Savings and Loan Insurance Corporation (FSLIC) The federal agency created to insure deposits in federally chartered and state-chartered savings and loan associations. [FSLIC was abolished under the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and its functions transferred to the Federal Deposit Insurance Corporation.]

FHA *See Federal Housing Administration.*

FHLMC *See* **Federal Home Loan Mortgage Corporation.**

Filtration Theory A theory of housing markets that suggests that housing purchased by higher-income households “frees up” housing for lower-income households and that this process “filters down” to successively lower economic groups.

Finance Costs The costs associated with financing a property, usually interest and loan fees.

Financial Intermediary An institution that acts as an intermediary between borrowers and savers by selling its own obligations to lend the accumulated funds to borrowers. Includes savings and loan associations, credit unions, mutual savings banks, and life insurance companies.

Fixed Disbursement Schedule A schedule agreed upon by a borrower and a lender releasing construction loan funds at specified periods. *See also* **Voucher System.**

Fixed-Price Contract A type of construction agreement in which the price to be paid is fixed before the fact and the contractor assumes the risk of cost increases. *See also* **Cost-Plus-Fixed-Fee Contract; Guaranteed-Maximum-Price Contract.**

Flip Mortgage A form of graduated-payment mortgage that allows the borrower to place all or a portion of his or her down payment in a savings account, with principal and interest used to supplement lower mortgage payments in the earlier years. *See* **Graduated-Payment Mortgage.**

Floating Capital A firm’s investment in current assets, such as inventory and accounts receivable.

Floor/Area Ratio (FAR) The ratio of the bulk area of a building to the land on which it is situated. Calculated by dividing the total square footage in the building by the square footage of land area. For example, a 500,000-square-foot building on a 50,000-square-foot land parcel would have an FAR of 10.0X. Often used by public agencies in regulating high-rise development.

Floor Price The minimum price that an owner will sell a piece of property for. Also called “reservation price.”

FNMA *See* **Federal National Mortgage Association.**

Freddie Mac *See* **Federal Home Loan Mortgage Corporation.**

Free and Clear Income *See* **Project Income.**

Free and Clear Property Real property that is free of any encumbrances.

Free and Clear Return *See* **Capitalization Rate.**

Frontage The side of a lot facing a street or body of water.

Front-End Money The capital used for the predevelopment expenses of initiating a project. Also called “seed money.”

Front-End Foot A unit of linear measure, usually used in connection with the frontage of a parcel along a prestigious street or water amenity (e.g., a beach, river; or lake). In these situations land prices may be stated in terms of front feet rather than square feet. *See* **Square Foot.**

FSLIC *See* **Federal Savings and Loan Insurance Corporation.**

Fully Amortized Mortgage A mortgage loan requiring constant monthly, quarterly, semi-annual, or annual payments, composed of both interest and principal, so that the principal is fully amortized over the term of the mortgage. Also called “self-liquidating mortgage.” *See also*

Interest-Only Mortgage; Partially Amortized Mortgage.

Functional Obsolescence A loss in usefulness, and hence in value, of an asset due to technological changes and improvements of newer models. *See also* **Economic Obsolescence;**

Physical Obsolescence

Gap Financing A type of interim financing used to fund the “gap” between a loan being offered and another loan of a lesser amount. May be needed, for example, when a permanent loan paying off a construction loan is only partially disbursed until a minimum occupancy level required by the permanent lender is reached. *See* **Construction Loan; Interim Financing; Permanent Financing.**

General Contractor One who supervises the construction of a structure under terms specified by the owner. The construction may be carried out by the general contractor’s employees and may be subcontracted.

Gentrification The movement of middle and upper class (generally white) households into older, deteriorating central city residential neighborhoods, often displacing poorer (generally black) households.

Ginnie Mae *See* **Government National Mortgage Association.**

GLA *See* **Gross Leasable Area.**

GNMA *See* **Government National Mortgage Association.**

Goodwill An intangible business asset that exists when the value of a business as a going concern exceeds the liquidation value of the individual assets.

Government National Mortgage Association (GNMA) The agency within the U.S. Department of Housing and Urban Development (HUD) that purchases obligations of the federal government (such as FHA-insured mortgages) to provide a secondary market for these securities. Nicknamed “Ginnie Mae.”

Graduated Lease A lease, usually long-term, whose rental payments vary over time, either according to a predetermined schedule or in concert with changes in an index, such as the consumer price index. *See* **Consumer Price Index.**

Graduated-Payment Mortgage A mortgage whose initial payments are lower than later payments (the payments rise as the borrower’s income increases). *See also* **Flip Mortgage.**

GRM *See* **Gross Rent Multiplier.**

Gross Building Area The total area of a building expressed in square feet.

Gross Income *See* **Gross Revenue.**

Gross Leasable Area (GLA) The total area for which a tenant pays rent; that area designated for the exclusive use and occupancy of the tenant. Measured from the face of outside walls and the center of joint walls and expressed in square feet. Used primarily in connection with shopping centers.

Gross Lease A lease agreement in which the lessor (landlord) pays all maintenance costs, taxes, and utilities. *See also* **Net Lease.**

Gross Receipts *See* **Effective Gross Revenue.**

Gross Rent Multiplier (GRM) A rough method of appraising residential income property. Effective gross revenue is multiplied by a certain commonly used number (*e.g.* revenue = \$100,000 x 7.0 = \$700,000).

Gross Revenue The total rental receipts that would be collected at scheduled rental rates and 100 percent occupancy. Also called “gross income” and “scheduled gross revenue.” *See also* **Effective Gross Revenue; Vacancy Factor.**

Ground Lease A lease of land only, with the lease sometimes secured by the improvements installed by the lessee. Also called “land lease.”

Ground Rent That part of the total earnings of improved property credited to the land after a proper amount of earnings has been allocated to the improvements; rent payable under a ground lease.

Guaranteed-Maximum-Price Contract A construction contract in which the owner pays only for actual costs incurred plus the contractor’s profit within a maximum-price guarantee. The contractor absorbs any loss and shares in any savings with the owner. *See also* **Cost-Plus-Fixed-Fee Contract; Fixed-Price Contract.**

Hard-Dollar Equivalents The sum of hard dollars invested plus the portion of soft money that cannot be used as a tax shield.

Hard Dollars The actual cash proceeds from a loan that are given to the seller; the portion of equity investment that is not tax deductible in the first year. *See also* **Soft Dollars.**

Highest and Best Use That use of property that will provide the greatest economic return over time.

Hundred Percent Location The best available location in a given community from the viewpoint of attracting business.

HVAC Heating, ventilating, and air-conditioning equipment used in a building.

Impounds Often required payments that are made directly to a lender in addition to principal and interest. Used to pay property taxes, insurance premiums, and other related expenses.

Imputation of Interest The attribution under the Internal Revenue Code of seven percent interest to any arrangement in which the seller of a property receives payment of the purchase price on a deferred basis at no specified interest or interest specified at less than six percent per annum.

Income Approach to Value A method of appraising real property by which annual project income is capitalized to arrive at market value. *See also* **Market Approach to Value;**

Replacement Approach to Value.

Income Property Any real property that produces a monetary income for the owner from the leasing of space. Contrast with sale property. *See* **Sale Property.**

Incurable Depreciation Functional or economic obsolescence or physical deterioration that is either physically impossible or economically infeasible to correct.

Indirect Costs Development costs other than direct material or direct labor costs, including administrative and office expenses, financing costs, and property taxes.

Industrial Development Bond A municipal or tax-exempt bond whose proceeds are used to construct industrial facilities.

Institute of Real Estate Management (IREM) A professional and trade association of real property managers. Affiliated with the National Association of Realtors. Designations include Certified Property Manager (CPM) (individuals) and Accredited Management Organization (AMO) (firms).

Interest-Only Mortgage A mortgage loan requiring only interest payments during its term. A balloon payment is required at the termination of the loan to pay off the principal. Also called “standing mortgage” and “straight-term mortgage.” *See also* **Fully Amortized Mortgage; Partially Amortized Mortgage.**

Interest Rate A percentage of a sum of money, paid or charged for its use, usually expressed for a one-year period.

Interim Financing Short-term financing, usually used during construction, that is paid off with the proceeds from permanent financing when the building is completed and in operation. *See Construction Loan; Gap Financing; Permanent Financing.*

Internal Rate of Return (IROR) A discounted cash-flow technique by which investment outlays and fixture cash flows are discounted by a series of present-value factors, in a trial-and-error process, to arrive at that discount rate that most nearly reduces the net present value to zero. Also called the “yield method.” *See Discounted Cash Flow; Net Present Value; Present Value; Target Rate of Return.*

Intrinsic Locational Value That value associated with a parcel of land as a result of its good siting, particular soils or mineral deposits, or a favorable exposure to the sun. Contrast with **Relative Locational Value.**

Investment Credit A credit against the federal income tax that is allowed for the purchase of certain tangible personal property and certain other property acquired and placed in service by a business. Used as public policy to encourage business investments in certain types of assets.

Involuntary Lien Any lien (usually mechanic’s, tax, or judgment liens) placed against a property without the consent of the owner. *See also Voluntary Lien.*

IREM *See Institute of Real Estate Management.*

IROR *See Internal Rate of Return.*

Kicker The additional money paid to a lender or landlord over and above the fixed interest or rent. Usually based on a percentage of gross receipts, cash flow above a certain minimum level, or a percentage of equity ownership. *See also Equity Participation.*

Land Banking A practice, more common in Europe, in which public agencies purchase private land to be “banked” for future public use or for lease or sale to private developers, with the public agency benefiting from the appreciation in property value; a financial arrangement whereby a lending institution pays cash for a piece of property but gives the seller an option to repurchase the property at a later date.

Land Lease *See Ground Lease.*

Land Loan A loan subordinate to the construction loan used to finance the purchase of the land.

Land Residual Process A method used in appraising land by which an annual return is imputed to the improvements and then is deducted from project income. The “residual” is then capitalized to arrive at a land value.

Leaseback A situation in which a tenant agrees to lease real property for a certain period of time, usually structured in such a manner that the rent will pay off the mortgage and the lessor will own the property free and clear at the end of the lease period. *See also Sale-Leaseback.*

Leasehold Mortgage A mortgage executed by a tenant and secured by his or her leasehold interest.

Letter Of Credit An instrument, usually issued by a bank, authorizing a named person to draw a specified amount of money on the issuer bank.

Leverage The use of another’s money (usually a financial institution) for a portion of the costs of purchasing or developing a real estate investment. *See Negative Leverage; Positive Leverage.*

Link Financing The additional financing needed to cover a compensating balance requirement. For example, a 20 percent compensating balance requirement coupled with a need for \$1,000 in spendable funds would necessitate link financing of \$250 in addition to the original \$1,000. *See Compensating Balance.*

Liquidation Value The price a property would bring under conditions of forced sale less all costs associated with the liquidation process.

Liquidity The cash position or state of having cash available for use, usually measured by cash on hand and cash equivalents or securities that can be readily converted into cash at no loss in value.

Loan Assumption *See Assumption of Mortgage.*

Loan Constant *See Constant.*

Loan Fee A fee or charge in addition to the required interest made for negotiating a loan (*e.g.*, points). *See Points.*

Loan to Facilitate A loan with especially favorable terms made by a lender to encourage the purchase of real estate repossessed by the lender.

Lock-In Clause A clause in a mortgage or land contract that prohibits the prepayment of the indebtedness for a predetermined period of time.

Lump-Sum Contract A construction contract requiring the contractor to complete the building for a specified amount, which usually was established by competitive bidding. The contractor absorbs any loss or retains any profit.

MAI *See American Institute of Real Estate Appraisers. See also Society of Real Estate Appraisers.*

Margin of Security The difference between the appraised value of a property and the outstanding mortgage loans.

Marketability Study *See Market Study.*

Market Absorption *See Absorption.*

Market Approach to Value A method of appraising real property by which the subject site is compared with several similar surrounding properties that were recently sold or leased. An appraised value is estimated by compensating for different sizes and conditions. *See also Income Approach to Value; Replacement Approach to Value.*

Market Area *See Primary Market Area.*

Market Capture The anticipated percentage of market demand in the trade or market area that a certain project is expected to receive. Also called “market penetration.”

Market Indicators Statistical measures of activity in construction and real estate activity, including issued permits, indices of building costs, deeds recorded, and homes for sale.

Market Penetration *See Market Capture.*

Market Study A forecast of fixture demand for a type of project along with recommendations as to quantity to be sold or leased and prices to be charged. Also called “marketability study.”

Market Value *See Fair Market Value.*

Microanalysis Technique A method of analyzing retail demand by which the trade area is divided into a series of small units (*e.g.*, blocks or neighborhoods). The potential business from each of these units is then calculated and distributed judgmentally among the various stores in the trade area. Any potential that cannot be distributed is assumed to be available to the proposed

store or center.

Mixed-Use Building A building in which space is provided for more than one land use (*e.g.*, an apartment building with office space, a hotel with office space, or a retail establishment with apartments).

Moratorium A legal delay in the requirement to meet a debt payment; the temporary suspension of an activity.

Mortgage-Backed Bonds Securities resembling bonds with fixed, contractual interest and principal payments backed by a pool of mortgages held by the issuer of the securities. *See also Mortgage-Backed Certificates.*

Mortgage-Backed Certificates Securities that represent an investment in a pool of mortgages held by the issuer of the securities in which the actual yield on the mortgages is “passed through” to the investor less a service charge by the issuing institution. Foreclosure losses are passed through as well, although these are generally insured through private mortgage insurance. Issued by Ginnie Mae (FHA mortgages), Freddie Mac (VA mortgages), and financial institutions (conventional mortgages). Also called “passthrough mortgage certificates.” *See also Mortgage-Backed Bonds.*

Mortgage Banker A person or firm whose activities range from personal investment in mortgage loans to the administration and servicing of mortgage loans for other lenders as well as property management and mortgage brokerage.

Mortgage Broker One who brings borrowers and lenders of mortgage money together, for a commission, without the commitment of personal funds.

Mortgage Guarantee Insurance *See Private Mortgage Insurance.*

Mortgage Insurance Premium The fee paid by the borrower of funds for insurance issued by the FHA in favor of the lender.

Mortgage Release Price A stipulated sum indicated in the release clause of a mortgage or trust deed, the payment of which permits the partial reconveyance of a portion of the encumbered property. *See Partial Reconveyance; Release Clause.*

Mortgaging Out Obtaining 100 percent debt financing or more in the purchase or development of a property.

Mutual Mortgage Insurance The system by which all mortgage insurance premiums under FHA loans are pooled and, if the FHA’s overall losses have been low, the borrower may receive a partial refund of premiums after the loan is paid off.

NACORE *See National Association of Corporate Real Estate Executives.*

NAR *See National Association of Realtors.*

NAREIT *See National Association of Real Estate Investment Trusts.*

National Association of Corporate Real Estate Executives (NACORE) A national professional and trade association of individuals employed by industrial, utility, or retail corporations to manage corporate real estate assets.

National Association of Real Estate Boards *See National Association of Realtors.*

National Association of Real Estate Investment Trusts (NAREIT) A national trade association of real estate investment trusts, corporations, partnerships, or individuals that manage and/or advise real estate investment trusts.

National Association of Realtors A national federation of state and local real estate board associations. Formerly the National Association of Real Estate Boards. Designations include Realtor and Realtor-Associate.

Negative Cash Flow A situation that occurs when the cash income generated by a property is less than the cash expenditures to operate the property and service the mortgage.

Negative Leverage A situation that exists when the simple return on a real estate investment is less with the use of debt financing than it would be on a free and clear basis. This occurs when the loan constant is higher than the capitalization rate. Also called “reverse leverage.” *See Leverage; Positive Leverage.*

Negotiable Instrument A check or promissory note meeting certain legal requirements that can be assigned or transferred in the ordinary course of business.

Net Leasable Area *See Net Rentable Area.*

Net Lease A lease agreement in which the lessee pays certain costs associated with a leased property, including property taxes, insurance premiums, and the cost of repairs, utilities, and maintenance, in addition to rent. There are also “net-net” (double net) and “net-net-net” (triple net) leases, depending upon the degree to which the lessee is responsible for operating costs. *See also Gross Lease.*

Net Leased Area *See Net Rented Area.*

Net Listing A listing in which the seller specifies the net price that must be received from the sale. The broker’s commission is the amount over and above the net listing price for which the broker is able to sell the property.

Net Occupied Area The total area actually occupied by tenants, measured in square feet. May be less than the net rented area.

Net Operating Income (NOI) *See Project Income.*

Net Present Value A discounted cash-flow technique by which investment outlays and future cash flows are discounted by a predetermined present-value factor to arrive at the net present value. The present-value factor used may reflect a “riskless” rate of return (Government bonds), the cost of internal capital (opportunity rate), or a “target” or “hurdle” rate that incorporates some assessment of risk. *See Discounted Cash Flow; Internal Rate of Return; Present Value; Target Rate of Return.*

Net Realizable Value The net selling price of a property, consisting of its fair market value less the costs of its disposition. *See Fair Market Value.*

Net Spendable Income *See Income.*

Net Spendable Return *See Simple Return.*

NOI *See Project Income.*

Nominal Interest Rate The interest rate as stated in a loan agreement.

Nonrecourse Note A mortgage loan for which the borrower has no personal liability. The lender’s only remedy in the event of default is foreclosure of the mortgage against the property. Also called “in-rem note.” *See also Recourse; Recourse Note.*

Nonspecified Asset Fund A real estate syndication through which funds are raised without having specific properties committed for investment. Also called “blind pool.” *See also Specified Asset Fund.*

Obsolescence A loss of value or usefulness due to physical, economic, or other changes. *See also Economic Obsolescence; Functional Obsolescence; Physical Obsolescence.*

Off-Site Construction Construction of major building components at a place other than the building site where they will ultimately be utilized. Used with modular housing and precast panels.

Off-Site Costs The costs of land development that are not directly related to building construction, such as the costs of streets, sidewalks, and sewer and utility connections.

On-Site Costs The costs of land development that are directly related to building construction.

Open-End Mortgage A mortgage that secures and permits additional advances by the lender in the future, provided that certain conditions are met (*e.g.*, that the building is leased to a certain level of occupancy).

Ordinary Income Any income that is subject to taxes at the full or ordinary rate rather than at a more favorable rate.

Overimprovement Any improvement on land that does not represent the highest and best use of the land because of the excessive size or cost of the improvement, particularly in comparison with improvements on similar properties.

Packaging The preliminary analysis involved in developing a new project, including initial market research, site evaluation, land acquisition, design and planning, and financing.

Parking Index The figure representing the number of parking spaces available per 1,000 square feet of GLA. Used primarily in retail commercial projects.

Partially Amortized Mortgage A mortgage loan that requires only periodic partial principal payments at selected points during the term of the mortgage. Interest payments are due on a scheduled basis; the balance of principal is due at the end of the term. *See also Fully Amortized Mortgage; Interest-Only Mortgage.*

Partial Reconveyance The release from the lien of a mortgage or trust deed of only a portion of the encumbered property, in conformity with the terms and conditions contained in a release clause in the mortgage or trust deed. Negotiated in exchange for payment of a portion of the debt (mortgage release price). *See also Mortgage Release Price; Release Clause.*

Participation Loan A loan made by one institution in which one or more other institutions have purchased an interest; a loan in which the mortgagee has an equity interest.

Passive Investor One who invests capital but does not participate in the management of the property. *See also Limited Partnership.*

Pass Through To pass income (losses) directly through to the owners of an entity without the entity being taxed. Partnerships and REITS are examples of pass-through vehicles. *See Partnership; Real Estate Investment Trust.*

Pass-Through Mortgage Certificate *See Mortgage-Backed Certificate.*

Payback A method of evaluating investment opportunities by which the annual cash flow generated is divided into the equity investment to determine the number of years required for a return of the funds invested.

Percentage Lease A lease of property in which the rental is calculated as a percentage of sales. The lessor is usually protected by the provision for a minimum rent if sales are below some level.

Percentage of Completion Method A method of recording income from construction that involves finding the ratio of incurred costs to total estimated costs and recording that percentage

of total project income. *See also* **Completed Contract Method**.

Performance Bond A bond guaranteeing the owner that the bonding company will complete construction if the contractor defaults. The cost is usually one to two percent of total construction cost and is normally borne by the contractor. Also called “completion bond.”

Permanent Financing Long-term financing on projects that have been completed and are in operation. *See also* **Interim Financing; Takeout Loan**.

Personal Services Services usually purchased in a nondiscriminatory fashion at the most convenient place available (*e.g.* laundry and dry cleaning, shoe repairs, and barbering). *See also* **Specialized Services**.

Physical Obsolescence The decline in value of an asset due to wear and tear, use, and action of the elements. *See also* **Economic Obsolescence; Functional Obsolescence**.

PMI *See* **Private Mortgage Insurance**.

Points A one time fee charged for making a loan or a deduction from the nominal amount of a discounted loan. One point equals one percent of the total loan.

Positive Leverage A situation that exists when the simple return on a real estate investment is higher with the use of debt financing than it would be on a free and clear basis. Occurs when the loan constant is lower than the capitalization rate. *See* **Leverage; Negative Leverage**.

Preliminary Design A step in the project planning and design process during which specific dimensions and volumes are established in the form of “hard- line” drawings. *See also* **Contract Documents; Schematic**.

Prepayment Penalty A penalty, usually an additional monetary sum as specified in a note, for the early payoff of that note.

Prepayment Privilege The right of a borrower to prepay, with or without penalty, all or part of a note. Must be specified in the note and may require prior notice to the lender.

Present Value The present value of a sum of money to be received in the future. Calculated by discounting those future cash flows at some discount rate. *See* **Discounted Cash Flow; Internal Rate of Return; Net Present Value**.

Pretax Cash Flow *See* **Equity Income**.

Price Takeoff Method *See* **Quantity Survey**.

Primary Financing An unsubordinated loan for real property that is secured by a first mortgage or trust deed.

Primary Market Area The geographic area surrounding a site from which it will draw the major portion of demand for various land uses, generally residential or retail. Also called “market area.”

Principal The original amount or balance of a loan, not including interest; also a direct investor (as opposed to an agent).

Private Mortgage Insurance (PMI) The insurance by private companies of the top 20 to 25 percent of a mortgage loan, up to 95 percent of face value. Also called “mortgage guarantee insurance.”

Pro Forma Statement A projection of the annual income, expenses, and resulting cash flows expected from the operation of an investment.

Program Evaluation and Review Technique (PERT) A computerized management tool for planning and scheduling that was developed for the Polaris program. Uses the CPM network and

a number of statistical techniques. See **Critical Path Method**.

Progress Payments Payments from a construction loan made to a contractor on a periodic basis according to the progress of the construction project. Interest accrues only on the portion of the loan that has been paid out under this arrangement rather than on the entire loan amount committed.

Project Income The gross income from a real estate project, less operating costs and an allowance for anticipated vacancy. Also called “free and clear income” and “net operating income (NOI).”

Propensity to Consume The innate tendency to use or consume a certain proportion of one’s income; the relationship between consumption and income.

Proprietary Lease A lease issued to a shareholder in a cooperative providing for long-term occupancy, with some restrictions on the resale of shares to another.

Purchase Money Mortgage A mortgage given to the seller of a property by the purchaser. Thus the seller is the lender, and the purchaser is the borrower. Also called “mortgage takeback.”

Quantity Survey A detailed method of estimating construction costs by which precise quantities of materials and labor are priced at current and forecasted unit construction costs. Also called “price takeoff method.”

Real Estate Owned (REO) Property held in inventory by a lending institution as a result of foreclosure.

Realtor A real estate broker who is an active member of a local real estate board affiliated with the National Association of Realtors. See **National Association of Realtors**.

Recapture That portion of the gain from the sale of real estate that is taxed at ordinary income tax rates. Calculated as the difference between the accelerated depreciation taken and the straight-line depreciation that would have been allowed.

Recourse The exposure of a borrower to personal liability on a debt as well as the loss of property pledged as security. See also **Nonrecourse Note; Recourse Note**.

Recourse Note A note for which the lender has recourse against the personal assets of the borrower in addition to the collateral or security pledged for the note. See also **Nonrecourse Note; Recourse**.

Red-Lining The alleged refusal of lenders to make funds available to property owners in certain neighborhoods, especially in decaying areas, thereby contributing to the decline of the affected neighborhoods.

Refinancing Financing undertaken when the existing mortgage or mortgages are paid off and replaced by a new mortgage, usually at a different interest rate and in a larger amount.

Refundable Utility Contract A contract according to which a local utility company agrees to repay a developer for costs incurred in installing water mains or other utility extensions.

Rehabilitation The remodeling of a building so that it will meet present standards of use. Contrast with **Restoration**.

Relative Locational Value The locational value created by spatial proximity and linkage. The major determinant of value. Contrast with **Intrinsic Locational Value**. See **Linkage; Spatial Proximity**.

Relative Sales Value A method of allocating costs (*e.g.*, land costs) among units on the basis of some revenue-generating ability of the units as measured by the sales price of a unit compared

with expected sales price of all units.

Release Clause A clause in a mortgage or trust deed that provides for the release of specific parcels of property (“partial reconveyance”) from the mortgage or trust deed upon payment of a specific sum of money (mortgage release price) to the holder of the mortgage or trust deed. *See* **Mortgage Release Price; Partial Reconveyance.**

Remaining Economic Life The expected life of an asset from the time of appraisal to the time when it loses all utility.

Rendering An architect’s two-dimensional representation of the expected appearance of a proposed project.

Rental Concession An agreement by a landlord to reduce the contract rent on a temporary (*e.g.*, first month free) or permanent (*e.g.*, rent reduction for the resident manager) basis. Rental concessions must be subtracted from contract rent in gross income projections.

Rent-Up Period The period of time following construction when renters are being actively sought for a rental project and the project is approaching stabilized occupancy.

REO *See* **Real Estate Owned.**

Replacement Approach to Value A method of appraising real property by which the cost of replacing or reproducing the subject property is calculated using current costs of construction. Also called “cost approach to value.” *See also* **Income Approach to Value; Market Approach to Value.**

Replacement Cost The cost of producing a new and modern version of an item with the same degree of utility.

Replacement Reserve A reserve fund established to pay for the replacement of building components (*e.g.*, carpets, drapes, HVAC equipment, and elevators) as they wear out. *See* **Reserve Fund.**

Reproduction Cost The cost of producing a duplicate item using the same materials that were used originally.

Reservation Price *See* **Floor Price.**

Reserve Fund A fund established to cover possible future losses or expenses. Additions to the fund are provided through periodic charges to gross income. Not tax deductible. Also called “sinking fund.” *See also* **Replacement Reserve.**

Residual Receipts Revenue remaining at the end of the fiscal year after all operating and other expenses have been paid.

Residuals The profit on a sale or the cash available after the refinancing of an investment.

Restoration The remodeling of a building to its original form. Contrast with **Rehabilitation.**

Retail Land Developer An individual who develops subdivided lots for sale to final consumers.

Retail Lot Sales Sales of lots in a subdivision to ultimate users.

Retentions Portions of interim invoices not paid until after final completion of a construction project and intended to provide some assurance of satisfactory completion (*e.g.*, the contractor holds out 10 to 20 percent of each payment to a subcontractor until all work is completed in an acceptable manner).

Return of an Investment The return of actual cash invested (*e.g.*, depreciation). *See also* **Return on an Investment.**

Return on an Investment The total return from an investment less the return of the investment (*e.g.*, if \$1,000 is invested at the beginning of one year and \$1,100 is returned at the end of that year, \$1,000 is the return of the investment, and \$100 is the return on the investment). *See also* **Return of an Investment**.

Reverse Annuity Mortgage A mortgage in which the lender pays a monthly or quarterly sum to an elderly homeowner and is then repaid out of the sale of the property upon the homeowner's death.

Reverse Leverage *See* **Negative Leverage**.

Revolver Loan A single loan substituted for individual lines of credit and other debt by a series of creditors. So called because it is subject to review and approval at periodic intervals as it "revolves." Used by banks and other lenders in an attempt to work out problem REIT loans.

Risk-Adjusted Rate of Return The rate of return calculated for an investment using discounted cash-flow analysis when the projected cash flows have been arrived at by assigning probabilities based on risk.

RM *See* **American Institute of Real Estate Appraisers-RM**.

Rollover The procedure of making repeated investment of the proceeds of terminated real estate investments that is usually carried out when tax advantages begin to decline or when the crossover phenomenon occurs. *See* **Crossover Phenomenon**.

Sale-Leaseback A financing arrangement in which a property owner sells all or part of the property to an investor and then leases it back. *See also* **Leaseback**.

Salvage Value The anticipated value of an asset at the end of its economic life.

Sandwich Position The position of the holder of a leasehold estate who subleases part or all of the property.

Scheduled Gross Revenue *See* **Gross Revenue**.

Schematic An architect's initial drawings and sketches depicting the space planning, structural systems, and mass of a building in relation to the site plan and appropriate aesthetic and environmental considerations. Also called "sketch plan." *See also* **Contract Documents; Preliminary Design**.

Seasoned Loan A loan that has had a good payment record.

Seasoned Property An investment property that has been leased at a relatively high percentage (*e.g.*, two to three years), thus providing a demonstrated record of successful operation.

Secondary Financing Any loan or financing secured by a second mortgage or junior trust deed.

Secondary Mortgage Market A financial market established for the purpose of facilitating the purchase and sale of outstanding mortgages. The existence of an organized market provides liquidity for such an investment.

Seed Money *See* **Front-End Money**.

Self-Liquidating Mortgage *See* **Fully Amortized Mortgage**.

Sensitivity Analysis A method of arriving at several different rates of return for a project on the basis of the different outcomes of several events critical to the project's success. Tests the importance of each of the events to the overall rate of return.

Sequence Sheet A roster of the development of lots within a project in order of scheduled construction.

Servicing Operational procedures carried out in connection with a loan, including collection of payments, bookkeeping, arranging for insurance, loan analysis, and follow-up actions performed by a mortgage lender or its agent.

Simple Return A method of evaluating investment opportunities by which annual debt service is deducted from project income to arrive at the amount of annual equity income. This number is then divided by the amount of equity investment to arrive at the simple return. Also called “cash-on-cash return,” “net spendable return,” and “spendable return.”

Sinking Fund *See Reserve Fund.*

SIR *See Society of Industrial Realtors.*

Sketch Plan *See Schematic.*

Skip-Payment Privilege A borrower’s right to skip a regular mortgage payment if he or she has previously paid at least an equal amount.

Society of Industrial Realtors (SIR) A national professional and trade association of individuals specializing in the development, leasing, management, and sale of industrial properties. Affiliated with the National Association of Realtors.

Society of Real Estate Appraisers (SREA) A national professional and trade association of appraisers. Formerly the Society of Residential Appraisers. Designations include Senior Residential Appraiser (SRA), Senior Real Estate Analyst (SREA), and Senior Real Property Appraiser (SRPA).

Soft Dollars That portion of equity investment that is tax-deductible in the first year. *See also Hard Dollars.*

Special Assessment Any special charge levied against real property for public improvements that benefit the property (*e.g.*, a street or sewer assessment). Normally payable in installments.

Specifications A listing of materials and construction techniques that, in combination with working drawings, composes the contract documents indicating the exact manner in which a project should be built. *See Contract Documents; Working Drawings.*

Specified Asset Fund A real estate syndication through which funds are raised to invest in specific properties selected by the syndicator. *See also Nonspecified Asset Fund.*

Speculate To engage in real estate investments involving unusual risks in the hope of making unusually large profits. To anticipate a profit from conjectural price movements rather than from ordinary earnings.

Spendable Income *See Equity Income.*

Spendable Return *See Simple Return.*

Spread The difference between the interest rate a financial institution must pay to attract deposits and the rate at which the money can be loaned out.

Square Foot A unit of area measure used in determining the size of a land parcel or the floor area of a building. Land values and building costs are often stated in terms of square footage. *See Front Foot.*

SRA *See Society of Real Estate Appraisers -SRA. See also American Institute of Real Estate Appraisers -MAI.*

SREA *See Society of Real Estate Appraisers - SREA.*

SRPA *See Society of Real Estate Appraisers - SRPA.*

Stabilized Value The value of a property under stable market conditions (*e.g.*, at times when there is not abnormal inflation or a material shortage).

Standby Commitment An agreement by a lender to make funds available to a borrower at a future date at a specified rate. For this assurance, the borrower pays a fee, which is usually a percentage of the future loan. This commitment is often sought by a developer for takeout financing as it provides a measure of safety while allowing the borrower to finance at more favorable terms if interest rates fall.

Standing Mortgage *See Interest-Only Mortgage.*

Straight-Line Depreciation A method of calculating depreciation by which equal amounts of depreciation are charged off each year. Each year's depreciation is the total depreciable value of the asset divided by the asset's depreciable life (*e.g.*, an asset with a five-year life would have one-fifth of its depreciable value depreciated each year). Contrast with **Accelerated Depreciation**.

Straight-Term Mortgage *See Interest-Only Mortgage.*

Subject To Mortgage A situation in which a buyer takes title to property that is still subject to a mortgage while assuming no personal responsibility for the repayment of the existing mortgage. The original maker of the mortgage is still liable to the lender. *See also Assumption of Mortgage; Substitution of Liability*

Subordination Clause A provision by which the priority of a mortgage lender is relinquished in favor of that of a lender that would otherwise be junior in status. Also used with a "ground lease." *See Ground Lease.*

Subrogation The substitution of one person in the place of another. Used with reference to a legal claim or right. The substituted person succeeds to all rights of the other person.

Substitution of Liability The transfer of responsibility for payment of an existing mortgage from the current borrower to another party, usually the purchaser of the property. One form of assumption of mortgage. *See Assumption of Mortgage; Subject to Mortgage.*

Tax Participation The sharing or total assumption of the responsibility to pay property taxes by a lessee.

Tax Shelter The offsetting of project income by cash and noncash charges (*e.g.*, depreciation) with the aim of reducing project tax liability. *See Deep Shelter.*

Track Record An analysis in a real estate investment prospectus indicating the performance of prior investments analyzed and managed by the syndicator of the proposed investment fund. Used primarily in connection with nonspecified asset funds. *See Nonspecified Asset Fund.*

Turnkey Leasing The leasing of housing constructed by private investors to government authorities for use as low-income housing.

Turnkey Project A project in which the developer is responsible for the total completion of a building (including interior design and construction) to the custom requirements of a future owner. Title does not usually pass until all aspects of the contract have been satisfactorily completed.

Underlying Loan The original loan, which remains unsubordinated in an all-inclusive trust deed or sales contract. *See also Wraparound Mortgage.*

Unearned Increment Appreciation in the value of real estate not caused by an action of the owner of the property.

Upset Price A minimum or maximum price specified by a contract below or above which a transaction cannot transpire.

Use Capacity The relative ability of a parcel of land to generate a surplus of returns and/or satisfactions over its costs of utilization.

Vacancy Allowance *See Vacancy Factor.*

Vacancy Factor The amount of gross revenue lost because of vacant units and/or space; an allowance item on pro forma income statements, usually calculated as a percentage of gross revenue. Also called “vacancy allowance.” *See Effective Gross Revenue; Gross Revenue.*

Vacuum Approach A method of calculating the sales potential for a new retail store or center in a given trade area by subtracting the existing sales volume from the total sales potential in the trade area.

VA Loan A loan granted by a private financial institution but guaranteed by the Veterans Administration. *See Veterans Administration.*

Valuation The estimate of a price or value by means of an appraisal.

Variable Rate Mortgage A mortgage in which the interest rate varies over the term. The interest rate is usually tied to some predetermined index.

Veterans Administration (VA) An independent agency under the president responsible for administering laws providing benefits to veterans and their dependents and beneficiaries.

Voucher System A system of paying construction subcontractors with a voucher (instead of cash) redeemed by the construction lender. *See also Fixed Disbursement Schedule.*

Working Drawings The final set of plans for a project that, in combination with a set of specifications, comprise the contract documents indicating the exact manner in which a project should be built. *See Contract Documents; Specifications.*

Workout A situation in which a borrower attempts to negotiate with a lender to restructure the borrower’s debt rather than go through foreclosure proceedings.

Wraparound Mortgage An all-inclusive mortgage that covers all underlying financing. One payment is made to the wraparound mortgage holder who in turn makes all payments on the underlying financing. Also called “all-inclusive trust deed” and “extended first mortgage.”

Write-Up The difference between the value of a property as appraised by a lender or the FHA and the cost of the property.

Yield The effective return on a mortgage based upon the stated interest rate and the actual price paid for the mortgage; the ratio of the annual project income from a property to its cost.

Yield Method *See Internal Rate of Return.*

SAMPLE SALE AGREEMENT

THIS AGREEMENT is made this _____ day of _____ 20____, between _____ LIMITED PARTNERSHIP, an Oklahoma limited partnership, having a notice address at Post Office Box _____ Oklahoma (the "Seller"), and _____ INC., a California corporation, having a notice address at _____ Oklahoma, City, Oklahoma (the "Buyer").

WITNESSETH:

1. *Sale of Project.* The Seller agrees to sell and the Buyer agrees to purchase on the terms hereafter stated all of the Seller's right, title and interest in and to the following described property (hereafter called the "Project"):
 - 1.1 *Real Property.* All of the land situated in Oklahoma County, Oklahoma, described at Schedule "A-I" attached as a part hereof, together with the buildings, improvements, fixtures and other items of real property located on such land.
 - 1.2 *Tangible Personal Property.* All tangible personal property located on such real property which is owned by the Seller and used in the ownership, financing, operation and maintenance of the aforesaid buildings, improvements and land, including, without limitation, all furniture, furnishings, ranges, refrigerators, swimming pool equipment, maintenance equipment, vehicles, signs, draperies and carpeting.
 - 1.3 *Intangible Personal Property.* All intangible personal property owned by the Seller and used in the ownership, financing, operation and maintenance of the aforesaid buildings, improvements and land, including, without limitation, the non-exclusive right to use the trade name "Washington Park Apartments," all contract rights, escrow accounts, insurance policies, deposits, instruments, documents of title, general intangibles and business records pertaining to said buildings, improvements and land, excluding only cash on hand and in bank accounts.

2. *Purchase Price.* Subject to the adjustments and proration hereafter described, the total purchase price to be paid by the Buyer to the Seller for the purchase of the Project is the sum of FOUR MILLION DOLLARS (\$4,000,000.00). The purchase price will be paid in the following manner:
 - 2.1 *Earnest Money.* The sum of Fifty Thousand Dollars (\$50,000.00) in collected funds (the "Earnest Money Deposit") is herewith deposited as earnest money with the Seller to be applied against the total purchase price on the Closing Date.
 - 2.2 *Cash at Closing.* On the Closing Date, the Buyer will pay to the Seller the further sum of Four Hundred Fifty Thousand Dollars (\$450,000.00), in collected

funds.

- 2.3 *Wraparound Mortgage.* In payment of the balance of the purchase price, the Buyer agrees to execute and deliver to the Seller a promissory note, real estate mortgage and security agreement, collateral assignment of leases and financing statements (the “Wraparound Mortgage Documents”) in the amount of Three Million Five Hundred Thousand Dollars (\$3,500,000) on the Closing Date. The Wraparound Mortgage Documents will evidence and secure payment of a loan bearing interest at ___percent (___%) per annum payable in monthly payments of _____Dollars (\$_____).commencing _____ 20___, and monthly thereafter until _____, 20___, on which date the entire unpaid principal balance will be due and payable. The Wraparound Mortgage Documents will be in substantially the form of Schedule “A-2” attached as a part hereof.

3. *Title.* Within ten (10) days after the written request of the Buyer, the Seller will provide to the Buyer a copy of the existing survey of the Project and a preliminary binder for issuance of an ALTA Form B owner’s title insurance policy issued by Title Insurance Company, Mid America Tower, Oklahoma City, Oklahoma 73102 (the “Title Insurer”) showing fee simple title to the Project to be in the Seller and containing the exceptions (hereafter called the “Approved Title Exceptions”) described at Schedule “A-3” attached as a part hereof. The Buyer will have ten (10) days after receipt of the preliminary title binder to provide to the Seller a letter setting forth all of the Buyer’s objections to the Seller’s title to the Project and the Seller shall have thirty (30) days after receipt of such letter to correct the defects in title objected to by the Buyer. If the Seller is unwilling or unable to correct such defects within such thirty (30) day period, the Buyer will have the option to waive such defect or terminate this Agreement and obtain a refund of the Earnest Money Deposit. On the Closing Date, the Seller will cause to be issued to the Buyer a policy of owner’s title insurance in an amount equal to the purchase price containing the Approved Title Exceptions and any other exceptions to coverage waived or approved by the Buyer.

4. *Closing.* The Buyer and the Seller agree that the purchase will be consummated as follows:

- 4.1 *Title Transfer.* The Seller agrees to convey title to the Project to the Buyer by general warranty deed on or before the close of business on the Closing Date and, effective on the delivery of such deed by the Seller to the Buyer, beneficial ownership and the risk of loss of the Project will pass from the Seller to the Buyer.
- 4.2 *Closing Date.* This transaction will close on or before _____ 20___ (the “Closing Date”). The closing will take place at the offices of Hastie and Kirschner, 3000 First Oklahoma Tower, 210 West Park Avenue, Oklahoma City, Oklahoma, with the exact time and date for closing to be designated by the Seller and approved by the Buyer.
- 4.3 *Seller’s Instruments.* At closing, the Seller will deliver or cause to be delivered to the Buyer the following items (all documents will be duly executed and

acknowledged where required):

- 4.3.1 *Warranty Deed.* A general warranty deed and assignment of leases in substantially the form of Schedule “A-4” attached as a part hereof executed by the Seller conveying to the Buyer marketable fee simple title to all of the Seller’s right, title and interest in and to all of the real property comprising a portion of the Project, free and clear of all liens and encumbrances except the Approved Title Exceptions;
- 4.3.2 *Bill of Sale.* A bill of sale and assignment in substantially the form of Schedule “A-5” attached as a part hereof conveying all of the Seller’s right, title and interest in and to all of the tangible and intangible personal property comprising a portion of the Project free and clear of all liens and encumbrances except the Approved Title Exceptions;
- 4.3.3 *Certificate.* The Seller’s certificate in substantially the form set forth as Schedule “A-6” hereto with attached copies of a current rent roll, a listing of refundable tenant deposits, an inventory of personal property and a listing of accounts payable and contracts relating to the Project;
- 4.3.4 *First Mortgagee Consent.* A consent to the sale of the Project to the Buyer executed by the holder of the first mortgage loan described at Schedule “A-3”;
- 4.3.5 *Insurance Policies.* Original or certified copies of all policies of insurance covering the Project and evidence of premium payment therefor;
- 4.3.6 *Lien Affidavit.* An affidavit in form acceptable to the Title Insurer certifying that the Project is free from claims for mechanics’, materialmen’s and laborers’ liens; and
- 4.3.7 *Additional Documents.* Such additional documents as might be reasonably required by the Buyer to consummate the sale of the Project to the Buyer.
- 4.4 *Buyer’s Instruments.* At closing, the Buyer will deliver to the Seller the payment required by paragraph 2.2 and appropriate Oklahoma sales tax return and such additional documents as might be reasonably required by the Seller to consummate the sale of the Project to the Buyer.
- 4.5 *Costs.* The Seller will pay the following costs: the Seller’s attorney’s fees, all abstracting costs, the Oklahoma mortgage registration tax applicable to the Wraparound Mortgage Documents, any brokerage commission payable as described in paragraph 11.4, and the cost of any documentary stamps to be affixed to the deed. The Buyer will pay the following costs: the Buyer’s attorney’s fees, the costs of recording the deed conveying title to the Project to the Buyer, all sales and transfer taxes imposed by any governmental authority and the premium expense of the policy of owner’s title insurance.

5. *Project Condition.* The Seller agrees that the Buyer will be permitted for a period ending on the date ten (10) days after the date of execution of this Agreement by the Seller to inspect the Project at the Buyer’s expense to determine whether the physical properties and structures are sound and in good working order and to have access to and make reasonable examination of the utility costs, real estate title, contracts, leases and accounts of the Seller insofar as the operation

and maintenance of the Project is concerned. If during such ten (10) day period the Buyer determines that the condition of the Project is unsatisfactory or that repairs are required and the Seller refuses to make such repairs, the Buyer will have the option to terminate this Agreement by written notice to the Seller and the Earnest Money Deposit will be returned to the Buyer on such termination. It is understood that the Seller has made no representation as to the condition or state of repair of the Project and has made no agreement to alter, repair or improve the Project. After the expiration of such ten (10) day period, the sole obligation of the Seller will be to deliver possession of the Project to the Buyer on the Closing Date in substantially the same condition (normal wear and tear and casualty loss excepted) as existed on the date of execution of this Agreement by the Seller and the Buyer has agreed to accept possession of the Project on the Closing Date in an AS IS condition WITH ALL FAULTS.

6. *Adjustments and Prorations.* All receipts and disbursements of the Project will be prorated on the Closing Date and the purchase price will be adjusted on the following basis:

- 6.1 *Project Rents.* All rents receivable from tenants of the Project earned and attributable to the period prior to the Closing Date will be paid to the Seller to the extent that such rents have been collected on or before the Closing Date; rents earned and attributable to the period beginning on the Closing Date and thereafter will be paid to the Buyer. On receipt after the Closing Date by the Buyer of rents earned by the Project prior to the Closing Date the same will be paid to the Seller; provided, that the Buyer will have no obligation to enforce collection of such rents.
- 6.2 *Security Deposits.* On the Closing Date, the Seller will deliver to the Buyer an amount of money equal to all refundable security deposits theretofore paid to the Seller by tenants occupying the Project.
- 6.3 *Accounts Payable.* All sums due for accounts payable which were owing or incurred by the Project prior to the Closing Date will be paid by the Seller and the Seller agrees to indemnify and hold the Buyer harmless with respect thereto. The Buyer will furnish to the Seller any bills for such period received after the Closing Date for payment, and the Buyer will have no further obligation with respect thereto. All accounts payable incurred on or after the Closing Date will be paid by the Buyer and the Buyer agrees to indemnify and hold the Seller harmless with respect thereto.
- 6.4 *Property Taxes.* All real and personal property ad valorem taxes and installments of special assessments, if any, for the calendar years preceding the year in which the Closing Date occurs will be paid by the Seller. All real and personal property ad valorem taxes and special assessments, if any, whether payable in installments or not, for the calendar year in which the Closing Date occurs and any amount held in any impound account by any mortgage lender with respect to the Project will be prorated to the Closing Date, based on the latest available tax rate and assessed valuation.
- 6.5 *Utility Charges.* All utility charges will be prorated to the Closing Date and the Buyer will obtain a final billing therefor. All utility security deposits, if any, will be retained by the Seller.

- 6.6 *Employee Wages.* All employees' wages, including accrued vacation and fringe benefits, if any, will be prorated to the Closing Date and paid by the Seller.
- 6.7 *Insurance.* The Seller will assign all existing insurance policies to the Buyer and all insurance carriers will be notified of the change in title to the Project. The cost of insurance premiums and any amount held in any impound account by any mortgage lender with respect to the Project will be prorated to the Closing Date and the Buyer will reimburse the Seller for the prepaid portion thereof.
7. *Covenant to Operate.* Prior to the Closing Date the Seller agrees to maintain, repair, manage and operate the Project in a businesslike manner in accordance with the Seller's prior practices and agrees that the Seller will not dissipate the Project or remove any property therefrom.
8. *Possession.* Possession of the Project will be delivered to the Buyer on the Closing Date free from management contracts, employment agreements and parties claiming rights to possession of the Project other than as tenants in possession.
9. *Casualty Loss.* In the event of damage to or destruction of all or any part of the Project prior to the Closing Date, it is agreed as follows:
- 9.1 *Damage.* If the amount of the casualty loss is not more than Ten Thousand Dollars (\$10,000.00), this Agreement will continue, all insurance proceeds collectible by reason of such damage will be absolutely payable to the Buyer and the purchase price will be paid without reduction.
- 9.2 *Destruction.* If the amount of casualty loss is more than Ten Thousand Dollars (\$10,000.00), the Buyer and the Seller will have the mutual option for ten (10) days after receipt of notice of such destruction to cancel this Agreement by service of written notice of cancellation. On the exercise of such option, this Agreement will thereupon become null and void, and the Earnest Money Deposit will be returned to the Buyer. If, in such event, neither party affirmatively exercises the option to cancel this Agreement, such option will lapse, the Buyer will be entitled to receive all insurance proceeds collectible by reason of such destruction and the purchase price will be paid without reduction.
10. *Default; Remedy.* In the event that either party fails to perform such party's obligations hereunder (except as excused by the other's default), the party claiming default will make written demand for performance. If the Seller fails to comply with such written demand within ten (10) days after receipt thereof, the Buyer will have the option to waive such default or to terminate this Agreement; and on such termination, the Earnest Money Deposit will be returned to the Buyer. If the Buyer fails to comply with such written demand within ten (10) days after receipt thereof the Seller will have the option to waive such default or to terminate this Agreement; and on such termination, the Seller will be entitled to retain the Earnest Money Deposit as liquidated damages arising from such default. On such return or payment of the Earnest Money Deposit, the parties will be discharged from any further obligations and liabilities hereunder.

11. *Miscellaneous.* It is further agreed as follows:
- 11.1 *Time.* Time is of the essence of this Agreement.
 - 11.2 *Notice.* All notices required hereunder will be in writing and served by certified mail, return receipt requested, postage prepaid, at the addresses shown above, until notification of a change of such addresses.
 - 11.3 *Survival.* All representations and warranties of the Seller and the Buyer contained in this Agreement will terminate on and as of the Closing Date and will not survive the closing of this transaction, except for the warranties of title of the Seller expressed in documents delivered at closing, the agreement of the Buyer with respect to rents collected after the Closing Date set forth at paragraph 6.1, the agreements of the Buyer and Seller with respect to payment of accounts set forth at paragraph 6.3 and the agreement regarding brokerage fees set forth at paragraph 11.4. The provisions of paragraph 10, limiting the remedies of the Buyer and the Seller will not apply to any action brought by either party after the Closing Date to enforce any covenant or representation described in this paragraph 11.3.
 - 11.4 *Brokerage.* The Buyer represents to the Seller that the sale hereby contemplated was brought about by the efforts of Seller & Associates Realtors and that the Buyer has dealt with no other broker in connection with the Project. The Seller agrees to pay the brokerage commission, if any, earned by such broker as a result of the consummation of the sale of the Project to the Buyer and the Buyer agrees to hold the Seller harmless from any claim for real estate brokerage commissions asserted by any other party as a result of dealings with the Buyer. The Seller agrees to indemnify and hold the Buyer harmless from any claim for real estate brokerage commissions asserted by any party other than Seller & Associates Realtors as a result of dealings with the Seller.
 - 11.5 *Entire Agreement.* This instrument constitutes the entire agreement between the Buyer and the Seller and there are no agreements, understandings, warranties or representations between the Buyer and the Seller except as set forth herein. This Agreement cannot be amended except in writing executed by the Buyer and the Seller.
 - 11.6 *Binding Effect.* This Agreement will inure to the benefit of and bind the respective successors and permitted assigns of the parties hereto.
 - 11.7 *Expiration.* This Agreement has been executed by the parties on the dates set forth below their respective signatures. It is understood that the obligation of the Buyer under this Agreement will terminate on the date ten (10) days after the date of the Buyer's execution of this Agreement unless the Seller shall have duly executed and returned a copy of this Agreement to the Buyer prior to such date.
 - 11.8 *Assignment.* The rights of the Buyer under this Agreement cannot be assigned in whole or in part without the prior written consent of the Seller. It is understood that the Buyer contemplates such assignment and that the Seller has specifically reserved the right to approve the financial condition, management capability and all other matters concerning the proposed assignee at the Seller's sole discretion.

IN WITNESS WHEREOF, this instrument has been executed by the parties on the date first above written.

_____ INC.,
a California corporation

By _____
President

Date Executed: _____
(the "Buyer")

LIMITED PARTNERSHIP, an
Oklahoma limited partnership

By _____
President

Date Executed: _____
(the "Seller")

Source: Hastie, Contracts for Disposition of Commercial Properties, ALI-ABA, 1
Modern Real Estate Transactions, 371 (7th ed. 1986).

A.L.T.A. OWNER'S POLICY
POLICY OF TITLE INSURANCE
(Amended 2006)

Issued by
Blank Title Insurance Company

Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 18 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, BLANK TITLE INSURANCE COMPANY, a Blank corporation (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
 - (a) A defect in the Title caused by
 - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
 - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (vii) a defective judicial or administrative proceeding.
 - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
 - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.

3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (a) the occupancy, use, or enjoyment of the Land;
 - (b) the character, dimensions, or location of any improvement erected on the Land;
 - (c) the subdivision of land; or
 - (d) environmental protectionif a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. Title being vested other than as stated in Schedule A or being defective
 - (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
 - (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
 - (i) to be timely, or
 - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY: PRESIDENT

BY: SECRETARY

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
 - (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but

Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

- (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
- (a) a fraudulent conveyance or fraudulent transfer; or
 - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

SCHEDULE A

Name and Address of Title Insurance Company:

[File No.:] Policy No.:

Address Reference:

Amount of Insurance: \$ [Premium: \$]

Date of Policy: [at a.m./p.m.]

1. Name of Insured:

2. The estate or interest in the Land that is insured by this policy is:

3. Title is vested in:

4. The Land referred to in this policy is described as follows:

SCHEDULE B

[File No.] Policy No.

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

1. [Policy may include regional exceptions if so desired by the issuing
2. Company.]
3. [Variable exceptions such as taxes, easements, CC&R's, etc., shown here]
- 4.

CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

- (a) “Amount of Insurance”: The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 10 and 11 of these Conditions.
- (b) “Date of Policy”: The date designated as “Date of Policy” in Schedule A.
- (c) “Entity”: A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (d) “Insured”: The Insured named in Schedule A.
 - (i) the term "Insured" also includes
 - (A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
 - (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
 - (C) successors to an Insured by its conversion to another kind of Entity;
 - (D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
 - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
 - (2) if the grantee wholly owns the named Insured,
 - (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or
 - (4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.
 - (ii) with regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.
- (e) "Insured Claimant": An Insured claiming loss or damage.
- (f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
- (g) "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 insured by this policy.

- (h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
- (i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.
- (j) "Title": The estate or interest described in Schedule A.
- (k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

- (a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.
- (b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.
- (c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

- (a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.
- (b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence,

reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) to pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

- (a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of
 - (i) the Amount of Insurance; or
 - (ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.
- (b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,
 - (i) the Amount of Insurance shall be increased by 10%, and
 - (ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.
- (c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

- (a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.
- (b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.
- (c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

11. LIABILITY NONCUMULATIVE

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

12. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

14. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to

this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

- (a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.
- (b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.
- (c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.
- (d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

16. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

17. CHOICE OF LAW; FORUM

- (a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

- (b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

18. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at [fill in].

NOTE: Bracketed [] material optional

INSTALLMENT LAND CONTRACT

PURCHASER(S)			
	LAST	FIRST	MIDDLE INIT.
	LAST	FIRST	MIDDLE INIT.

MISS
MR.
MRS.
TITLE

MISS
MR.
MRS.
TITLE

ADDRESS _____

_____ AREA CODE _____ TELEPHONE _____

CITY _____ STATE _____ ZIP OR COUNTRY _____

DESCRIPTION OF PROPERTY:

LOT(S)	BLOCK	UNIT ADDITION SECTION
		(Name of Subdivision)

_____, according to the plat of record in _____ COUNTY, FLORIDA

PAYMENT TERMS	MONTHLY PAYMENTS
1. Total Cash Purchase Price \$ _____	7. Standard Monthly Payment _____ Due and payable by mail or in person, on the 10th of each month.
2. Cash Downpayment \$ _____	8. Standard Number of Payments _____
3. Unpaid Balance of Cash Price \$ _____ (Amount Financed)	9. Final Payment Amount \$ _____
4. FINANCE CHARGE \$ _____	10. ANNUAL PERCENTAGE RATE (Interest) _____ %
5. Total of Payments \$ _____	11. All payments (cash, checks or money orders) must be made in United States currency.
6. Total Deferred Payment Price \$ _____	

HOMESITE DEVELOPMENT YEAR _____ **NEXT PAYMENT DUE** **10, 20** _____

There are no default or delinquency charges in the event of late payment, however, interest will continue to accrue on the unpaid balance during any default or delinquency period.

Seller retains a security interest (as defined in the Federal Reserve Board's Regulation Z) in the above real estate, in that seller retains title and possession thereto until completion of payments, in accordance with the terms of this Agreement.

ACKNOWLEDGEMENT
The undersigned Purchaser(s) certifies that:

(a) I am of legal age.

(b) I have read this Agreement including the Conditions of Purchase on the reverse side and no additional representations have been made to induce me to purchase the property described

(c) I have received and have had an opportunity to examine the Supplement to the Agreement containing a statement required by Federal law regarding my right to cancel this transaction within seven (7) days.

(d) I UNDERSTAND I HAVE THE OPTION TO REVOKE THIS CONTRACT IF I HAVE NOT RECEIVED A PROPERTY REPORT PREPARED PURSUANT TO THE RULES AND REGULATIONS OF THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT IN ADVANCE OF, OR AT THE TIME OF SIGNING THIS CONTRACT; I UNDERSTAND I HAVE THE FURTHER RIGHT TO REVOKE THIS CONTRACT WITHIN 48 HOURS AFTER I HAVE SIGNED IF I DID NOT RECEIVE SAID PROPERTY REPORT AT LEAST 48 HOURS BEFORE SIGNING THE CONTRACT. I HEREBY

ACKNOWLEDGE AND AFFIRM BY MY SIGNATURE
HEREON THAT I RECEIVED SUCH PROPERTY REPORT
(WHICH IS ALSO THE REPORT REQUIRED UNDER
FLORIDA LAW), TOGETHER WITH ANY PROPERTY
REPORT OR OTHER APPROPRIATE DOCUMENT REQUIRED
BY THE LAW OF _____ IN ADVANCE OF SIGNING
THIS CONTRACT AND I HAVE READ AND UNDERSTAND
SUCH REPORT(S).

(e) I agree to purchase the described property in accordance with
the terms of this Agreement, the Supplement and any duly executed
Rider thereto.

Purchaser's signature SEAL

Accepted at Miami, Florida by

By: _____
Authorized Employee Signature

Witness: _____

Witness: _____

STATE OF FLORIDA
COUNTY OF DADE _____ SS:

I HEREBY CERTIFY that on this day, before me, a Notary Public authorized to take acknowledgments, personally appeared the person indicated as Authorized Employee above, whom I know to be the Agent of _____ in the forgoing Purchase Agreement, and acknowledged before me that s/he executed such contract in the name of and on behalf of _____; that as such Agent s/he is duly authorized by _____ to do so, and that such Purchase Agreement is the act and deed of _____.

WITNESS my hand and seal In the County and State named above.

this date _____.

- You have the privilege of transferring your equity in this property to a home or other available property of equal or higher value in one of our Florida Communities. (See Item 6 below.) We do not repurchase property after expiration of the cancellation periods provided by law or refund any portion of payments except as provided in Item 7 below.
- Without extra charge to you:
- We will pay all real estate taxes on your property until we have deeded your property to you or this Agreement is recorded. (See Item 5 below.)
- We will pave your Street not later than the end of the Homesite Development Year. (See Item 2 below.)
- We will issue you a Warranty Deed and title insurance policy. (See Item 3 below.)

CONDITIONS OF PURCHASE

PLEASE READ CAREFULLY

1. BASIC AGREEMENT

We agree to sell to you (the purchaser or purchaser named on the face page) the residential property described in this purchase agreement. This agreement also states the price and describes the other terms of this purchase. You agree to buy this property from us and to make Standard Monthly Payments in the amount shown on the face of this agreement on or before the tenth day of each month. The unpaid balance at any time will bear interest at the rate specified on the front of the Agreement (ANNUAL PERCENTAGE RATE).

2. PAVING OF YOUR STREET

This property is currently undeveloped. We agree to complete the paving of streets adjacent to your property, in accordance with the plat filed in the public records of the county in which your property is located, before the end of the Homesite Development Year.

3. YOUR WARRANTY DEED

(a) We will deliver to you at our expense a properly executed Warranty Deed if you have fully paid for this property by making all the Standard Monthly Payments without prepayment.

(b) The Warranty Deed will convey good marketable and insurable title to you, free and clear of all encumbrances except for the following: (1) the lien for taxes for the year in which we convey the property; (2) oil, gas and mineral reservations of record, if any; (3) zoning and regulatory ordinance, restrictions and easements commonly found in Florida communities of high standards; (4) restrictions and limitations affecting the use of the property which are common to the subdivision and which now or hereafter may become of public record; and (5) easements for drainage, canal maintenance and public utilities.

(c) After this Warranty Deed is recorded, we will at our expense have issued to you a standard owner's title policy from a member firm of the American Land Title Association.

(d) Use and possession of this property will be retained by us until you have paid us the purchase price in full and until we have delivered the Warranty Deed.

4. YOUR RIGHT TO PREPAY

You have the right to prepay the outstanding balance under this agreement in whole or in part at any time without penalty. Prepayment does not, however, accelerate our obligation (a) to deliver the Warranty Deed and title insurance policy to you before the Homesite Development Date or (b) to complete paving of the streets adjacent to your property before the end of the Homesite Development Year. However, if you do prepay, we will thereupon issue you a certificate of payment in full.

5. WE PAY TAXES

We will pay all real property taxes on this property while this Agreement is in force or until you record this Agreement or until we deliver you a Warranty Deed conveying title to the property to you, whichever first occurs.

6. YOUR TRANSFER PRIVILEGE

If your payments are current we guarantee you the privilege to transfer your equity (the portion of your payments on this property applied towards principal) at any time before you have paid your outstanding balance in full. This transfer may be toward either:

(a) The purchase of available property of equal or higher price in this or any other of our Florida communities; or (b) The purchase of a standard home built by us in an available housing area.

If you have equities in more than one homesite, you may transfer them only to a like number of other homesites or homes.

7. YOUR RIGHTS IF WE FAIL TO PERFORM

If we fail to meet any of our obligations under this Agreement, you may elect either of the following exclusive remedies, at your option.

(a) You may exchange this property for other property of similar value in this or any other of our communities and in a similarly desirable location, or

(b) We will refund all payments made by you under this Agreement.

If you elect either of these remedies, both you and we will be released from any further obligations under this Agreement. There are no other privileges of cancellation or refund except as stated above.

8. NO PERSONAL LIABILITY ON DEFAULT

You have no personal liability to make any payment under this Agreement. However, if you fail to make any payment, you will be in default and we may terminate this agreement.

Before any such termination becomes effective, you will have a grace period within which to bring your account to a current status. This grace period shall be for the period of 60 days if 10% or less of the principal amount of the purchase has been paid, 90 days if more than 10% and less than 25% of the principal amount of the purchase price has been paid, and 120 days if more than 25% but less than 50% of the principal amount of the purchase price has been paid, and 150 days if 50% of the principal amount of the purchase price has been paid.

If you bring your account to a current status by paying all past due principal and interest within the applicable grace period, you will no longer be considered in default. If you do not bring your account to a current status within the applicable grace period, we may terminate this Agreement without further notice.

9. TERMINATION

If we terminate this Agreement, we will retain all monies you have paid under this Agreement, including principal and interest, as liquidated damages because we have turned away other prospective purchasers and we have incurred or will be incurring selling, administrative and development expenses in connection with this property. Upon termination, any and all rights you may have had in this property shall immediately terminate and we may return this property to our inventory and resell it free and clear of any claims, liens or encumbrances arising out of this Agreement.

If this Agreement is terminated, our recorded affidavit attesting to your default and the termination, shall be conclusive proof of such default and termination for all purposes, and you irrevocably authorize us to thus attest and record such affidavit as though it were your own act and deed.

10. EFFECTIVE DATE

This Agreement is effective and binding on us when you have signed it and when we have signed it at our Home Office. We may accept or reject this Agreement without explanation, and if we reject it, we will return the deposit to you and both parties shall be released from any obligation hereunder.

11. ASSIGNMENT OF THIS AGREEMENT

You may assign this Agreement with our written consent upon payment of a transfer fee.

12. NOTICES

Notices under this Agreement must be in writing and addressed to the last known address of the respective party except as to the voidance and revocation rights as provided in paragraph (d) under "acknowledgment" section on the face page.

13. FLORIDA CONTRACT

The parties agree that this Agreement shall be construed and interpreted in accordance with the laws of the State of Florida.

**SAMPLE LENDER FORM OF SUBORDINATION, NONDISTURBANCE AND
ATTORNMEN T AGREEMENT**

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

SUBORDINATION, NONDISTURBANCE AND ATTORNMEN T AGREEMENT

NOTICE: THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMEN T AGREEMENT RESULTS IN YOUR LEASEHOLD ESTATE IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS AGREEMENT is entered into by and among Tenant, Landlord, and Beneficiary and affects the Property described in Exhibit A attached hereto. The terms “Tenant,” “Landlord,” “Beneficiary,” “Premises,” “Lease,” “Property,” “Loan,” “Note,” and “Mortgage” are defined in the Schedule of Definitions attached hereto as Exhibit B. This Agreement is entered into with reference to the following facts:

- A. Landlord and Tenant have entered into the Lease covering the Premises in the Property.
- B. Beneficiary has agreed to make the Loan to Landlord to be evidenced by the Note, which Note is to be secured by the Mortgage covering the Property, provided that the Lease is subordinated to the lien of the Mortgage.
- C. For the purposes of completing the Loan, the parties hereto desire expressly to subordinate the Lease to the lien of the Mortgage, it being a condition precedent to Beneficiary’s obligation to consummate the Loan that the lien of the Mortgage be unconditionally and at all times prior and superior to the leasehold interests and estates created by the Lease.
- D. Tenant has requested that Beneficiary agree not to disturb Tenant’s possessory rights in the Premises in the event Beneficiary should foreclose the Mortgage; provided that Tenant is not then in default under the Lease and provided further that Tenant attorns to Beneficiary or the purchaser at any foreclosure or trustee’s sale of the Property.

NOW THEREFORE, in consideration of the mutual covenants contained herein and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- 1. Subordination. Notwithstanding anything to the contrary set forth in the Lease, the Lease and the leasehold estate created thereby and all of Tenants rights thereunder shall be and shall at all times remain subject, subordinate and inferior to the Mortgage and the lien thereof, and all rights of Beneficiary thereunder and to any and all renewals, modifications, consolidations, replacements and extensions thereof.

2. Nondisturbance. If it becomes necessary to foreclose the Mortgage, Beneficiary shall neither terminate the Lease nor join Tenant in summary or foreclosure proceedings so long as Tenant is not in default under any of the terms, covenants, or conditions of the Lease.
3. Attornment. Tenant shall attorn to and recognize any purchaser at a foreclosure sale under the Mortgage, any transferee who acquires the Premises by deed in lieu of foreclosure, and the successors and assigns of such purchaser(s), as its landlord for the unexpired balance (and any extensions, if exercised) of the term of the Lease on the same terms and conditions set forth in the Lease.
4. Acknowledgment and Agreement by Tenant. Tenant acknowledges and agrees that:
 - (a) Beneficiary would not make the Loan without this Agreement;
 - (b) It consents to and approves the Mortgage and the agreements evidencing and securing the Loan; and
 - (c) Beneficiary, in making any disbursements to Landlord, is under no obligation or duty to oversee or direct the application of the proceeds of such disbursements, and such proceeds may be used by Landlord for purposes other than improvement of the Property.
 - (d) From and after the date hereof, in the event of any act or omission by Landlord which would give Tenant the right, either immediately or after the lapse of time, to terminate the Lease or to claim a partial or total eviction, Tenant will not exercise any such right:
 - (i) until it has given written notice of such act or omission to Beneficiary; and
 - (ii) until the same period of time as is given to Landlord under the Lease to cure such act or omission shall have elapsed following such giving of notice to Beneficiary and following the time when Beneficiary shall have become entitled under the Mortgage to remedy the same.
 - (e) It has notice that the Lease and the rent and all other sums due thereunder have been assigned or are to be assigned to Beneficiary as security for the Loan secured by the Mortgage. In the event that Beneficiary notifies Tenant of a default under the Mortgage and demands that Tenant pay its rent and all other sums due under the Lease to Beneficiary, Tenant shall honor such demand and pay its rent and all other sums due under the Lease directly to Beneficiary or as otherwise required pursuant to such notice.
 - (f) It shall send a copy of any notice or statement under the Lease to Beneficiary at the same time such notice or statement is sent to Landlord.
 - (g) It has no right or option of any nature whatsoever, whether pursuant to the Lease or otherwise, to purchase the Premises or the Property, or any portion thereof or any interest therein, and to the extent that Tenant has had, or hereafter acquires, any such right or option, the same is hereby acknowledged to be subject and subordinate to the Mortgage and is hereby waived and released as against Beneficiary.

- (h) This Agreement satisfies any condition or requirement in the Lease relating to the granting of a nondisturbance agreement.
5. Foreclosure and Sale. In the event of foreclosure of the Mortgage, or upon a sale of the Property pursuant to the trustee's power of sale contained therein, or upon a transfer of the Property by conveyance in lieu of foreclosure, then:
- (a) So long as Tenant complies with this Agreement and is not in default under any of the terms, covenants, or conditions of the Lease, the Lease shall continue in full force and effect as a direct lease between the succeeding owner of the Property and Tenant, upon and subject to all of the terms, covenants and conditions of the Lease, except as set forth in Exhibits C and D attached hereto, for the balance of the term of the Lease. Tenant hereby agrees to adhere to and accept any such successor owner as landlord under the Lease, and to be bound by and perform all of the obligations imposed by the Lease, and Beneficiary, or any such successor owner of the Property, will not disturb the possession of Tenant, and will be bound by all of the obligations imposed on the Landlord by the Lease, except as set forth in Exhibits C and D attached hereto; provided, however, that Beneficiary, or any purchaser at a trustee's or sheriff's sale or any successor owner of the Property shall not be:
 - (i) liable for any act or omission of a prior landlord (including Landlord);
 - (ii) liable for the return of any security deposit unless such deposit has been delivered by Beneficiary, by Landlord or is deposited in an escrow fund available to Beneficiary;
 - (iii) liable or obligated to expand the Property, pay tenant improvement allowances, construct additional improvements or otherwise expend funds which are capital in nature, other than expenses for ordinary maintenance and repair;
 - (iv) liable to reconstruct the Premises or the Property to the extent Insurance proceeds are not available therefor;
 - (v) liable for any obligation to indemnify or reimburse Tenant, any leasehold mortgagee, or any other third party or any of their respective successors, and assigns from and against any loss, liability, damage or cost relating to or arising from the presence of any toxic or hazardous materials on, under or about the Property;
 - (vi) liable or bound by any right of first refusal or option to purchase all or any portion of the Property set forth in the Lease;
 - (vii) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord);
 - (viii) bound by any rent or additional rent which Tenant might have paid in advance to any prior landlord (including Landlord) for a period in excess of one month or by any security deposit, cleaning deposit or other prepaid charge which Tenant might have paid in advance to any prior landlord (including Landlord); or
 - (ix) bound by any agreement or modification of the Lease made without the prior written consent of Beneficiary.

- b) Upon the written request of either Beneficiary or Tenant to the other given at the time of any foreclosure, trustee's sale or conveyance in lieu thereof, the parties agree to execute a lease of the Premises upon the same terms and conditions as the Lease between Landlord and Tenant, with the changes set forth in Exhibits C and D attached hereto, which lease shall cover any unexpired term of the Lease existing prior to such foreclosure, trustee's sale or conveyance in lieu of foreclosure.
 - c) The provisions of the Lease set forth in Exhibit C shall be of no force or effect and shall not be binding upon Beneficiary or any purchaser or transferee acquiring the Property as a result of such foreclosure, trustee's sale or conveyance in lieu thereof, and in the event of such foreclosure, trustee's sale, or conveyance in lieu thereof, the provisions set forth in Exhibit D shall be added to the Lease and shall be effective and binding upon Tenant.
 - d) Beneficiary shall have no responsibility to provide (or liability for not providing) any additional space for which Tenant has any option or right under the Lease unless Beneficiary at its option elects to provide the same and Tenant hereby releases Beneficiary from any obligation it may otherwise have to provide the same, and agrees that Tenant shall have no right to cancel the Lease, abate rent or assert any claim against Beneficiary as a result of the failure to provide any option space.
 - e) Beneficiary shall have no liability to Tenant or any other party for any conflict between the provisions of the Lease and the provisions of any other lease affecting the Property, including, but not limited to, any provisions relating to renewal options and options to expand, and in the event of such a conflict, Tenant shall have no right to cancel the Lease or take any other remedial action against Beneficiary or action against any other party for which Beneficiary would be liable.
6. Acknowledgment and Agreement by Landlord. Landlord, as landlord under the Lease and mortgagor or trustor under the Mortgage, acknowledges and agrees for itself and its heirs, successors and assigns, that:
- (a) This Agreement does not:
 - (i) constitute a waiver by Beneficiary of any of its rights under the Mortgage; and/or
 - (ii) in any way release Landlord from its obligations to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Mortgage;
 - (b) The provisions of the Mortgage remain in full force and effect and must be complied with by Landlord; and
 - (c) In the event of a default under the Mortgage, Tenant may pay all rent and all other sums due under the Lease to Beneficiary as provided in this Agreement.
7. No Obligation of Beneficiary. Beneficiary shall have no obligation or incur any liability with respect to the erection or completion of the improvements in which the Premises are located or for completion of the Premises or any improvements for Tenant's use and occupancy, either at the commencement of the term of the Lease or upon any renewal or

extension thereof or upon the addition of additional space, pursuant to any expansion rights contained in the Lease.

8. Notice. All notices hereunder to Beneficiary shall be deemed to have been duly given if mailed by United States registered or certified mail, with return receipt requested, postage prepaid to Beneficiary at its address set forth in Exhibit B attached hereto (or at such other address as shall be given in writing by Beneficiary to Tenant) and shall be deemed complete upon any such mailing.
9. Miscellaneous.
 - (a) This Agreement supersedes any inconsistent provision of the Lease.
 - (b) Nothing contained in this Agreement shall be construed to derogate from or in any way impair or affect the lien and charge or provisions of the Mortgage.
 - (c) Beneficiary shall have no obligations nor incur any liability with respect to any warranties of any nature whatsoever, whether pursuant to the Lease or otherwise, including, without limitation, any warranties respecting use, compliance with zoning, Landlord's title, Landlord's authority, habitability, fitness for purpose or possession.
 - (d) In the event that Beneficiary shall acquire title to the Premises or the Property, Beneficiary shall have no obligation, nor incur any liability, beyond Beneficiary's then equity interest, if any, in the Premises, and Tenant shall look exclusively to such equity interest of Beneficiary, if any, in the Premises for the payment and discharge of any obligations imposed upon Beneficiary hereunder or under the Lease, and Beneficiary is hereby released and relieved of any other obligations hereunder and under the Lease.
 - (e) This Agreement shall inure to the benefit of the parties hereto, their respective successors and permitted assigns; provided however, that in the event of the assignment or transfer of the interest of Beneficiary, all obligations and liabilities of Beneficiary under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom Beneficiary's interest is assigned or transferred; and provided further that the interest of Tenant under this Agreement may not be assigned or transferred without the prior written consent of Beneficiary.
 - (f) This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located.

IN WITNESS WHEREOF, the parties have executed this Subordination, Nondisturbance, and Attornment Agreement as of _____, 20_____.

NOTICE: THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT CONTAINS PROVISIONS WHICH ALLOW THE PERSON OBLIGATED ON THE LEASE TO OBTAIN A LOAN, A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE PROPERTY.

IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT, THE PARTIES CONSULT

WITH THEIR ATTORNEYS WITH RESPECT THERETO.

BENEFICIARY: _____,

a _____

By _____

By _____

TENANT: _____,

a _____

By _____

By _____

LANDLORD: _____,

a _____

By _____

By _____

Exhibit A

Legal Description

Exhibit B

Schedule of Definitions

“Beneficiary” shall mean _____. All notices hereunder to Beneficiary shall be mailed to:_____

“Mortgage” shall mean a first lien Deed of Trust and Security Agreement with Assignment of Rents and Fixture Filing dated as of_____,20____, encumbering the Property, executed by Landlord, as Trustor, to _____, a _____, as Trustee, in favor of Beneficiary, securing repayment of the Loan evidenced by the Note, to be recorded in the records of the County in which the Property is located.

“Landlord” shall mean _____, a _____, having an office at _____.

“Lease” shall mean a certain lease entered into by and between Landlord and Tenant dated as of_____,20____, covering the Premises.

“Loan” shall mean a first mortgage loan in an amount up to \$ _____ from Beneficiary to Landlord.

“Note” shall mean that certain Promissory Note executed by Landlord in favor of Beneficiary dated as of_____, 20____, in the amount of \$_____.

“Premises” shall mean certain space in the improvements located in and upon the Property.

“Property” shall mean the real property described in Exhibit A attached hereto together with the improvements thereon.

“Tenant” shall mean_____, a _____, having an office at _____.

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____, 20____, before me, _____, a Notary Public personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature_____ (Seal)

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____, 20____, before me, _____, a Notary Public personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature_____ (Seal)

Postconstruction Loan Commitment

20_____

[Name of Borrower]

[Borrower's Address]

Attention:

Re: Loan of up to _____ Dollars

Subject to the terms, provisions and conditions hereinafter set forth in this letter agreement (hereinafter referred to as this "Commitment"), Ace Insurance Company (hereinafter referred to as "Ace") agrees to disburse a first mortgage loan in the maximum amount of _____ Dollars (\$), (hereinafter referred to as the 'Loan'), to _____, a _____, having an address at _____ (hereinafter referred to as the "Borrower").

ARTICLE 1—Definitions of Certain Terms

Section 1.01. Definitions.

Unless the context otherwise requires, the terms defined in this Section 1.01 for all purposes of this Commitment shall have the respective meanings herein specified:

The term "Parcel" shall mean that certain lot, piece or parcel of land, described and located as so indicated on *Exhibit A* attached hereto and hereby made a part hereof, together with all easements, licenses and rights appurtenant thereto as may be required by Ace. The specific legal description of the Parcel shall in all respects be subject to the approval of Ace, its Law Department and its special counsel.

The term "Improvements" shall mean the _____ and related buildings, structures and improvements located on the Parcel referred to on *Exhibit A* hereto.

The term "Note" shall mean the note in the face amount not to exceed the principal amount of _____ Dollars (\$ _____) to be given by the Borrower in favor of Ace to evidence the indebtedness of the Loan.

The term "Project" shall mean the Parcel, together with the Improvements located on the Parcel, and all fixtures, fittings, appliances, apparatus, equipment, machinery, furnishings, furniture and other personal property, and any replacements thereof, or additions thereto, now or at any time hereafter affixed to, or attached to, or placed upon, or used in any way in connection with the complete and comfortable use, occupancy and operation of said Improvements as a _____, other than those items of personal property listed on *Exhibit B* attached hereto and

hereby made a part hereof.

The term “Mortgage” shall mean the valid first priority mortgage (or deed to secure debt or deed of trust) and security agreement executed and delivered by the Borrower to secure the Note, which mortgage (or deed to secure debt or deed of trust) and security agreement shall cover and encumber the fee simple absolute title to (a) the Parcel, (b) the Improvements, (c) the Accounts Receivable, and (d) all fixtures, fittings, appliances, apparatus, equipment, machinery, furnishings, furniture and other personal property, and any replacements thereof, or additions thereto, now or at any time hereafter affixed to, or attached to, or placed upon, or used in any way in connection with the complete and comfortable use, occupancy and operation of the Improvements as a _____, other than those items of personal property listed on *Exhibit B* hereto.

The term “Loan Year” shall mean a period of twelve (12) consecutive months, the first of which shall begin on the first day of the second month next succeeding the Advance Date.

The term “Accounts Receivable” shall mean any right of the Borrower arising from the operation of the Project to payment for goods sold or leased or for services rendered, whether or not yet earned by performance, and whether or not evidenced by an instrument or chattel paper, including, without limiting the generality of the foregoing, (i) all accounts arising from the operation of the Project, and (ii) all rights to payment from any consumer credit/charge card organization or entity (such as, or similar to, the organizations or entities which sponsor and administer the American Express Card, the Visa Card, the Carte Blanche Card and the MasterCard). Accounts Receivable shall include those now existing or hereafter created, substitutions therefor, proceeds (whether cash or non-cash, movable or immovable, tangible or intangible) received upon the sale, exchange, transfer, collection or other disposition or substitution thereof and any and all of the foregoing and proceeds therefrom.

The term “Advance Date” shall mean the date upon which Ace shall make its initial disbursement of all or any portion of the Loan.

The term “Tenant” shall mean _____, a _____, having an address at _____.

ARTICLE 2—Terms of the Loan

Section 2.01. The Note.

(a) The Note shall be in the aggregate maximum principal amount of _____ Dollars (\$), shall be for a term of _____ () years from the Advance Date and shall provide:

- (i) for the payment of interest at the rate of _____ percent () per annum computed from the Advance Date on a 360-day year basis, on the principal balance of the Loan at any time outstanding and unpaid, said interest to be due and payable on the first day of the month next

succeeding the Advance Date;

- (ii) for fixed equal monthly payments of principal and interest at the rate of _____ percent () per annum computed on a 360-day year basis on the principal balance of the Loan at any time outstanding and unpaid, the amount of said fixed monthly payments of principal and interest shall be _____ Dollars (\$), commencing on the first day of the second month next succeeding the Advance Date and continuing on the first day of each month thereafter until the _____ (___th) month next succeeding the Advance Date, when the entire balance of the unpaid principal of the Loan with the accrued interest thereon shall be due and payable;
- (iii) that all such fixed monthly payments, shall be applied first to the payment of interest at the aforesaid rate of _____ percent () per annum, computed on a 360-day year basis and, second to the reduction of the then principal balance of the Loan;
- (iv) that the Borrower shall have the privilege of prepaying the entire principal balance of the Loan (but not a part thereof) on the first day of any calendar month beginning with the first day of the first month of the _____ () Loan Year, upon sixty (60) days prior written irrevocable notice to Ace of the Borrower's intention to so prepay and upon payment by the Borrower to Ace of the principal balance of the Loan together with the accrued interest thereon and all other sums due and payable under the Note and the other Loan Documents (as hereinafter defined) and a prepayment fee (hereinafter referred to as the "Prepayment Fee") equal to the _____.
In the event that the amount of the principal being prepaid is equal to or greater than _____, there shall be no Prepayment Fee and the Borrower shall not be entitled to any form of refund, credit or payment;
- (v) that if the Borrower gives notice of its intention to prepay as herein above provided, the entire principal balance of the Loan, the accrued interest thereon, all other sums due and payable under the Note and the other Loan Documents, and the applicable Prepayment Fee, shall, at the option of Ace, become due and payable on the date specified in the notice indicating an intention to prepay by the Borrower;
- (vi) that in the event any sum required to be paid under the terms of the Note is not paid when due and payable, the Borrower shall pay a late charge in the amount of four cents (\$.04) for each One Dollar (\$1.00), or part, so overdue;
- (vii) that if a default shall occur under the Note, the Mortgage, or under any

other document or instrument evidencing, securing, or otherwise relating to the Loan (the Note, the Mortgage and said documents and instruments are collectively referred to herein as the "Loan Documents") and the principal sum evidenced by the Note shall be called immediately due and payable, then a tender of payment by the Borrower, the Tenant or any person or entity on behalf of the Borrower or of the Tenant of the amount necessary to satisfy all sums due under the Note and the other Loan Documents made any time prior to judicial or public sale of the Project, or the purchase at a foreclosure sale by the Borrower or by the Tenant or any person or entity on behalf of the Borrower or of the Tenant of the Project, shall constitute an evasion of the payment terms of the Note and shall be deemed to be a voluntary prepayment of the Loan, and any such payment, to the extent permitted by law, must therefore include the fee required under the prepayment provisions to be contained in the Loan Documents, or if the Loan is not permitted to be prepaid at that time, such payment, to the extent permitted by law, must include a prepayment fee equal to _____; and

- (viii) that upon the maturity of the Loan, by acceleration or otherwise, or after the occurrence of an event of default under the Note or any of the other Loan Documents which entitles the holder of the Note to accelerate the maturity of the Loan, and irrespective of whether or not the holder of the Note shall elect to declare all or any part of the principal indebtedness and interest due and payable, the annual rate of interest thereafter payable on the unpaid principal balance of the Loan, at the option of Ace, shall be increased to the lesser of (i) _____ percent (), or (ii) the highest rate of interest permitted by applicable law; and the monthly payments, if any, shall be adjusted to include the amount of such increase in interest.

(b) Although the term of the Loan is _____ () years, the periodic monthly payments are based on an amortization period of _____ () years.

Section 2.02. Environmental Matters.

The Borrower shall, pursuant to provisions (which shall be satisfactory to Ace, its Law Department and its special counsel, in form, scope and substance) to be contained in the Loan Documents, indemnify, defend and hold Ace harmless from and against any and all losses, claims, costs, damages, penalties, and liabilities (including, without limitation, attorneys' fees and disbursements) which may arise or result in any way out of: (i) the enforcement (or attempted enforcement) of any current or future federal, state, or local act, law, statute, rule, regulation, order or ordinance concerning hazardous or toxic wastes, substances or materials (as defined in any current or future federal, state, or local act, law, statute, rule, regulation, order or ordinance) affecting the Project (such hazardous or toxic wastes, substances and materials are hereinafter collectively referred to as "Hazardous Materials"), and/or (ii) the presence or alleged

presence of any Hazardous Materials on, in, under, or upon the Project. The Borrower's obligations referred to in this paragraph shall not be covered by the exculpation provision to be included in the Note and Mortgage and shall survive the foreclosure of the Mortgage and/or Ace's acceptance of a deed in lieu thereof.

The Borrower hereby represents and shall represent in the Loan Documents, that the Project has not had an environmental notice of lien filed thereon, and that it will not during the term of the Loan acquire any other real property upon which an environmental notice of lien has been filed. In the event that the Project, or any other property hereafter so acquired by the Borrower during the term of the Loan, has an environmental notice of lien filed thereon, or if any representation made herein is false, Ace shall have the option, in its sole and absolute discretion, to accelerate the maturity of the Loan and declare a default thereunder.

Section 2.03. Escrows.

The Mortgage shall provide that the Borrower will deposit on the first day of each month such amount as in the discretion of Ace will enable Ace or a depository satisfactory to Ace, to pay at least thirty (30) days before due, all taxes, assessments, insurance premiums, and similar charges affecting the Project and shall further provide that no interest on such deposits shall be paid to the Borrower by Ace or the depository.

Section 2.04. Financial Statements.

The Mortgage shall provide that the Borrower shall furnish to Ace within ninety (90) days of the end of each fiscal year of the Borrower, financial statements prepared in accordance with generally accepted accounting principles containing a balance sheet, a profit and loss statement and a statement of changes in financial position.

Section 2.05. Exculpation Provisions.

The Note and the Mortgage shall contain an exculpation provision in substantially the following terms:

Notwithstanding anything to the contrary contained in the Note or in any of the other Loan Documents, but without in any manner releasing, impairing or otherwise affecting the Note or any of the other Loan Documents, or the validity hereof or thereof, or the lien of the Mortgage, upon the occurrence of Event of Default, except as expressly set forth in this Section ____, the liability of the Borrower and the general partners of the Borrower, if any, shall be limited to and satisfied out of the property encumbered by the Mortgage (the "Mortgaged Property"). Notwithstanding any of the foregoing, nothing contained in this Section ____ shall be deemed to prejudice the rights of Ace to (i) proceed against any entity or person whatsoever, including the Borrower and the general partners of the Borrower, if any, with respect to the enforcement of any leases, guarantees, bonds, policies of insurance or other agreements for compliance with any of the terms, covenants and conditions of the Loan Documents; and/or (ii) recover damages against the Borrower

and the general partners of the Borrower, if any, for fraud, breach of trust, breach of warranty, misrepresentation or waste; and/or (iii) recover any loan proceeds, condemnation proceeds or insurance proceeds or other similar funds or payments attributable to the Mortgaged Property which have been misapplied by the Borrower or which, under the terms of the Loan Documents, should have been paid to Ace, and/or (iv) recover any tenant security deposits, prepaid rents or other similar sums paid to or held by the Borrower or any other entity or person in connection with the Mortgaged Property; and/or (v) recover the rents and profits accruing from and after the occurrence of an Event of Default, which have not been applied to pay any portion of the indebtedness evidenced by the Note, operating and maintenance expenses of the Mortgaged Property, Premiums, Impositions, deposits into a reserve for replacement or other sums required by the Loan Documents; and/or (vi) recover damages against the Borrower and/or the general partners of the Borrower, if any, arising from, or in connection with, the covenants, obligations, liabilities, warranties and representations contained in Section _____ of the Mortgage (that Section of the Mortgage referring to Hazardous Materials); and/or (vii) except to the extent Ace actually receives proceeds therefor under its lender's title policy, recover from the Borrower and/or the general partners of the Borrower, if any, the entire indebtedness secured by the Loan Documents, in the event of any judicial determination that the lien of the Mortgage is invalid; and/or (viii) recover from the Borrower, or the general partners of the Borrower, if any, amounts due and payable pursuant to Sections _____ and _____ of the Mortgage (those Sections of the Mortgage referring to out-of-pocket expenses). The Borrower and/or the general partners of the Borrower, if any, shall be personally liable for the Borrower's obligations arising in connection with the matters set forth in the foregoing clauses (i) to (viii) inclusive.

The defined terms in the preceding provision shall have the meaning ascribed to them herein, in the Note or the Mortgage, as the case may be.

ARTICLE 3—Construction of the Improvements and Construction Financing

Section 3.01. Plans and Specifications.

Within not more than _____ () days of the date of this Commitment, detailed plans and specifications for the Improvements must be submitted in duplicate to Ace's architect (hereinafter referred to as "the Architect" or "Ace's Architect") and must meet with the Architect's written approval. Such plans and specifications shall include, but not be limited to, Architectural, Structural, Mechanical, Electrical, Site, and Landscaping and Sprinkler plans and specifications. In addition, complete curtain wall drawings and specifications must be submitted for review and approval by a curtain wall consultant to be retained by Ace's Architect at the expense of the Borrower and such drawings and specifications must meet with such consultant's written approval. Whenever Ace's Architect's requirements exceed the requirements of local codes, the Architect's requirements shall govern. If the Architect does not approve the plans and specifications, this Commitment may, at the option of Ace, be terminated. Upon completion of the Improvements, Ace shall be furnished with a complete set of "as built" plans and specifications. All references in this Commitment to "Ace's Architect," "the Architect," or "our

Architect” shall be deemed to refer to such architect(s) as Ace may elect to utilize; provided, however, in instances where approval of “Ace’s Architect”, “the Architect”, or “our Architect” is required or permitted by the terms of this Commitment, such approval may be given only by duly authorized personnel in Ace’s Architectural Unit.

Section 3.02. Construction and Inspections.

The construction of the Improvements (including any grading, landscaping and any other on-site or off-site work) shall be in accordance with such plans and specifications as Ace’s Architect shall have approved in writing. The construction shall be made to meet with the written approval of Ace’s Architect. The Architect and Ace’s representatives shall have the right to inspect all such Improvements periodically during and after construction.

Section 3.03. Soil Report.

A complete report, at Borrower’s expense, concerning soil conditions of the Parcel from an engineer acceptable to Ace shall be submitted to Ace. The report shall include results of test borings, and shall recommend soil bearing pressures, types of foundations, excavations, fill and compaction. All such recommendations shall be followed in the construction of the Improvements. In addition, the Borrower shall submit compaction test reports for all fill under slabs and pavements on grade, indicating compaction satisfactory to Ace’s Architect. The conditions shown in the report must be satisfactory to Ace’s Architect.

Section 3.04. Completion of Construction.

For the purpose of this Commitment, the construction of the Improvements, including any grading, landscaping, and any other on-site or off-site work, shall be deemed to have been completed when completion in accordance with the plans and specifications has been approved by the Architect and when the Improvements are ready for occupancy and fully equipped for proper operation as approved by Ace’s Architect, and when Certificates of Occupancy permitting space which is to be occupied to be legally occupied and all other proper certificates by the agencies or departments of _____ and any other governmental authority having or claiming to have jurisdiction over the construction and occupancy have been validly issued and delivered to Ace.

Section 3.05. Additional Architectural Requirements.

In connection with Section 3.01 hereof, Ace’s Architect, based upon a review of the preliminary drawings heretofore submitted, requires submission, clarification, compliance or correction, as the case may be, of the items set forth in *Exhibit C* attached hereto and made a part hereof.

The foregoing is in no way intended to limit, restrict or diminish Sections 3.01 to 3.04 inclusive of this Commitment and it is understood and agreed that detailed final plans and specifications shall be submitted for review and approval to Ace’s Architect. The construction

shall be completed in accordance with the plans and specifications approved by Ace's Architect and the final construction must be approved in writing by Ace's Architect.

Section 3.06. Agreement With Construction Lender.

If Ace so requires, at the time of execution of the construction loan documents, the construction lender shall agree to sell the Loan to Ace and Ace shall agree, subject to all the terms, including, without limitation, the satisfaction of each of the conditions of this Commitment, to buy the Loan from the construction lender. The Borrower shall execute, approve and consent to such agreement, which agreement shall be in form, scope and substance satisfactory to Ace's Law Department and special counsel.

Section 3.07. Combined Construction—Long-Term Loan.

The terms of the construction loan documents shall be such as to meet all the requirements in this Commitment which are to be complied with on the date of Ace's initial disbursement of the Loan. The combined construction and long-term mortgage shall be recorded or filed for record when approved by Ace's Law Department and its special counsel.

ARTICLE 4—Insurance

Section 4.01. Types and Amounts of Insurance.

The Borrower shall furnish to Ace at Borrower's expense for so long as the Loan remains unpaid:

(a) Causes of Loss—Special Form coverage on the Project (sometimes referred to as “All Risks of Physical Loss”), and separate insurance against such other insurable hazards as, under good insurance practices, from time to time are insured against for similar properties in the area of the Parcel. The amount of such separate insurance shall be not less than the greater of (1) one hundred percent (100) of the Full Replacement Cost of the Improvements without deduction for depreciation; (2) an amount sufficient to prevent Ace or the Borrower from becoming a co-insurer within the terms of the applicable policies; or (3) the original principal amount secured by the Mortgage. Full Replacement Cost, as used herein, means the cost of replacing the Improvements, exclusive of the cost of excavations, foundations and footings below the lowest basement floor. The present amount of such Full Replacement Cost for the Improvements is estimated to be _____ Dollars (\$). Each policy shall contain a Replacement Cost Endorsement.

(b) When obtainable from the United States of America or any agency or instrumentality thereof, War Risk Insurance in an amount not less than the then amount of insurance described in Section 4.0 1(A) hereof, except that, in the event it is not possible to obtain war risk insurance in such amount, then such insurance shall be procured in the maximum amount obtainable.

(c) Commercial General Liability Insurance for personal injury liability, including,

without limitation, bodily injury, death or property damage liability and also garage keeper's liability, products liability, elevator liability, liquor liability and contractual liability on an occurrence basis in an amount not less than _____ Dollars (\$).

(d) Flood Insurance in an amount satisfactory to Ace and which otherwise complies with the national flood insurance program as set forth in the "Flood Disaster Protection Act of 1973," as well as subsequent amendments thereto, provided that (i) the Project (or any portion thereof) is included in a HUD designated flood prone area, and (ii) Ace, in its sole discretion, elects to disburse the Loan even though the Project (or any portion thereof) is included in such a designated flood prone area. The Mortgage shall contain a provision providing that any failure either to so obtain such insurance prior to Ace's disbursement of the Loan or to comply with the said Act and all amendments thereto, shall constitute a default under the Loan Documents. Prior to Ace's disbursement of the Loan, the Borrower shall furnish evidence, satisfactory to Ace, indicating whether or not the Project (or any portion thereof) is included in a HUD designated flood prone area and if the Project or any portion thereof is so included, and if Ace (in its sole discretion) elects to disburse the Loan even though the Project (or portion thereof) is located in such a flood prone area, the Borrower shall furnish the required flood insurance.

(e) Boiler and Machinery Insurance in an amount not less than _____ Dollars (\$), or such greater amount as Ace may require, covering physical damage to the Improvements and to the boilers, pressure vessels, pressure piping and other major components of any central heating, air-conditioning or ventilating systems, and such other equipment as Ace may require from time to time.

(f) Business Income Insurance against loss of income by reason of any hazard covered under the insurance required under subsections (A), (D), (E), and (G) of this Section 4.01 in an amount sufficient to avoid any coinsurance penalty, but in any event for not less than one year's gross receipts from all sources of income from the Project, which amount is presently estimated to be _____ Dollars (\$). All proceeds of such insurance in the event of loss recovery thereunder shall be paid to Ace as its interest may appear and shall be held and applied by Ace to the extent of such loss recovery towards the payment of the Loan and all obligations under any of the Loan Documents until satisfactory completion or restoration of the Improvements has been effected, at which time, provided the Borrower is not then in default under the Note or under any of the other Loan Documents (and provided there is no event which, with the giving of notice or passage of time, or both, would constitute such a default), the balance of the loss recovery, if any, shall be paid over to the Loan, as Ace may elect.

(g) All Risk Builders Risk Insurance on Improvements under construction, including coverage against collapse, written on a completed value basis in an amount not less than the total value of the Improvements under construction (less the value of such of the Improvements as are uninsurable under the policy, i.e., site preparation, grading, paving, parking lots, excepting, however, foundations and other under surface installations subject to collapse or damage by other insured perils) including, if applicable, the coverages available under the so-called Installation Floater, all in form and amount as Ace may require from time to time.

(h) Such other insurance on the Project, and the other property covered by the Loan Documents, or any part or parts thereof, or any replacements or substitutions therefor, or additions thereto, and in such amounts as may from time to time be required by Ace against other insurable hazards or casualties which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the height and type of the Improvements, and other property and their construction, location, use and occupancy. All proceeds of insurance carried or required to be carried under all subsections of this Section 4.01, except subsection (C) and except as otherwise provided in subsection (F), and all proceeds in the event of a condemnation or other taking, shall be paid to Ace and applied towards the reduction of the principal balance of the Loan in such manner as Ace shall require.

Section 4.02. Approval of Ace.

All insurance required under this Article 4 shall be subject to the approval of Ace as to insurance companies, amounts, content and form of policies and expiration dates, and each policy shall contain a Non-Contributory Standard Mortgagee Clause or its equivalent, in favor of Ace. Such policies shall provide for the payment of all costs and expenses incurred by Ace in the event of any contested claim, and shall not be cancelled or otherwise terminated without at least thirty (30) days' prior written notice to Ace. Full particulars concerning such insurance must be submitted to Ace for its approval at least forty-five (45) days in advance of the date Ace makes its initial disbursement of all or any portion of the Loan. Premiums on acceptable policies of insurance must be fully paid and evidence of payment submitted on the Advance Date. The Loan Documents shall contain provisions satisfactory in form, scope and substance to Ace, incorporating the foregoing insurance requirements.

ARTICLE 5—Leases

Section 5.01. General Requirements.

The Project shall be leased to the Tenant for an initial term of not less than _____ () years, at an annual rental rate as so indicated on *Exhibit D* attached hereto and hereby made a part hereof, and Tenant's performance pursuant to such lease shall be guaranteed by _____, a _____ (the "Guarantor"), with the form of said lease and the form of such guaranty to be as indicated on *Exhibit E* attached hereto and hereby made a part hereof. Any other leases affecting the Project shall be subject to Ace's approval. Ace shall have no obligation to disburse any portion of the Loan unless each such lease is in full force and effect at the time of the Advance Date, and unless the Borrower provides Ace, prior to the Advance Date, with copies of said leases as well as with an estoppel certificate from the Tenant, and all other tenants, which estoppel certificates must be in form, scope and substance satisfactory to Ace, its Law Department and special counsel.

Section 5.02. Assignment of Leases.

All leases referred to in Section 5.01 hereof shall be assigned to Ace as additional security for the Loan, and shall be made either unconditionally subordinate or superior to the Mortgage, as Ace shall elect. The assignment shall be recorded and shall either be acknowledged by the Tenant and all other tenants or Ace shall be furnished with a certified mail receipt and affidavit of mailing evidencing Tenant's and all other tenants' receipt of notice of the assignment. As of the Advance Date and as a condition of disbursing any portion of the Loan, each lease to be so assigned shall be in full force and effect, the Tenant and each other tenant shall be in occupancy of and shall have accepted the premises as being completed without exception and shall have confirmed to Ace the commencement of its lease term, and shall be paying rent on a current basis with no defenses, rental offsets or claims, and Ace shall be furnished with evidence satisfactory to Ace including but not limited to an estoppel certificate from the Tenant and from each other tenant, that all of the foregoing are true and have occurred.

Section 5.03. Prohibitions in Respect of Leases.

With respect to the leases referred to in Section 5.01 hereof the Loan Documents shall provide, *inter alia*, that: (a) none of the leases shall be modified, abridged or terminated, nor shall any surrender be accepted without the prior written consent of Ace, and (b) the Borrower shall not collect rent for more than one (1) month in advance except (i) upon the execution of a lease by all parties thereto, provided that such advance rent in excess of one (1) month's rent is applied to the rents at the beginning of the term of said lease, and (ii) as a security deposit to be applicable either against the rent due at the end of the term of said lease or to be refunded upon the expiration of the term thereof.

Section 5.04. Leasing Commissions.

Any agreement to pay leasing commissions (i) shall provide that the obligation to pay such commissions will not be enforceable against any party other than the party who entered into such agreement, (ii) shall be subordinate to the Mortgage, and (iii) shall not be enforceable against Ace. Ace shall be furnished with evidence of the foregoing satisfactory to it in form, scope and substance. The foregoing requirement shall also be included as a covenant in the Mortgage, which covenant shall be satisfactory in form, scope and substance to Ace, its Law Department and special counsel.

ARTICLE 6—Survey

Section 6.01. Plot Plan.

Within not more than thirty (30) days from the date of this Commitment, the Borrower at its sole cost and expense, shall furnish to Ace an accurate plot plan with the line measurements showing the Parcel, the location of adjoining streets and the distance to the nearest intersecting streets. Ace shall also be furnished a detailed metes and bounds location description at the same time.

Section 6.02. Survey.

The Borrower, at its sole cost and expense, shall furnish to Ace an “as-built” final metes and bounds Class A, ALTA/ACSM land title survey (including all of the table 3 additional requirements) of the Project, dated substantially concurrently with the completion of the Improvements and confirmed as of the Advance Date, which must be satisfactory to Ace, its Law Department and its special counsel, and certified to Ace as to accuracy and completion by a properly registered land surveyor satisfactory to Ace, showing, in addition to the aforementioned requirements, (a) the courses and measured distances of the exterior property lines of the Parcel and interior lot lines, if any; (b) the total square foot area of the Parcel; (c) the location of the Improvements and all structures on the Parcel, the dimensions thereof at ground surface level and the relationship of the same to the exterior property lines and to any applicable setback lines and to other buildings and the number of stories of all structures; (d) the location of adjoining streets; (e) the location and the dimensions of easements identified by reference to recording data of the Instrument creating each easement, and the location of building set-back lines and rights-of-way, if any; (f) encroachments, if any, upon adjoining property by the Improvements and encroachments, if any, upon the Parcel (without implying Ace’s consent to any such encroachment); (g) the location, number, striping and dimensions of parking spaces; (h) the full and complete legal description of the Parcel; and (i) all other matters required by Ace. Such survey shall also include the certification of the surveyor in form, scope and substance satisfactory to Ace.

ARTICLE 7—Title Requirements

Section 7.01. Title Insurance.

The Borrower, at its sole cost and expense, shall furnish to Ace an ALTA Revised 19___ policy of mortgagee title insurance, insuring the lien of the Mortgage, dated as of the Advance Date, with such endorsements as Ace may require, the form, scope and substance of which shall be subject to the approval of Ace, its Law Department and special counsel, totaling in the aggregate, the full amount of the Loan, insuring, *inter alia*, that Ace has a first lien on the fee simple absolute interest in the Project, free of encumbrances or other exceptions to title, other than those which are approved in writing by Ace, its Law Department and special counsel. The issuing company or companies, and the amount of title insurance issued by any company shall be approved by Ace and, if required by Ace, reinsurance by companies approved by Ace, its Law Department and special counsel and co-insurance by two or more title insurance companies with joint and several liability for not less than the first One Million Dollars (\$1,000,000.00) of coverage shall be provided on terms and conditions approved by Ace, its Law Department and special counsel.

ARTICLE 8—Disbursement of Loan

Section 8.01. Conditions Precedent to Disbursement.

Ace shall not be obligated to disburse any portion of the Loan unless and until:

(a) Construction of the Improvements has been completed as provided in Sections 3.04 and 3.05 hereof, the complete set of “as built” plans and specifications required under Section 3.01 hereof has been furnished and the other requirements imposed pursuant to Article 3 hereof have been complied with, and the plot plan and survey required under Article 5 hereof have been furnished.

(b) The lien of the Mortgage to be acquired by Ace is a valid first lien on the fee simple absolute interest in the Project and the title company or companies insuring title for Ace will so insure.

(c) Each of the Loan Documents shall be in form, scope and substance satisfactory to the Law Department of Ace and its special counsel and shall contain clauses deemed by said Law Department and special counsel to be necessary or desirable to protect the interests of Ace.

(d) The Project shall be free of all violations of law or municipal ordinances, orders and requirements, noted in or issued by any state, federal or municipal authorities having or claiming jurisdiction over the Project, and the Borrower shall exhibit to Ace’s Law department and special counsel such certificates as may be required or customary in the locality (including but not limited to permanent and unconditional Certificates of Occupancy) evidencing compliance with all building permits, approval of use and occupancy of the portions of the Improvements intended to be occupied or for which a Certificate of Occupancy is required in order to permit the Improvements to be legally occupied and operated, and approval of all installations therein. Certificates of unofficial bodies, such as the Board of Fire Underwriters, shall also be required. The Borrower shall also exhibit to Ace’s Law Department and special counsel copies of governmental permits and licenses necessary to conduct its business at the Project, which permits and licenses shall, at Ace’s option, be assigned to Ace as additional security for the Loan. As further evidence of the satisfaction of the requirements of this Section 8.01(d), Ace shall also receive such certificates from the Borrower, Borrower’s architects and any legal opinions of Borrower’s counsel as Ace may require.

(e) The Project shall be free from due and unpaid water charges, sewer rents, taxes, assessments and other similar liens or impositions.

(f) The Project shall be free of mechanics’ and materialmen’s liens and any other liens, whether or not disclosed in the title insurance policy or policies, or, if acceptable to Ace, such liens shall be bonded, so that they will not constitute liens on the Project, or any part thereof, to the satisfaction of Ace, or covered by other security satisfactory to Ace; and the title company or companies insuring the lien of the Mortgage must be ready and willing to issue their policy or policies without exception for such liens.

(g) Original paid-up insurance policies (or certificates thereof) providing the types of insurance and containing the clauses and endorsement specified in Article 4 hereof shall have been delivered to Ace at least forty-five (45) days in advance of the date (hereinafter referred to

as the “Closing Date”) requested by the Borrower for the disbursement of the Loan by Ace.

(h) Financing statements are executed by the Borrower for the Project pursuant to the Uniform Commercial Code as enacted in the state where the Project is located, and proof satisfactory to Ace is furnished to Ace, that all materials, furniture, furnishings, and equipment and all other items included in subsection (d) of the definition of “Mortgage” contained herein are owned by the Borrower and the foregoing, including labor, have been paid for in full. A complete inventory of the foregoing, certified by the Borrower and satisfactory in form, scope and substance to Ace shall be furnished to Ace.

(i) There are no outstanding unpaid conditional sales contracts, chattel mortgages, security agreements or financing statements upon the Project, the personalty to be covered under the Mortgage or other Loan Document or any other property, or rights therein covered under the Mortgage or assigned to Ace as additional security for the Loan.

(j) The Borrower shall have furnished evidence that the Project and its use complies fully with applicable zoning, flood hazard, fire safety, environmental, air quality, subdivision, building, planning, use and other governmental laws and requirements. Such evidence shall include without limitation, opinions of Borrower’s counsel, and such other material to establish that the zoning and/or subdivision approval is based on no real property, or rights appurtenant thereto, other than the Parcel encumbered by the Mortgage.

(k) The Borrower shall have reimbursed, or shall have made arrangements satisfactory to Ace for the reimbursement of, all expenses, fees and charges of the nature described in Article 11 of this Commitment which have been paid or incurred by Ace and the Borrower shall have made arrangements satisfactory to Ace to assure that Ace will not be required to pay any further such expenses, fees, or charges.

(l) The Borrower shall have notified Ace in writing of any requested Closing Date permitted under this Commitment at least sixty (60) days prior thereto and shall have submitted all title reports, final surveys, documents and other material required under this Commitment at least sixty (60) days prior to any requested Closing Date.

(m) The Borrower shall have furnished evidence satisfactory to Ace’s Law Department and special counsel that no portion of the Project is located within a Federal Flood Zone. If the Project, or portion thereof, is located within a Federal Flood Zone, and if Ace, in its sole discretion, elects to disburse the Loan even though the Project or portion thereof is located within a Federal Flood Zone (it being understood and agreed that Ace shall not be obligated to disburse any portion of the Loan if the Project or portion thereof is located within a Federal Flood Zone), then the Borrower shall furnish evidence satisfactory to Ace that the flood insurance, required pursuant to the terms of Article 4 hereof has been obtained and is in full force.

(n) The Borrower shall have furnished evidence, satisfactory to Ace, its Law Department and special counsel, that the Parcel is a separate subdivided lot with a separate tax assessment

and billing.

(o) There shall exist no default of condition which constitutes or, with the passage of time, or the giving of notice, or both, would constitute a default under any of the Loan Documents.

(p) Ace shall have received the opinions of counsel required by Sections 8.01(d), 8.01(j) and 10.01 of this Commitment in form, scope and substance satisfactory to Ace's Law Department.

(q) All easements necessary for the lawful and proper use and occupancy of the Project, including without limitation, easements for all utilities, pedestrian and vehicular ingress and egress to and from public highways, shall be created in form, scope and substance satisfactory to Ace, its Law Department and special counsel and shall be insured as appurtenances to the Project under the title policy or policies insuring the Mortgage. In addition, such title policy or policies shall affirmatively insure that no right or lien of any third party nor any foreclosure or tax sale can terminate such easements or the interests created therein.

(r) Neither the Project nor any portion thereof shall have been used for the disposal or storage of any Hazardous Materials. Borrower shall, at its sole cost and expense, have an engineer satisfactory to Ace perform a site investigation, which investigation shall include, at a minimum, an environmental "Phase I" (and "Phase II," if requested by Ace) assessment, as hereinafter defined, of the Project and the surrounding area to determine whether any such Hazardous Materials exist or are located on the Project or in the surrounding area, and, if so, the levels of such Hazardous Materials. The engineer shall issue a report certifying to Ace that its site investigation disclosed no evidence that the Project or the surrounding area contains any Hazardous Materials, and each such report shall be subject to Ace's approval. A "Phase I" environmental assessment shall mean an environmental assessment that includes, but is not limited to, a title search of the previous owners (and tenants of record) thereof; a review of the site history thereof; a regulatory status review; a review of available site information, including proximity to hazardous wastes sites and environmentally sensitive areas; a site visit to locate possible areas of concern with respect thereto, including surface drainage, surface anomalies (i.e., evidence of abandoned landfills, surface impoundments and excessive fill material, etc.); a survey concerning the presence of any types of asbestos-containing materials in the Improvements; and a report of the findings with respect to each of the foregoing, including a summary of work performed, identification of areas of concern, and recommendations for further action. A "Phase II" environmental assessment shall mean an environmental assessment that includes, but is not limited to, full sampling and laboratory testing, including obtaining samples of soil, ground water, surface water and stored wastes, if any, for laboratory analysis, with such testing being designed to target likely hazardous constituents; other samples and testing as may be appropriate in the evaluation of potential remedial action; and a report of the findings with respect to each of the foregoing, including a summary of work performed, the results of all testing, a listing of any and all potential environmental and health concerns, and recommendations for further action.

(s) In addition to the requirements referred to in Article 3 hereof, the Improvements shall have been inspected by Ace's Architect and, if Ace requires, by independent engineers, architects, consultants (including but not limited to, soil consultants, vertical transportation consultants, and curtain wall consultants) selected by Ace (hereinafter collectively referred to as the "Inspectors"), who shall issue written reports to Ace concerning all aspects of the construction and condition of the Improvements, including the soil conditions of the Parcel. Ace shall not be obligated to disburse any portion of the Loan unless and until Ace approves all matters disclosed by or reflected in the inspections conducted by Ace's Architect and the Inspectors and the reports issued by the Inspectors. Whenever the requirements of the Inspectors or Ace's Architect exceed the requirements of local codes, the requirements of Ace's Architect or the Inspectors, as the case may be, shall govern.

(t) Evidence shall be submitted to Ace (which evidence shall be acceptable to Ace, its Law Department and special counsel in form, scope and substance) that (a) all streets adjoining the Parcel have been completed, dedicated and accepted for maintenance and public use by the appropriate governmental authorities; (b) access from streets adjoining the Parcel is afforded to the Parcel and the Improvements thereon, and (c) all utilities for the Improvements enter the Parcel from public streets or through valid easements, which easements, if any, shall be in form, scope and substance satisfactory to Ace, its Law Department and special counsel.

(u) Any and all agreements relating to the Project or its use, occupancy, maintenance and operation shall be acceptable in form, scope and substance, to Ace, its Law Department and special counsel, and such agreements shall, at Ace's option, be assigned to Ace as additional security for the Loan.

(v) The Accounts Receivable relating to the Project are assigned to Ace as additional security for the Loan and Ace shall have a perfected and valid first security interest in all such Accounts Receivable.

(w) Each of the leases referred to in Article 5 hereof shall be made unconditionally subordinate or superior to the Mortgage, whichever Ace has elected. All rights of the Borrower as landlord under each of the leases shall be assigned to Ace as collateral security for the Loan. The Tenant and all other tenants under each of the leases shall have acknowledged receipt of a notice of such assignment or Ace shall be furnished with a certified mail receipt and affidavit of mailing evidencing the Tenant's and all other tenants' receipt of notice of the assignment. The Tenant and all other tenants under each such lease shall have accepted its premises being completed without exception, confirmed the commencement of the lease term and shall be paying rent on a current basis with no rental offsets or counterclaims, and Ace shall be furnished certificates from the Tenant and all other tenants to that effect, which certificates shall be in form, scope and substance satisfactory to Ace, its Law Department and special counsel.

(x) All other terms, provisions, conditions and requirements of this Commitment shall have been met to the satisfaction of Ace. The Borrower shall execute and deliver such other documents pertinent to the transactions herein contemplated as Ace may reasonably require.

Section 8.02. No Adverse Change.

At the time Ace disburses the Loan, the financial condition and the credit of the Borrower, the Tenant, the Guarantor of the Tenant's obligations under the leases referred to in Article 5 hereof, the guarantor of the Loan, if any, and all other features of the transaction shall be as represented to Ace without material, adverse change. No part of the Project shall have been damaged and not repaired to Ace's satisfaction or taken in condemnation or other like proceeding, nor shall any such proceeding be pending or threatened. In the event that there has been a condemnation or other taking, or if such a proceeding is pending or threatened, Ace shall have the option to cancel this Commitment or reduce the amount of the Loan by the amount of the award received in connection with the condemnation or other taking. Neither the Borrower, any partner of the Borrower, the Tenant, the Guarantor nor any guarantor of the Loan, shall be involved in any bankruptcy, reorganization, or insolvency proceeding.

The following shall automatically be deemed to be changes of a material adverse nature: (i) any sale of all or any part of, or any interest in, the Project; of (ii) the Borrower entering into a contract to sell all or any part of, or any interest in, the Project; or (iii) the existence of any financing secured by a lien upon the Project or any part thereof or interest therein at the Advance Date other than the Mortgage; or (iv) the occurrence of any event referred to in Article 15 hereof.

ARTICLE 9—Concerning Legality of Transaction

Section 9.01. Title to the Parcel and Improvements.

All matters of title with respect to the transactions contemplated in this Commitment, including matters with respect to the title of the Project, must meet with the approval of Ace's Law Department and its special counsel.

Section 9.02. Approval of Documents.

All documents, leases, title evidences and surveys required by Ace, its Law Department or special counsel with respect to any of the transactions contemplated in this Commitment must meet with the approval of Ace's Law Department and its special counsel as to substance, form and legal sufficiency. The final title evidences and surveys must be submitted to Ace's Law Department and special counsel at least sixty (60) days prior to the Closing Date.

ARTICLE 10—Legal Representation of Ace

Section 10.01. Special Counsel.

Ace, at its option, shall be represented in this transaction by a law firm selected by its Law Department to act as Ace's special counsel, and the legal fees and disbursements of said special counsel shall be paid by the Borrower. At the time of disbursement of the Loan, Ace shall receive from such special counsel and from the Borrower's counsel, opinions addressed to Ace

in form, scope and substance satisfactory to Ace and its Law Department concerning the legality, validity and binding effect of all documents required in connection with the disbursement of the Loan (including, without limitation, the lease with the Tenant referred to in Article 5 hereof), opinions with respect to Ace's compliance with the investment provisions of applicable State insurance laws in connection with the Loan, and as to all other aspects of the transactions contemplated by this Commitment.

ARTICLE 11—Costs and Expenses of Transaction

Section 11.01. Unqualified Obligation of Borrower.

In addition to the Deposit and Non-Refundable Commitment Fee provided for in Article 12 hereof, and regardless of whether all or any portion of the Loan is disbursed by Ace, the Borrower shall pay all costs and expenses in connection with the transactions contemplated herein, including, but not limited to:

1. the legal fees, charges and disbursements of Ace's special counsel;
2. survey costs;
3. title company charges;
4. documentary stamp taxes or mortgage taxes, if any;
5. recording and/or filing fees for all documents which special counsel for Ace requires be recorded or filed;
6. inspection fees
7. printing costs;
8. fees, charges and expenses of the environmental consultants and the Inspectors (including all architects, engineers, soil consultants, vertical transportation consultants, and curtain wall consultants retained to represent Ace); and
9. out-of-pocket traveling expenses of Ace personnel, including but not limited to, its legal and architectural personnel.

ARTICLE 12—Deposit and Nonrefundable Commitment Fee

Section 12.01. Amount and Nature of Deposits.

Simultaneously with the delivery to Ace of a counterpart of this Commitment with the

acceptance of the Borrower endorsed thereon, the Borrower shall deposit with Ace the sum of _____ Dollars (\$) (herein referred to as the "Deposit") either in cash or in the form of an unconditional and irrevocable Letter of Credit to Ace in the aforementioned amount, with said Letter of Credit to be a "clean" Letter of Credit requiring no documents, for a minimum term of _____ () years, issued by a bank acceptable to Ace, transferable one time with no fee, in compliance with all applicable laws and regulations, including, without limitation, regulations of the Comptroller of the Currency and in form, scope and substance satisfactory to Ace's Law Department and special counsel. The Borrower agrees and acknowledges that the Deposit, if deposited with Ace in the form of cash, may be commingled with other funds owned or held by Ace. The Deposit shall be held by Ace as security for the collection of damages Ace suffers by reason of the Borrower's failure to perform any of its obligations under this Commitment, but the amount of damages that Ace shall be entitled to collect shall not be limited to the amount of the Deposit. In the event the Borrower fails to so perform any of its obligations under this Commitment, Ace shall have the right to retain the cash Deposit and to present the aforementioned Letter of Credit for payment, if so provided as the Deposit, but the amount of damages that Ace shall be entitled to collect shall not be limited to the amount of the Deposit. As used herein, the term "damages" shall include, without limitation, loss of interest by reason of changing interest rates or otherwise, expenses incurred by Ace for those items referred to in Section 11.01 hereof and for the use of any independent appraisers, and salaried time of Ace's employees in connection with, or attributable to, the issuance and administration of this Commitment.

Section 12.02. Return of Deposit.

Within fifteen (15) business days of the date Ace disburses the full amount of the Loan, Ace shall return the Deposit to the Borrower. It is understood and agreed that Ace shall have no obligation to pay any interest on the Deposit.

Section 12.03. Retention of Deposit by Ace.

In the event that any or all of the terms, provisions and conditions of this Commitment are not fulfilled within the time limitation of Section 13.01 hereof for any reason, other than the willful default of Ace, and as a result thereof, Ace does not disburse the full amount of the Loan, Ace may retain the Deposit, to compensate Ace for time spent, labor and services performed, loss of interest and for any other loss which might be incurred by Ace in connection with this transaction. It is understood that the foregoing provision for retention of the Deposit shall not constitute an option on the Borrower's part not to complete the loan transaction herein contemplated, and that Ace reserves any and all rights and remedies which it may have at law or in equity, including but not limited to, specific performance.

Section 12.04. Additional Nature of Obligations Concerning the Deposit.

The Borrower's obligations under this Article 12 with respect to the Deposit referred to in this Article 12 are in addition to all obligations provided elsewhere in this Commitment with respect

to payment of fees to Ace or to payment to any other entity, of fees, charges or expenses.

Section 12.05. Amount and Nature on Nonrefundable Commitment Fee.

Simultaneously with the delivery to Ace of a counterpart of this Commitment with the acceptance of the Borrower endorsed thereof, the Borrower shall pay to Ace in addition to the amount of the Deposit referred to above in this Article 12, the amount of _____ Dollars (\$) as a Nonrefundable Commitment Fee. By accepting this Commitment, the Borrower hereby acknowledges and agrees that Ace is entitled to retain said Nonrefundable Commitment Fee (regardless of whether the Loan is disbursed by Ace) in the amount of _____ (\$) and that the Borrower shall have no further rights with respect thereto.

Section 12.06. Retention of Nonrefundable Commitment Fee by Ace.

It is understood that Ace's right to retain the Nonrefundable Commitment Fee shall not constitute an option on the Borrower's part not to complete the loan transaction contemplated by this Commitment and that Ace reserves any and all rights which it may have at law or in equity, including but not limited to, specific performance.

Section 12.07. Additional Nature of Obligations Concerning the Nonrefundable Commitment Fee.

The Borrower's obligations under this Article 12 with respect to the Nonrefundable Commitment Fee referred to in this Article 12 are in addition to all obligations provided elsewhere in this Commitment with respect to payment of fees to Ace or to payment to any other entity, of fees, charges or expenses.

ARTICLE 13—Termination of Commitment

Section 13.01. Time of Disbursement of the Loan.

If Ace does not disburse the Loan by _____, except for Ace's willful default, Ace's obligations under this Commitment shall cease, unless prior thereto, Ace having sole option to do so, extends the Commitment by notice to the Borrower in writing.

ARTICLE 14—Completion Escrow

Section 14.01. Escrow for Uncompleted Space.

At the time Ace disburses the Loan, it is required that the Improvements contain approximately _____ net rentable square feet of _____ space and approximately _____ net rentable square feet of _____ space. If either the entire _____ space or _____ space is not completed and ready for occupancy and use, the Borrower shall deposit in escrow with Ace, or a depository satisfactory to Ace, at the closing, cash in an amount

equal to _____ Dollars (\$) per square foot of _____ space or _____ space multiplied by the number of square feet not completed for use and occupancy to cover the costs and expenses of completing the space which is uncompleted and not ready for use and occupancy. Notwithstanding anything contained in this Commitment to the contrary, the form, scope and substance of the Escrow Agreement must be satisfactory to Ace's Law Department and special counsel. The Escrow Agreement shall provide that as such uncompleted _____ and _____ space is completed for occupancy and use and the labor, materials, and all other charges are paid for, and Certificates of Occupancy permitting occupancy are issued therefor and furnished to Ace, and further provided no default exists under the Note, the Mortgage or any of the other Loan Documents, there shall be returned to the Borrower, but not more frequently than at thirty (30) day intervals, the first of which shall commence one (1) month following the date of the Escrow Agreement, an amount equal to _____ Dollars (\$) per square foot, multiplied by the number of square feet of space so completed. Ace's title insurance policy or policies shall be endorsed (at the Borrower's expense) to extend the effective date thereof to the date of the return to the Borrower of the funds provided in the preceding sentence to be returned with no additional exceptions added to such title insurance policy or policies. If all of such uncompleted space is not completed by _____, any cash remaining on deposit shall be used, at the option of Ace, in reduction of the principal balance of the Loan, for completion of the space or as otherwise provided in the Escrow Agreement. If a default should occur under the Note, the Mortgage or any of the other Loan Documents prior to the return of all of the escrow funds (in addition to Ace's other rights and remedies), the remainder thereof shall, at the option of Ace, be applied to accrued and unpaid interest, in reduction of the principal balance of the Loan, to the curing of the default or as otherwise provided in the Escrow Agreement. During the continuance of the escrow, the cash deposited will not bear interest.

For the purpose of this Article 14, _____ space and _____ space shall be deemed completed and ready for occupancy and use when all tenant work, including but not limited to, partitions, ceiling suspension systems, ceilings, lights, interior zone duct distribution systems and floor coverings have been installed and all painting has been done, permanent and unconditional Certificates of Occupancy have been issued by the appropriate governmental authorities, the tenant estoppel certificates from the Tenant and all other tenants of the type required pursuant to Section 5.02 of the Commitment have been delivered to Ace and all work is approved as being completed by Ace's Architect.

The escrow provided for completion of the work described above in this Section is in addition to any other escrow required by Ace's Architect to cover the cost of completing any and other incomplete work in the event that Ace, in its sole and absolute discretion, agrees to accept an escrow for such other incomplete work in lieu of completion of such work at the time Ace disburses the Loan.

ARTICLE 15—Additional Payment Requirements

Section 15.01. Ownership.

The Loan Documents shall also contain provisions in form, scope and substance satisfactory to Ace's Law Department and special counsel providing that in the event (a) the Borrower conveys, transfers, assigns, sells, mortgages, encumbers, pledges, hypothecates or otherwise grants or creates a lien or security interest in the Project or the Accounts Receivable, or (b) _____ conveys, transfers, assigns, sells, encumbers, pledges, hypothecates or otherwise grants or creates a lien or security interest in any of the capital stock of Borrower or (c) _____, a _____ conveys, transfers, assigns, sells, encumbers, pledges, hypothecates or otherwise grants or creates a lien or security interest in any portion of its interest in Borrower, or (d) a default occurs on the part of either the landlord or the Tenant pursuant to any of the leases between Borrower and Tenant of the Project, or (e) the Borrower ceases to lease to the Tenant the interest in the Project as a _____ as required pursuant to Article 5 hereof; then in any such event, Ace shall have the right, at its option, to declare an amount equal to one-hundred percent (100) of the outstanding principal balance of the Loan to be immediately due and payable, whereupon it shall be so due and payable. The Loan Documents shall contain such other provisions as Ace's Law Department and its special counsel deem appropriate to monitor and enforce the provisions of this Article 15.

Section 15.02. Management.

[Insert appropriate provisions regarding Management of the Project.]

ARTICLE 16—Notices

Section 16.01. Method of Service.

All notices permitted or required in this Commitment shall be in writing and shall be deemed to have been properly given or served when sent by certified or registered mail, return receipt requested, postage prepaid, and addressed to the party to whom such notice is intended as set forth in Section 16.02 hereof.

Section 16.02. Addresses.

For the purpose of Section 16.01 hereof;

(a) notices to Ace shall be addressed:

Ace Insurance Company
200 Park Avenue, Suite
New York, New York 10166-0114
Attention: Vice President, Real Estate Investments

with a copy to:

Ace Insurance Company
One Madison Avenue
New York, New York 10010
Attention: Vice President and Investment Counsel, Real Estate Investments—Law
Department

or at such other place as Ace may from time to time specify by notice;

(b) notices to the Borrower shall be addressed: _____ or at such other place as the Borrower may from time to time specify by notice.

(c) All notices, demands and requests shall be effective upon being deposited in the United States mail. However, the time period in which a response to any such notice, demand or request must be given shall commence to run from the date of receipt on the return receipt of the notice, demand or request by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address for which no notice was given shall be deemed to be receipt of the notice, demand or request sent as of the date of such rejection, refusal or inability to deliver.

(d) By giving to the other party at least thirty (30) days' prior written notice thereof in the manner required hereby, any party hereto shall have the right from time to time and at any time during the term of this Commitment to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

ARTICLE 17—Servicing

Section 17.01. Appointment.

Ace reserves the right to service the Loan directly or to appoint any person, firm or other entity to service the Loan.

ARTICLE 18—Controlling Law

Section 18.01. Construing of Commitment.

This Commitment shall be deemed to be construed under the laws of the State of _____.

ARTICLE 19—General

Section 19.01. References.

All personal pronouns used in this Commitment whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. All references herein to Articles, Sections or subdivisions shall refer to the corresponding Article, Section or subdivision of this Commitment unless specific reference is made to such Articles, Sections or subdivisions of another document or instrument.

Section 19.02. Entire Agreement.

This Commitment contains the sole and entire agreement and understanding of the parties hereto with respect to the entire subject matter hereof. Any and all prior discussions, negotiations, applications, commitments, writings and understandings relating thereto, unless in writing and therein expressly providing that certain obligations, duties or rights shall survive the execution and delivery of this Commitment are hereby merged herein. This Commitment cannot be changed, or modified or amended except by an instrument in writing signed by the party against whom any such change or modification is sought to be enforced.

Section 19.03. Consents to Defaults.

No consent or waiver, express or implied, by any party hereto of any breach or default by any other in the performance by the other of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such party under this Commitment. Failure on the part of any party to complain of any act or failure to act of the other party or to declare any other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

Section 19.04. No Waiver.

No review, approval, disapproval or acquiescence by Ace shall constitute a waiver of any term, provision or condition of this Commitment, nor give rise to any liability on Ace's part, with respect to the matter reviewed, approved, disapproved, or acquiesced in by Ace.

Section 19.05. Relatives of Borrower.

The Borrower represents that no stockholder or partner of it, is an officer or director of Ace or is a relative of such officer or director within the following categories: a son, a daughter, or a descendant or either; a stepson, stepdaughter, stepfather or stepmother; a father, mother, or ancestor of either; or a spouse. The Borrower shall sign a sworn statement as to the foregoing at the time the Loan is disbursed by Ace.

Section 19.06. Subordinate Financing.

The Mortgage shall contain a provision prohibiting (in addition to the other requirements and prohibitions referred to in this Commitment) any financing which is secured by a mortgage lien, pledge or other encumbrance on the Project or any partnership, capital stock or other ownership interest in the Borrower.

Section 19.07. Limitation.

This Commitment may not be assigned by the Borrower, whether voluntarily or by operation of law, without the prior written consent of Ace, and any attempted assignment (including but not limited to, a change in the stockholders or partners of the Borrower) without such consent shall be null and void (and shall constitute a default hereunder), and shall give Ace the right, at its option, to terminate this Commitment and to exercise its rights and remedies as a result of Borrower's default.

Section 19.08. Press Release.

A press release concerning this proposed financing may, at Ace's option, be prepared and released by Ace after Ace's receipt of the Borrower's acceptance of this Commitment. The Borrower agrees not to issue (or cause to be issued) any such press release without Ace's prior written consent.

Section 19.09. Captions.

The headings and titles of the Articles and Sections of this Commitment are for the convenience of reference only and are not to be considered a part hereof and shall not limit, amplify or otherwise affect any of the terms, conditions, or provisions hereof.

Section 19.10. Foreign Investors.

The Borrower represents that at the time of acceptance of this Commitment and will again represent at the time the Loan is disbursed by Ace, that neither it nor any stockholder or partner of it is, or will be a "foreign person" under the International Investment Survey Act of 1976, the Agricultural Foreign Investment Disclosure Act of 1978, the Foreign Investments in Real Property Tax Act of 1980, the regulations promulgated pursuant to such Acts or any amendments to such Acts or regulations (such Acts, regulations and amendments are hereinafter collectively referred to as the "Foreign Investment Acts and Regulations") and the Borrower further represents that no legal or beneficial interest in it, or any stockholder or partner of it, is, or will be, held directly or indirectly by a "foreign person" under any Foreign Investment Acts and Regulations. The Borrower shall sign a sworn statement as to the foregoing at the time the Loan is disbursed by Ace.

ARTICLE 20—Fees

Section 20.01. Broker and Finder’s Fees.

It is understood and agreed that Ace shall be under no obligation for the payment of any brokerage commissions or fees of any kind with respect to this Commitment or the transactions contemplated hereunder. By acceptance of this Commitment, the Borrower hereby agrees to defend, indemnify and hold Ace harmless from any claims for brokerage commissions or fees of any kind, and for any legal fees, disbursements, expenses and liabilities incurred by Ace in connection with any such claims. The Loan Department shall contain such provisions as Ace’s Law Department and special counsel deem appropriate to incorporate and enforce the provisions of this Article 20.

Upon the return to Ace of a duplicate original of this Commitment with the acceptance of the Borrower endorsed thereon together with the Deposit required under Section 12.01 of this Commitment and the Nonrefundable Commitment Fee required pursuant to Section 12.05 hereof by not later than fifteen (15) days from the date hereof, this Commitment shall be deemed to be the binding obligation of each party in respect of all matters herein required on the part of each said party to be done or performed.

Very truly yours,

ACE INSURANCE COMPANY

By: _____

Vice President Real Estate Investments

ACCEPTED AND AGREED TO THIS
____ DAY OF _____, 20____

[Name of Borrower]

By: _____

Title: _____

Mortgage Note for Postconstruction Loan

\$ _____,

_____, 20__

FOR VALUE RECEIVED _____, having its principal place of business at _____, (hereinafter referred to as “Maker”), promises to pay to the order of _____, a _____, at its principal place of business at _____ (hereinafter referred to as “Payee”), or at such other place as the holder hereof may from time to time designate in writing, the principal sum of _____ Dollars, in lawful money of the United States of America with interest thereon to be computed from the date of this Note at the Applicable Interest Rate (hereinafter defined), and to be paid in installments as follows:

[Appropriate payment provision to be inserted]

The whole of the principal sum of this Note, together with all interest accrued and unpaid thereon and all other sums due under the Mortgage (hereinafter defined) and this Note (all such sums hereinafter collectively referred to as the “Debt”) shall without notice become immediately due and payable at the option of Payee if any payment required in this Note is not paid within ten (10) days of the date when due or on the happening of any other default, after the expiration of any applicable notice and grace periods, herein or under the terms of the Mortgage (hereinafter collectively an “Event of Default”). All of the terms, covenants and conditions contained in the Mortgage and the Other Security Documents (hereinafter defined) are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event that it should become necessary to employ counsel to collect the Debt or to protect or foreclose the security hereof, Maker also agrees to pay reasonable attorney’s fees for the services of such counsel whether or not suit be brought.

If following the occurrence of any Event of Default, Maker shall tender payment of an amount sufficient to satisfy the Debt at any time prior to a foreclosure sale of the Mortgaged Property (as defined in the Mortgage), and if at the time of such tender prepayment of the principal balance of this Note is not permitted, Maker shall, in addition to the entire Debt, also pay to Payee a sum equal to interest which would have accrued on the principal balance of this Note at the Applicable Interest Rate from the date of such tender to the earlier of (i) the Maturity Date or (ii) the first day of the period during which prepayment of the principal balance of this Note would have been permitted, together with a prepayment consideration equal to the prepayment consideration which would have been payable as of the first day of the period during which prepayment would have been permitted. If at the time of such tender prepayment of the principal balance of this Note is permitted, such tender by Maker shall be deemed to be a voluntary prepayment of the principal balance of this Note, and Maker shall, in addition to the entire Debt, also pay to Payee the applicable prepayment consideration specified in this Note.

[Appropriate prepayment provision to be inserted]

Maker does hereby agree that upon the occurrence of an Event of Default or upon the failure of Maker to pay the Debt in full on the Maturity Date, Payee shall be entitled to receive and Maker shall pay interest on the entire unpaid principal sum at the rate of 24% per annum or at the maximum rate of interest which Maker may by law pay, whichever is lower, to be computed from the occurrence of the Event of Default until the actual receipt and collection of the Debt. This charge shall be added to the Debt, and shall be deemed secured by the Mortgage. This clause, however, shall not be construed as an agreement or privilege to extend the date of the payment of the Debt, nor as a waiver of any other right or remedy accruing to Payee by reason of the occurrence of any Event of Default.

This Note is secured by the Mortgage and the Other Security Documents. The term "Mortgage" as used in this Note shall mean the Mortgage and Security Agreement dated the date hereof in the principal sum of \$_____ given by Maker to Payee covering the _____ estate of Maker in certain premises located in _____ County, State (Commonwealth) of _____, and other property, as more particularly described therein and intended to be duly recorded in said County. The term "Other Security Documents" as used in this Note shall mean all and any of the documents other than this Note or the Mortgage now or hereafter executed by Maker and/or others and by or in favor of Payee, which wholly or partially secure or guarantee payment of this Note. Whenever used, the singular number shall include the plural, the plural the singular, and the words "Payee" and "Maker" shall include their respective successors, assigns, heirs, executors and administrators.

This Note is subject to the express condition that at no time shall Maker be obligated or required to pay interest on the principal balance due hereunder at a rate which could subject Payee to either civil or criminal liability as a result of being in excess of the maximum interest rate which Maker is permitted by applicable law to contract or agree to pay. If by the terms of this Note, Maker is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of such maximum rate, the Applicable Interest Rate shall be deemed to be immediately reduced to such maximum rate and all previous payments in excess of the maximum rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder.

If any sum payable under this Note is not paid within ten (10) days after the date on which it is due, Maker shall pay to Payee upon demand an amount equal to the lesser of five percent (5%) of such unpaid sum or the maximum amount permitted by applicable law to defray the expenses incurred by Payee in handling and processing such delinquent payment and to compensate Payee for the loss of the use of such delinquent payment and such amount shall be secured by the Mortgage and the Other Security Documents.

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Maker or Payee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

If Maker consists of more than one person or party, the obligations and liabilities of each such person or party shall be joint and several.

Maker and all others who may become liable for the payment of all or any part of the Debt do hereby severally waive presentment and demand for payment, notice of dishonor, protest and notice of protest and non-payment. No release of any security for the Debt or extension of time for payment of this Note or any installment hereof, and no alteration, amendment or waiver of any provision of this Note, the Mortgage or the Other Security Documents made by agreement between Payee and any other person or party shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Maker, and any other who may become liable for the payment of all or any part of the Debt, under this Note, the Mortgage or the Other Security Documents.

Maker (and the undersigned representative of Maker, if any) represents that Maker has full power, authority and legal right to execute and deliver this Note, the Mortgage and the Other Security Documents and that this Note, the Mortgage and the Other Security Documents constitute valid and binding obligations of Maker.

This Note shall be governed and construed in accordance with the laws of the State of _____ and the applicable laws of the United States of America.

IN WITNESS WHEREOF, Maker has duly executed this Note the day and year first above written.

(Maker)

Fee Mortgage and Security Agreement for Postconstruction Loan

THIS MORTGAGE AND SECURITY AGREEMENT (the "Mortgage"), made the ___ day of _____, 20__, by _____, a _____, having its principal place of business at _____ ("Mortgagor") to _____, a _____, having its principal place of business at _____ ("Mortgagee"),

WITNESSETH:

To secure the payment of an indebtedness in the principal sum of _____ Dollars (\$), lawful money of the United States of America, to be paid with interest according to a certain note dated the date hereof made by Mortgagor to Mortgagee (the note together with all extensions, renewals or modifications thereof being hereinafter collectively called the "Note") (said indebtedness, interest and all other sums due hereunder and under the Note being collectively called the "Debt"), Mortgagor has mortgaged, given, granted, bargained, sold, aliened, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated and by these presents does mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, pledge, assign and hypothecate unto Mortgagee the real property described in Exhibit A attached hereto (the "Premises") and the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (the "Improvements");

TOGETHER WITH: all right, title, interest and estate of Mortgagor now owned, or hereafter acquired, in and to the following property, rights, interests and estates (the Premises, the Improvements together with the following property, rights, interests and estates being hereinafter collectively referred to as the "Mortgaged Property"):

(a) all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Premises and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(b) all machinery, equipment, fixtures (including but not limited to all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Premises and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or

hereafter located upon the Premises and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Premises and the Improvements (hereinafter collectively called the "Equipment"), and the right, title and interest of Mortgagor in and to any of the Equipment which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Mortgaged Property is located (the "Uniform Commercial Code"), superior in lien to the lien of this Mortgage;

(c) all awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Mortgaged Property, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of said right), or for a change of grade, or for any other injury to or decrease in the value of the Mortgaged Property;

(d) all leases and other agreements affecting the use, enjoyment or occupancy of the Premises and the Improvements heretofore or hereafter entered into (the "Leases") and all rents, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Premises and the Improvements (the "Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(e) all proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property;

(f) the right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Mortgagee in the Mortgaged Property;

TO HAVE AND TO HOLD the above granted and described Mortgaged Property unto and to the use and benefit of Mortgagee, and the successors and assigns of Mortgagee, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Mortgagor shall well and truly pay to Mortgagee the Debt at the time and in the manner provided in the Note and this Mortgage and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, these presents and the estate hereby granted shall cease, terminate and be void;

AND Mortgagor represents and warrants to and covenants and agrees with Mortgagee as follows:

1. Payment of Debt and Incorporation of Covenants, Conditions and Agreements.

Mortgagor will pay the Debt at the time and in the manner provided in the Note and in this Mortgage. All the covenants, conditions and agreements contained in (a) the Note and (b) all and

any of the documents other than the Note or this Mortgage now or hereafter executed by Mortgagor and/or others and by or in favor of Mortgagee, which wholly or partially secure or guaranty payment of the Note (the "Other Security Documents"), are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein.

2. Warranty of Title.

Mortgagor warrants that Mortgagor has good title to the Mortgaged Property and has the right to mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, pledge, assign and hypothecate the same and that Mortgagor possesses an unencumbered fee estate in the Premises and the Improvements and that it owns the Mortgaged Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions shown in the title insurance policy insuring the lien of this Mortgage. Mortgagor shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Mortgage and shall forever warrant and defend the same to Mortgagee against the claims of all persons whomsoever.

3. Insurance.

(a) Mortgagor will keep the Mortgaged Property insured against loss or damage by fire, flood and such other hazards, risks and matters, including without limitation, business interruption, rental loss, public liability, and boiler damage and liability, as Mortgagee may from time to time require in amounts required by Mortgagee, and shall pay the premiums for such insurance (the "Insurance Premiums") as the same become due and payable. All policies of insurance (the "Policies") shall be issued by insurers acceptable to Mortgagee and shall contain the standard New York mortgagee non-contribution clause naming Mortgagee as the person to which all payments made by such insurance company shall be paid. Mortgagor will assign and deliver the Policies to Mortgagee. Not later than fifteen (15) days prior to the expiration date of each of the Policies, Mortgagor will deliver evidence satisfactory to Mortgagee of the renewal of each of the Policies.

(b) If the Mortgaged Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Mortgagor shall give prompt notice thereof to Mortgagee. Sums paid to Mortgagee by any insurer may be retained and applied by Mortgagee, after deduction of Mortgagee's reasonable costs and expenses of collection, toward payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper or, at the discretion of Mortgagee, either in whole or in part, to Mortgagor for such purposes as Mortgagee shall designate. Any reduction of the Debt pursuant to the terms of this paragraph 3 shall not be deemed a prepayment of the Debt and no prepayment consideration, if any, shall be due.

4. Payment of Taxes, etc.

Mortgagor shall pay all taxes, assessments, water rates and sewer rents, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof (the "Taxes") and all ground rents, maintenance charges, other governmental impositions, and other charges, including without limitation vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Premises, now or hereafter levied or assessed or imposed against the Mortgaged

Property or any part thereof (the “Other Charges”) as same become due and payable. Mortgagor will deliver to Mortgagee, promptly upon Mortgagee’s request, evidence satisfactory to Mortgagee that the Taxes and Other Charges have been so paid or are not then delinquent. Mortgagor shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Mortgaged Property, and shall promptly pay for all utility services provided to the Mortgaged Property. Mortgagor shall furnish to Mortgagee receipts for the payment of the Taxes, Other Charges and said utility services prior to the date the same shall become delinquent.

5. Escrow Fund.

Mortgagor shall, at the option of Mortgagee, pay to Mortgagee on the first day of each calendar month (a) one-twelfth of an amount which would be sufficient to pay the Taxes payable, or estimated by Mortgagee to be payable, during the next ensuing twelve (12) months and (b) one-twelfth of an amount which would be sufficient to pay the Insurance Premiums due for the renewal of the coverage afforded by the Policies upon the expiration thereof (said amounts in (a) and (b) above hereinafter called the “Escrow Fund”). The Escrow Fund and the payments of interest or principal or both, payable pursuant to the Note shall be added together and shall be paid as an aggregate sum by Mortgagor to Mortgagee. Mortgagor hereby pledges to Mortgagee any and all monies now or hereafter deposited in the Escrow Fund as additional security for the payment of the Debt. Mortgagee will apply the Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Mortgagor pursuant to paragraphs 3 and 4 hereof. If the amount of the Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to paragraphs 3 and 4 hereof, Mortgagee shall, in its discretion, return any excess to Mortgagor or credit such excess against future payments to be made to the Escrow Fund. In allocating such excess, Mortgagee may deal with the person shown on the records of Mortgagee to be the owner of the Mortgaged Property. If the Escrow Fund is not sufficient to pay the items set forth in (a) and (b) above, Mortgagor shall promptly pay to Mortgagee, upon demand, an amount which Mortgagee shall estimate as sufficient to make up the deficiency. Upon the occurrence of an Event of Default (hereinafter defined) Mortgagee may apply any sums then present in the Escrow Fund to the payment of the following items in any order in its uncontrolled discretion:

- (i) Taxes and Other Charges;
- (ii) Insurance Premiums;
- (iii) Interest on the unpaid principal balance of the Note;
- (iv) Amortization of the unpaid principal balance of the Note;
- (v) All other sums payable pursuant to the Note, this Mortgage and the Other Security Documents, including without limitation advances made by Mortgagee pursuant to the terms of this Mortgage.

Until expended or applied as above provided, any amounts in the Escrow Fund shall constitute additional security for the Debt. The Escrow Fund shall not constitute a trust fund and may be commingled with other monies held by Mortgagee. No earnings or interest on the Escrow Fund shall be payable to Mortgagor.

6. Condemnation.

Mortgagor shall promptly give Mortgagee notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Mortgagee copies of any and all papers served in connection with such proceedings. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Mortgagor shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Mortgage and the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by Mortgagee, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Mortgagee shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award interest at the rate or rates provided herein and in the Note. Mortgagee may apply any such award or payment to the reduction or discharge of the Debt whether or not then due and payable. Any reduction of the Debt pursuant to the terms of this paragraph 6 shall not be deemed a prepayment of the Debt and no prepayment consideration, if any, shall be due. If the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by Mortgagee of such award or payment, Mortgagee shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive said award or payment, or a portion thereof sufficient to pay the Debt.

7. Leases and Rents.

(a) Mortgagee is hereby granted and assigned by Mortgagor the right to enter the Mortgaged Property for the purpose of enforcing its interest in the Leases and the Rents, this Mortgage constituting a present, absolute assignment of the Leases and the Rents. Nevertheless, subject to the terms of this paragraph 7, Mortgagee grants to Mortgagor a revocable license to operate and manage the Mortgaged Property and to collect the Rents. Mortgagor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums. Upon or at any time after an Event of Default, the license granted to Mortgagor herein may be revoked by Mortgagee, and Mortgagee may enter upon the Mortgaged Property, and collect, retain and apply the Rents toward payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper.

(b) All Leases shall be written on the standard form of lease which has been approved by Mortgagee. Upon request, Mortgagor shall furnish Mortgagee with executed copies of all Leases. No material changes may be made to the Mortgagee-approved standard lease without the prior written consent of Mortgagee. In addition, all renewals of Leases and all proposed leases shall

provide for rental rates comparable to existing local market rates and shall be arms-length transactions. All proposed leases shall be subject to the prior approval of the Mortgagee. All Leases shall provide that they are subordinate to this Mortgage and that the lessee agrees to attorn to Mortgagee. Mortgagor (i) shall observe and perform all the obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to impair the value of the Leases as security for the Debt; (ii) shall promptly send copies to Mortgagee of all notices of default which Mortgagor shall send or receive thereunder; (iii) shall enforce all of the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed, short of termination thereof; (iv) shall not collect any of the Rents more than one (1) month in advance; (v) shall not execute any other assignment of lessor's interest in the Leases or the Rents; (vi) shall not alter, modify or change the terms of the Leases without the prior written consent of Mortgagee, or cancel or terminate the Leases or accept a surrender thereof or convey or transfer or suffer or permit a conveyance or transfer of the Premises or of any interest therein so as to effect a merger of the estates and rights of, or a termination or diminution of the obligations of, lessees thereunder; (vii) shall not alter, modify or change the terms of any guaranty of the Leases or cancel or terminate such guaranty without the prior written consent of Mortgagee; (viii) shall not consent to any assignment of or subletting under the Leases not in accordance with their terms, without the prior written consent of Mortgagee; and (ix) shall execute and deliver at the request of Mortgagee all such further assurances, confirmations and assignments in connection with the Mortgaged Property as Mortgagee shall from time to time require.

8. Maintenance of Mortgaged Property.

Mortgagor shall cause the Mortgaged Property to be maintained in a good and safe condition and repair. The Improvements and the Equipment shall not be removed, demolished or materially altered (except for normal replacement of the Equipment) without the consent of Mortgagee. Mortgagor shall promptly comply with all laws, orders and ordinances affecting the Mortgaged Property, or the use thereof. Mortgagor shall promptly repair, replace or rebuild any part of the Mortgaged Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be affected by any proceeding of the character referred to in paragraph 6 hereof and shall complete and pay for any structure at any time in the process of construction or repair on the Premises. Mortgagor shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Mortgaged Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Mortgaged Property is or shall become a nonconforming use, Mortgagor will not cause or permit such nonconforming use to be discontinued or abandoned without the express written consent of Mortgagee.

9. Transfer or Encumbrance of the Mortgaged Property.

(a) Mortgagor acknowledges that Mortgagee has examined and relied on the creditworthiness of Mortgagor and experience of Mortgagor in owning and operating properties such as the Mortgaged Property in agreeing to make the loan secured hereby, and that Mortgagee

will continue to rely on Mortgagor's ownership of the Mortgaged Property as a means of maintaining the value of the Mortgaged Property as security for repayment of the Debt. Mortgagor acknowledges that Mortgagee has a valid interest in maintaining the value of the Mortgaged Property so as to ensure that, should Mortgagor default in the repayment of the Debt, Mortgagee can recover the Debt by a sale of the Mortgaged Property. Mortgagor shall not, without the prior written consent of Mortgagee, sell, convey, alien, mortgage, encumber, pledge or otherwise transfer the Mortgaged Property or any part thereof, or permit the Mortgaged Property or any part thereof to be sold, conveyed, aliened, mortgaged, encumbered, pledged or otherwise transferred.

(b) A sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer within the meaning of this paragraph 9 shall be deemed to include (i) an installment sales agreement wherein Mortgagor agrees to sell the Mortgaged Property or any part thereof for a price to be paid in installments; (ii) an agreement by Mortgagor leasing all or a substantial part of the Mortgaged Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgagor's right, title and interest in and to any Leases or any Rents; (iii) if Mortgagor, any Guarantor (hereinafter defined), or any general partner of Mortgagor or Guarantor is a corporation, the voluntary or involuntary sale, conveyance or transfer of such corporation's stock (or the stock of any corporation directly or indirectly controlling such corporation by operation of law or otherwise) or the creation or issuance of new stock by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders; (iv) if Mortgagor, any Guarantor or any general partner of Mortgagor or any Guarantor is a limited or general partnership or joint venture, the change, removal or resignation of a general partner or managing partner or the transfer of the partnership interest of any general partner or managing partner; and (v) the removal or resignation of the managing agent for the Mortgaged Property or the transfer of ownership, management or control of such managing agent to a person or entity other than the general partner or managing partner of Mortgagor.

(c) Mortgagee reserves the right to condition the consent required hereunder upon a modification of the terms hereof and on assumption of this Mortgage as so modified by the proposed transferee, payment of a transfer fee, or such other conditions as Mortgagee shall determine in its sole discretion to be in the interest of Mortgagee. Mortgagee shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Mortgagor's sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property without Mortgagee's consent. This provision shall apply to every sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property regardless of whether voluntary or not, or whether or not Mortgagee has consented to any previous sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property.

10. Estoppel Certificates.

(a) After request by Mortgagee, Mortgagor, within ten (10) days, shall furnish

Mortgagee with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest of the Note, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Debt, if any, and (vi) that the Note and this Mortgage are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

(b) After request by Mortgagee, Mortgagor, within ten (10) days, will furnish Mortgagee with estoppel certificates from any lessees under the Leases as required by their respective Leases.

11. Changes in the Laws Regarding Taxation.

If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Debt from the value of the Mortgaged Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Mortgagee's interest in the Mortgaged Property, Mortgagor will pay such tax, with interest and penalties thereon, if any. In the event Mortgagee is advised by counsel chosen by it that the payment of such tax or interest and penalties by Mortgagor would be unlawful or taxable to Mortgagee or unenforceable or provide the basis for a defense of usury, then in any such event, Mortgagee shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

12. No Credits on Account of the Debt.

Mortgagor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Mortgaged Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Mortgaged Property, or any part thereof, for real estate tax purposes by reason of this Mortgage or the Debt. In the event such claim, credit or deduction shall be required by law, Mortgagee shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

13. Documentary Stamps.

If at any time the United States of America, any state thereof or any subdivision of any such state shall require revenue or other stamps to be affixed to the Note or this Mortgage, or impose any other tax or charge on the same, Mortgagor will pay for the same, with interest and penalties thereon, if any.

14. Usury Laws.

This Mortgage and the Note are subject to the express condition that at no time shall Mortgagor be obligated or required to pay interest on the Debt at a rate which could subject the holder of the Note to either civil or criminal liability as a result of being in excess of the maximum interest rate which Mortgagor is permitted by applicable law to contract or agree to pay. If by the terms

of this Mortgage or the Note, Mortgagor is at any time required or obligated to pay interest on the Debt at a rate in excess of such maximum rate, the rate of interest under the same shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Note.

15. Books and Records.

Mortgagor and Guarantors, if any, shall keep adequate books and records of account in accordance with generally accepted accounting practices consistently applied and furnish to Mortgagee: (a) an annual certified rent roll signed and dated by Mortgagor detailing the names of all tenants of the Improvements, the portion of the Improvements occupied by each tenant, the rent and any other charges payable under each lease, and the term of each lease; (b) an annual operating statement of the Mortgaged Property detailing the total revenues received and total expenses incurred to be prepared and certified by Mortgagor; (c) an annual balance sheet and profit and loss statement of Mortgagor, and of any Guarantor, prepared by or, if required by Mortgagee, audited and certified by a certified public accountant acceptable to Mortgagee within ninety (90) days after the close of each fiscal year; and (d) such annual balance sheets and profit and loss statements and other financial statements as may, from time to time, be required by Mortgagee.

16. Performance of Other Agreements.

Mortgagor shall observe and perform each and every term to be observed or performed by Mortgagor pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Mortgaged Property.

17. Further Acts, etc.

Mortgagor will, at the cost of Mortgagor, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as Mortgagee shall, from time to time, require, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the property and rights hereby mortgaged, given, granted, bargained, sold, aliened, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage. Mortgagor on demand, will execute and deliver and hereby authorizes Mortgagee to execute in the name of Mortgagor or without the signature of Mortgagor to the extent Mortgagee may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Mortgagee in the Mortgaged Property. Mortgagor grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and

perfecting any and all rights and remedies available to Mortgagee at law and in equity, including without limitation such rights and remedies available to Mortgagee pursuant to this paragraph 17.

18. Recording of Mortgage, etc.

Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of Mortgagee in, the Mortgaged Property.

Mortgagor will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property and any instrument of further assurance, and all federal, state, county and municipal, taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance, except where prohibited by law so to do. Mortgagor shall hold harmless and indemnify Mortgagee, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Mortgage.

19. Prepayment.

If permitted by the Note, the Debt may be prepaid in accordance with the terms thereof.

20. Events of Default.

The Debt shall become immediately due and payable at the option of Mortgagee upon any one or more of the following events (“Event of Default”):

- (a) if any portion of the Debt is not paid within ten (10) days after the same is due;
- (b) if any of the Taxes or Other Charges is not paid when the same is due and payable;
- (c) if the Policies are not kept in full force and effect, or if the Policies are not assigned and delivered to Mortgagee upon request;
- (d) if Mortgagor violates or does not comply with any of the provisions of paragraphs 7, 9, 34 or 35;
- (e) if any representation or warranty of Mortgagor, or of any person guaranteeing payment of the Debt or any portion thereof or performance by Mortgagor of any of the terms of this Mortgage (a “Guarantor”), made herein or in any such guaranty, or in any certificate, report,

financial statement or other instrument or document furnished to Mortgagee shall have been false or misleading in any material respect when made;

(f) if Mortgagor or any Guarantor shall make an assignment for the benefit of creditors or if Mortgagor shall generally not be paying its debts as they become due;

(g) if a receiver, liquidator or trustee of Mortgagor or of any Guarantor shall be appointed or if Mortgagor or any Guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Mortgagor or any Guarantor or if any proceeding for the dissolution or liquidation of Mortgagor or of any Guarantor shall be instituted; however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Mortgagor or such Guarantor, upon the same not being discharged, stayed or dismissed within sixty (60) days;

(h) if Mortgagor shall be in default under any other mortgage or security agreement covering any part of the Mortgaged Property whether it be superior or junior in lien to this Mortgage;

(i) if the Mortgaged Property becomes subject to any mechanic's, materialman's or other lien other than a lien for local real estate taxes and assessments not then due and payable and such lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of thirty (30) days;

(j) if Mortgagor fails to cure promptly any violations of laws or ordinances affecting or which may be interpreted to affect the Mortgaged Property; or

(k) if for more than ten (10) days after notice from Mortgagee, Mortgagor shall continue to be in default under any other term, covenant or condition of the Note, this Mortgage or the Other Security Documents.

21. Remedies of Mortgagee.

Upon the occurrence of any Event of Default, (a) Mortgagor will pay, from the date of that Event of Default, interest on the unpaid principal balance of the Note at the rate of 24% per annum, or at the maximum interest rate which Mortgagor may by law pay, whichever is lower, (the "Default Rate") and (b) Mortgagee shall have the right to exercise any and all rights and remedies available at law and in equity.

22. Sale of Mortgaged Property.

If this Mortgage is foreclosed, the Mortgaged Property, or any interest therein, may at the discretion of Mortgagee, be sold in one or more parcels or in several interests or portions and in any order or manner.

23. Right to Cure Defaults.

Upon the occurrence of any Event of Default or if Mortgagor fails to make any payment or to do any act as herein provided, Mortgagee may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof Mortgagee is authorized to enter upon the Mortgaged Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Mortgaged Property or to foreclose this Mortgage or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this paragraph 23, shall constitute a portion of the Debt and shall be due and payable to Mortgagee upon demand. All such costs and expenses incurred by Mortgagee in remedying such Event of Default or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee. All such costs and expenses incurred by Mortgagee together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Mortgage and the Other Security Documents and shall be immediately due and payable upon demand by Mortgagee therefor.

24. Late Payment Charge.

If any portion of the Debt is not paid within ten (10) days after the date on which it is due, Mortgagor shall pay to Mortgagee upon demand an amount equal to the lesser of five percent (5%) of such unpaid portion of the Debt or the maximum amount permitted by applicable law, to defray the expense incurred by Mortgagee in handling and processing such delinquent payment and to compensate Mortgagee for the loss of the use of such delinquent payment, and such amount shall be secured by this Mortgage and the Other Security Documents.

25. Prepayment After Event of Default.

If following the occurrence of any Event of Default Mortgagor shall tender payment of an amount sufficient to satisfy the Debt in whole or in part at any time prior to a foreclosure sale of the Mortgaged Property, and if at the time of such tender prepayment of the principal balance of the Note is not permitted by the Note, Mortgagor shall, in addition to the entire Debt, also pay to Mortgagee a sum equal to interest which would have accrued on the principal balance of the Note at the Applicable Interest Rate as defined in the Note from the date of such tender to the earlier of (i) the Maturity Date as defined in the Note or to (ii) the first day of the period during which prepayment of the principal balance of the Note would have been permitted together with a prepayment consideration equal to the prepayment consideration which would have been payable as of the first day of the period during which prepayment would have been permitted. If at the time of such tender prepayment of the principal balance of the Note is permitted, such tender by Mortgagor shall be deemed to be a voluntary prepayment of the principal balance of

the Note, and Mortgagor shall, in addition to the entire Debt, also pay to Mortgagee the applicable prepayment consideration specified in the Note and this Mortgage.

26. Right of Entry.

Mortgagee and its agents shall have the right to enter and inspect the Mortgaged Property at all reasonable times.

27. Appointment of Receiver.

The holder of this Mortgage, upon the occurrence of an Event of Default or in any action to foreclose this Mortgage or upon the actual or threatened waste to any part of the Mortgaged Property, shall be entitled to the appointment of a receiver without notice and without regard to the value of the Mortgaged Property as security for the Debt, or the solvency or insolvency of any person liable for the payment of the Debt.

28. Reasonable Use and Occupancy.

In addition to the rights which Mortgagee may have herein, upon the occurrence of any Event of Default, Mortgagee, at its option, may require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be occupied by Mortgagor or may require Mortgagor to vacate and surrender possession of the Mortgaged Property to Mortgagee or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise.

29. Security Agreement.

This Mortgage is both a real property mortgage and a “security agreement” within the meaning of the Uniform Commercial Code. The Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Mortgaged Property. Mortgagor by executing and delivering this Mortgage has granted and hereby grants to Mortgagee, as security for the Debt, a security interest in the Mortgaged Property to the full extent that the Mortgaged Property may be subject to the Uniform Commercial Code (said portion of the Mortgaged Property so subject to the Uniform Commercial Code being called in this paragraph 29 the “Collateral”). If an Event of Default shall occur, Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Mortgagee, Mortgagor shall at its expense assemble the Collateral and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Mortgagor shall pay to Mortgagee on demand any and all expenses

including legal expenses and attorneys' fees, incurred or paid by Mortgagee in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral sent to Mortgagor in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Mortgagee to the payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper.

30. Actions and Proceedings.

Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Mortgagee, in its discretion, decides should be brought to protect its interest in the Mortgaged Property. Mortgagee shall, at its option, be subrogated to the lien of any mortgage or other security instrument discharged in whole or in part by the Debt, and any such subrogation rights shall constitute additional security for the payment of the Debt.

31. Waiver of Counterclaim.

Mortgagor hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Mortgagee, and waives trial by jury in any action or proceeding brought by either party hereto against the other or in any counterclaim asserted by Mortgagee against Mortgagor, or in any matters whatsoever arising out of or in any way connected with this Mortgage, the Note, any of the Other Security Documents or the Debt.

32. Recovery of Sums Required To Be Paid.

Mortgagee shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.

33. Marshalling and Other Matters.

Mortgagor hereby waives, to the extent permitted by law, the benefit of all appraisalment, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Mortgaged Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage and on behalf of all persons to the extent permitted by applicable law.

34. Hazardous Materials.

Mortgagor represents and warrants that, to the best of Mortgagor's knowledge, after due inquiry and investigation, (a) there are no Hazardous Materials (hereinafter defined) on the Mortgaged Property, except those in compliance with all applicable federal, state and local laws, ordinances, rules and regulations, and (b) no owner or occupant nor any prior owner or occupant of the Mortgaged Property has received any notice or advice from any governmental agency or any source whatsoever with respect to Hazardous Materials on, from or affecting the Mortgaged Property. Mortgagor covenants that the Mortgaged Property shall be kept free of Hazardous Materials, and neither Mortgagor nor any occupant of the Mortgaged Property shall use, transport, store, dispose of or in any manner deal with Hazardous Materials on the Mortgaged Property, except in compliance with all applicable federal, state and local laws, ordinances, rules and regulations. Mortgagor shall comply with, and ensure compliance by all occupants of the Mortgaged Property with, all applicable federal, state and local laws, ordinances, rules and regulations, and shall keep the Mortgaged Property free and clear of any liens imposed pursuant to such laws, ordinances, rules or regulations. In the event that Mortgagor receives any notice or advice from any governmental agency or any source whatsoever with respect to Hazardous Materials on, from or affecting the Mortgaged Property, Mortgagor shall immediately notify Mortgagee. Mortgagor shall conduct and complete all investigations, studies, sampling, and testing, and all remedial actions necessary to clean up and remove all Hazardous Materials from the Mortgaged Property in accordance with all applicable federal, state, and local laws, ordinances, rules and regulations. The term "Hazardous Materials" as used in this Mortgage shall include, without limitation, gasoline, petroleum products, explosives, radioactive materials, polychlorinated biphenyls or related or similar materials, or any other substance or material defined as a hazardous or toxic substance or material by any federal, state or local law, ordinance, rule, or regulation, but excluding Asbestos, as defined in paragraph 35 hereof. The obligations and liabilities of Mortgagor under this paragraph 34 shall survive any entry of a judgment of foreclosure or the delivery of a deed in lieu of foreclosure of this Mortgage.

35. Asbestos.

Mortgagor represents and warrants that, to the best of Mortgagor's knowledge, after due inquiry and investigation, there is no asbestos or material containing asbestos ("Asbestos") on the Mortgaged Property, and that no owner or occupant nor any prior owner or occupant of the Mortgaged Property has received any notice or advice from any governmental agency or any source whatsoever with respect to Asbestos on, affecting or installed on the Mortgaged Property. Mortgagor covenants that the Mortgaged Property shall be kept free of Asbestos, and neither Mortgagor nor any occupant of the Mortgaged Property shall install, or permit to be installed, Asbestos on the Mortgaged Property. Mortgagor shall comply with, and ensure compliance by all occupants of the Mortgaged Property with, all applicable federal, state and local laws, ordinances, rules and regulations with respect to asbestos, and shall keep the Mortgaged Property free and clear of any liens imposed pursuant to such laws, ordinances, rules or regulations. In the event that Mortgagor receives any notice or advice from any governmental agency or any source

whatsoever with respect to Asbestos on, affecting or installed on the Mortgaged Property, Mortgagor shall immediately notify Mortgagee. Mortgagor shall conduct and complete all investigations, studies, sampling, and testing, and all remedial actions necessary to clean up and remove all asbestos from the Mortgaged Property in accordance with all applicable federal, state and local laws, ordinances, rules and regulations. The obligations and liabilities of Mortgagor under this paragraph 35 shall survive any entry of a judgment of foreclosure or delivery of a deed in lieu of foreclosure of this Mortgage.

36. Indemnification.

Mortgagor shall protect, defend, indemnify and save harmless Mortgagee from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including without limitation reasonable attorneys' fees and expenses), imposed upon or incurred by or asserted against Mortgagee by reason of (a) ownership of this Mortgage, the Mortgaged Property or any interest therein or receipt of any Rents; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Mortgaged Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) any use, non-use or condition in, on or about the Mortgaged Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (d) any failure on the part of Mortgagor to perform or comply with any of the terms of this Mortgage; (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof; (f) the failure of any person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with the Mortgage, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Mortgage is made; (g) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Materials on, from, or affecting the Mortgaged Property or any other property or the presence of Asbestos on the Mortgaged Property; (h) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials or Asbestos; (i) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials or Asbestos; or (j) any violation of laws, orders, regulations, requirements, or demands of government authorities, which are based upon or in any way related to such Hazardous Materials or Asbestos including, without limitation, the costs and expenses of any remedial action, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. Any amounts payable to Mortgagee by reason of the application of this paragraph 36 shall be secured by this Mortgage and shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Mortgagee until paid. The obligations and liabilities of Mortgagor under this paragraph 36 shall survive any termination, satisfaction, assignment, entry of a judgment of foreclosure or delivery of a deed in lieu of foreclosure of this Mortgage.

37. Notices.

Any notice, demand, statement, request or consent made hereunder shall be in writing and shall be deemed given when postmarked, addressed and mailed by first class mail to the address, as set forth above, of the party to whom such notice is to be given, or to such other address as Mortgagor or Mortgagee, as the case may be, shall in like manner designate in writing.

38. Authority.

(a) Mortgagor (and the undersigned representative of Mortgagor, if any) has full power, authority and legal right to execute this Mortgage, and to mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, pledge, hypothecate and assign the Mortgaged Property pursuant to the terms hereof and to keep and observe all of the terms of this Mortgage on Mortgagor's part to be performed. (b) Mortgagor represents and warrants that Mortgagor is not a "foreign person" within the meaning of §1445(f)(3) of the Internal Revenue Code of 1986, as amended and the related Treasury Department regulations, including temporary regulations.

39. Waiver of Notice.

Mortgagor shall not be entitled to any notices of any nature whatsoever from Mortgagee except with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by Mortgagee to Mortgagor and except with respect to matters for which Mortgagee is required by applicable law to give notice, and Mortgagor hereby expressly waives the right to receive any notice from Mortgagee with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by Mortgagee to Mortgagor.

40. Remedies of Mortgagor.

In the event that a claim or adjudication is made that Mortgagee has acted unreasonably or unreasonably delayed acting in any case where by law or under the Note, this Mortgage or the Other Security Documents, it has an obligation to act reasonably or promptly, Mortgagee shall not be liable for any monetary damages, and Mortgagor's remedies shall be limited to injunctive relief or declaratory judgment.

41. Sole Discretion of Mortgagee.

Wherever pursuant to this Mortgage, Mortgagee exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Mortgagee, the decision of Mortgagee to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole discretion of Mortgagee and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

42. Non-Waiver.

The failure of Mortgagee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (a) the failure of Mortgagee to comply with any request of Mortgagor or Guarantors to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Note or the Other Security Documents, (b) the release, regardless of consideration, of the whole or any part of the Mortgaged Property, or of any person liable for the Debt or any portion thereof, or (c) any agreement or stipulation by Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Mortgage or the Other Security Documents. Mortgagee may resort for the payment of the Debt to any other security held by Mortgagee in such order and manner as Mortgagee, in its discretion, may elect. Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Mortgage. The rights of Mortgagee under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Mortgagee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

43. No Oral Change.

This Mortgage, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Mortgagor or Mortgagee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

44. Liability.

If Mortgagor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Mortgage shall be binding upon and inure to the benefit of Mortgagor and Mortgagee and their respective successors and assigns forever.

45. Inapplicable Provisions.

If any term, covenant or condition of the Note or this Mortgage is held to be invalid, illegal or unenforceable in any respect, the Note and this Mortgage shall be construed without such provision.

46. Headings, etc.

The headings and captions of various paragraphs of this Mortgage are for convenience of

reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

47. Duplicate Originals.

This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

48. Definitions.

Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in singular or plural form and the word "Mortgagor" shall mean "each Mortgagor and any subsequent owner or owners of the Mortgaged Property or any part thereof or any interest therein," the word "Mortgagee" shall mean "Mortgagee and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Mortgage," the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, and any other entity, and the words "Mortgaged Property" shall include any portion of the Mortgaged Property and any interest therein. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

IN WITNESS WHEREOF, this Mortgage has been executed by Mortgagor the day and year first above written.

(Mortgagor)

ACKNOWLEDGMENTS
(to be attached)

EXHIBIT A—(Description of Premises)

Deed of Trust for Postconstruction Loan

This Deed of Trust, made and entered into on this _____ day of _____, 20____, by and between _____, whose principal place of business is located in the County of _____, State of _____ (hereinafter referred to as “Trustor”), and _____ a _____ corporation (hereinafter referred to as “Trustee”), and ACE INSURANCE COMPANY, a corporation organized under the laws of the State of _____ (hereinafter referred to as “Beneficiary”).

Witnesseth: That Trustor Grants, Transfers and Assigns to Trustee in Trust, with Power of Sale, all that certain real property, together with any and all buildings and improvements now or hereafter erected thereon, located and being in the County of _____, State of _____ and described as follows:

Together With all of the rents, royalties, issues, profits, revenues, income and other benefits of the above described real estate or arising from the use or enjoyment of all or any portion thereof, or from any lease or agreement pertaining to such use or enjoyment, SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, royalties, issues, profits, revenues, income and other benefits;

And Together With any and all awards or payments, including interest thereon, and the right to receive the same, which may be made with respect to the premises by any public or quasi-public authority or corporation as a result of (a) the exercise of the right of eminent domain, (b) the alteration of the grade of any street, or (c) any other injury to or decrease in the value of the premises, to the extent of all amounts which may be secured by this Deed of Trust at the date of receipt by Beneficiary of any such award or payment, and of the reasonable counsel fees, costs and disbursements incurred by Beneficiary in connection with the collection of such award or payment. Trustor agrees to execute and deliver, from time to time, such further instruments as may be requested by Beneficiary to confirm such assignment to Beneficiary of any such award or payment.

For the purpose of securing in such order of priority as Beneficiary may elect:

ONE: Payment of an indebtedness evidenced by a certain Promissory Note of even date herewith in the principal amount of _____ Dollars (\$_____), executed by Trustor, payable to Beneficiary or order, and any and all extensions or renewals thereon and the performance and discharge of each and every obligation of Trustor in said Promissory Note contained.

TWO: Payment of all other sums with interest thereon becoming due or payable under the provisions hereof to either Trustee or Beneficiary.

THREE: Performance and discharge of each and every obligation, covenant and agreement of Trustor herein contained and in any and all pledge agreements, chattel mortgages, supplemental agreements, assignments of lessor’s interest in leases, or other instruments of security executed

by Trustor as of even date herewith or at any time subsequent to the date hereof for the purpose of further securing any indebtedness hereby secured, or any part thereof, or any further advancements or further or additional loans of any sums hereafter made by Beneficiary to Trustor during the continuance of these trusts and secured hereby, or for the purpose of supplementing or amending this Deed of Trust or any instrument secured hereby.

To protect the security of this deed of trust, trustor agrees:

[See Mortgagor's covenants in Fee Mortgage and Security Agreement for Postconstruction Loan]

Tenant's Acceptance Letter—Closing Document

The undersigned, as tenant under that certain Lease dated _____, made with _____, as Landlord, does hereby certify:

1. That its leased premises at the above location have been completed in accordance with the terms of the Lease, that it has accepted possession of said premises and that it now occupies the same;
2. That it began paying rent on _____, 20____, and that, save only as may be required by the terms of the Lease, no rental has been paid in advance;
3. That there exist no defenses or offsets to enforcement of the Lease by the Landlord and that there are, as of the date hereof, no defaults or breaches on the part of the Landlord under the Lease known to the undersigned;
4. That the Lease is now in full force and effect and has not been amended, modified, or assigned, except by agreements dated
[if none, so state].

It is understood that you require this statement from the undersigned as a condition to the making of a loan to the owners of _____, secured by a first mortgage thereon and also by an assignment of the Lease as collateral security.

Dated: _____, 20____.

Tenant

Borrower's Assignment of Leases to Lender

By this assignment dated _____, 20____, _____ hereinafter referred to as "Owner", for the consideration of One Dollar (\$1.00), with intent to be legally bound hereby, and as an inducement for the making of the loan evidenced and secured as hereinafter described, hereby assigns unto _____, a corporation organized under the laws of the State of _____ and having its principal place of business at _____ hereinafter referred to as "Mortgagee," all the right, title, and interest of Owner in, under, or by virtue of the following described lease or leases, and all extensions, renewals, modifications or replacements thereof and any and all guaranties of the lessee's obligations under any provisions thereof and under any and all extensions and renewals thereof (any such lease or leases being hereinafter referred to collectively as the "Lease"). To wit:

Name of Lessee
Date of Lease
Date of Modification, if any

TO HAVE AND TO HOLD said Owner's right, title, and interest unto Mortgagee, its successors and assigns, as security for the payment of the principal and interest provided to be paid in or by Owner's bond, note, or obligation (herein called "Obligation") dated _____, 20____, and for the performance of the agreements of Owner contained in the mortgage, deed of trust, or other security instrument (herein called "Mortgage") made by Owner to, or to a trustee for, Mortgagee dated _____, 20____, and recorded or to be recorded at or prior to the recording of this assignment, covering the following described real estate: reserving, however, a license to collect, except as hereinafter provided, the rents, income, and profits accruing by virtue of said Lease as they respectively become due, but not in advance, and to enforce the agreements of said Lease, so long as there is no default by Owner in any of the terms, covenants, or provisions of said Obligation or of said Mortgage, or of this assignment.

Owner covenants as follows:

1. Notwithstanding said license Owner agrees that Mortgagee, and not Owner, shall be and be deemed to be the creditor of each lessee in respect of assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution, or receivership proceedings affecting such lessee, (without obligation on the part of Mortgagee, however, to file or make timely filings of claims in such proceedings or otherwise to pursue creditor's rights therein) with an option to Mortgagee to apply any money received by Mortgagee as such creditor in reduction of the aforesaid principal or interest or any other indebtedness secured or to be paid by said Mortgage.

2. Owner agrees that in the event of default in the performance of any of the terms, covenants, and conditions of said Obligation or of said Mortgage or of this assignment and until such default shall have been fully cured, the license reserved herein by Owner shall cease and

desist, and Mortgagee is hereby authorized at its option to enter and take possession of the leased premises, or any part thereof, and to perform all acts necessary for the operation and maintenance of said premises in the same manner and to the same extent that Owner might reasonably so act. In furtherance thereof and not by way of limitation, Mortgagee is empowered but shall be under no obligation, to collect the rents, income, and profits under said Lease, to enforce payment thereof and the performance of any and all other terms and provisions of said Lease, to exercise all the rights and privileges of Owner thereunder including the right to fix or modify rents, to demand and sue for possession of the premises covered by said Lease, to relet the premises or any part thereof and to collect the rents, income, and profits under such new lease. Mortgagee shall from time to time apply the net amount of income after payment of all proper costs and charges, including loss or damage referred to hereinafter in paragraph 6 and including reasonable attorney's fees, to the sums then due to said Mortgagee under said Obligation and Mortgage. The manner of the application of such net income, the reasonableness of the costs and charges to which such net income is applied and the item or items which shall be credited thereby shall be within the sole and uncontrolled discretion of said Mortgagee. Such entry and taking possession of the leased premises, or any part thereof, may be made by actual entry and possession, or by written notice served personally upon or sent by registered or certified mail to the last owner of the mortgaged premises appearing on the records of Mortgagee as Mortgagee may elect and no further authorization shall be required. Mortgagee shall only be accountable for money actually received by it pursuant to this assignment.

3. Upon payment to Mortgagee of the full amount of the indebtedness secured by the Mortgage as evidenced by a recorded satisfaction or release of the Mortgage, this assignment shall be void and of no effect.

4. Owner irrevocably consents that the lessee under said Lease, upon demand and notice from Mortgagee of Owner's default under said Obligation, under said Mortgage, or under this assignment shall pay said rents, income, and profits under said Lease to said Mortgagee without liability of said lessee for the determination of the actual existence of any default claimed by said Mortgagee. Owner hereby irrevocably authorizes and directs lessee, upon receipt of any notice of Mortgagee stating that a default exists and that payments are due under or in the performance of any of the terms, covenants, or conditions of said Obligation or of said Mortgage or of this assignment, to pay to Mortgagee the rents, income, and profits due and to become due under the Lease. Owner agrees that lessee shall have the right to rely upon any such notices of Mortgagee that lessee shall pay such rents, income, and profits to Mortgagee, without any obligation or without any right to inquire as to whether such default actually exists and notwithstanding any claim of Owner to the contrary. Owner shall have no claim against lessee for any rents paid by lessee to Mortgagee. Upon the curing of all defaults in the payments due under or in the performance of any of the terms, covenants, or conditions of the said Obligation or the said Mortgage, Mortgagee shall give written notice thereof to lessee and thereafter, until further notice from Mortgagee, lessee shall pay the rents, income, and profits to Owner.

5. Mortgagee shall have the right to assign Owner's right, title, and interest in said Lease to any subsequent holder of said Mortgage and to any person acquiring title to the mortgaged

premises through foreclosure or otherwise. After Owner shall have been barred and foreclosed of all right, title, interest, and equity of redemption in said premises, no assignee of Owner's interest in said Lease shall be liable to account to Owner for the rents, income, and profits thereafter accruing.

6. Owner agrees to indemnify and hold Mortgagee harmless of and from any and all liability, loss, or damage which Mortgagee may incur under said Lease or by reason of this assignment, and of and from any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any alleged obligation or undertaking to be performed or discharged by Mortgagee under said Lease or this assignment. Nothing herein contained shall be construed to bind Mortgagee to the performance of any of the terms and provisions contained in said Lease, or otherwise to impose any obligation on Mortgagee including, without limitation, any liability under the covenant of quiet enjoyment contained in said Lease in the event that the lessee shall have been joined as party defendant in any action to foreclose said Mortgage and shall have been barred and foreclosed thereby of all right, title, interest, and equity of redemption in said premises. Prior to actual entry and taking possession of the premises by Mortgagee, this assignment shall not operate to place responsibility for the control, care, management, or repair of said premises upon Mortgagee or for the carrying out of any of the terms and provisions of said Lease. Should Mortgagee incur any liability by reason of actual entry and taking possession or for any other reason or occurrence or sustain loss or damage under said Lease or under or by reason of this assignment or in the defense of any such claims or demands, Owner shall immediately upon demand reimburse Mortgagee for the amount thereof including interest at ___%, costs and expenses and reasonable attorneys' fees, and Mortgagee may retain possession and collect the rents, income, and profits and, from time to time, apply them in or toward satisfaction of or reimbursement for said loss or damage.

7. Owner represents that Owner now is the absolute owner of said Lease with full right and title to assign the same and the rents, income, and profits due or to become due thereunder; that said Lease is valid, in full force and effect, and has not been modified or amended except as stated herein; that there is no outstanding assignment or pledge thereof or of the rents, income, and profits due or to become due thereunder; that there are no existing defaults under the provisions thereof on the part of either party, that the lessee has no defense, set-off or counterclaim against Owner; that the lessee is in possession and paying rent and other charges under the Lease and as provided therein and that no rents, income, or profits payable thereunder have been or will hereafter be anticipated, discounted, released, waived, compromised, or otherwise discharged except as may be expressly permitted by said Lease. Owner covenants not to cancel, abridge, surrender, or terminate said Lease or change, alter, or modify the same, either to reduce the amount of said rents, income, and profits payable thereunder, or otherwise change, alter, abridge or modify said Lease, or make any subsequent assignment of said Lease, or consent to subordination of the interest of the lessee in said Lease, without the prior written consent of Mortgagee. Any attempt at cancellation, surrender, termination, change, alteration, modification, assignment, or subordination of the Lease without the written consent of Mortgagee shall be null and void.

8. Owner agrees to execute and deliver to Mortgagee and hereby irrevocably appoints Mortgagee and its successors and assigns as its agent and attorney in fact to execute and deliver during the term of this assignment such further instruments as Mortgagee may deem necessary to make this assignment and any further assignment effective.

9. Said Lease shall remain in full force and effect irrespective of any merger of the interest of the lessor and lessee thereunder. Owner shall not transfer or convey title to said premises to any lessee without requiring such lessee in writing to assume and agree to pay the Obligation in accordance with the terms, covenants, and conditions of the Obligation and the Mortgage, and the payment to Mortgagee by such lessee of so much of the purchase price as shall be deemed necessary by Mortgagee in reduction of the outstanding principal of the Obligation, in the inverse order of maturity, which payment, if made during the period that said Obligation permits prepayment, shall include applicable prepayment charges as set forth in said Obligation. In the event said Lease permits cancellation thereof on payment of consideration and said privilege of cancellation is exercised, the payments made or to be made by reason thereof are hereby assigned to Mortgagee to be applied, at the election of the Mortgagee, to reduce the amount of the principal of said Obligation in the inverse order of maturity or to be held in trust by the Mortgagee as further security without interest for the payment of the principal and interest provided to be paid by the Obligation.

10. Owner will not alter, modify, or change the terms of any guaranties of the Lease or cancel or terminate such guaranties, nor consent to any assignment of the Lease or any subletting thereunder, nor request, consent, or agree to or accept a subordination of the Lease to any mortgage or other encumbrance now or hereafter affecting the premises without the prior written consent of Mortgagee. Owner will not consent to or permit a material alteration of or addition to the premises by the lessee without prior written consent of Mortgagee unless the right to alter or enlarge is expressly reserved by lessee in its Lease.

11. Owner will not execute any other assignment of the Lease or of any interest therein or of any of the rents payable thereunder. Owner will perform all of its covenants and agreements as lessor under the Lease, will not suffer or permit to occur any release of liability of lessee or the accrual of any right in lessee to withhold payment of rents. Owner will give prompt notice to Mortgagee of any notice of Owner's default received from the lessee or from any other person and furnish Mortgagee with complete copies of said notice. If requested by Mortgagee, Owner will enforce the Lease and all remedies available to Owner against the lessee in case of default under said Lease by lessee.

12. Notwithstanding any variation of the terms of the Obligation and/or the Mortgage, including increase or decrease in the principal amount thereof or in the rate of interest payable thereunder or any extension of time for payment thereunder or any release of part or parts of the lands subject to the Mortgage, the Lease and the benefits hereby assigned shall continue as additional security in accordance with the terms of this assignment.

13. Mortgagee may take security in addition to the security already given Mortgagee for

the payment of the principal and interest provided to be paid in or by the Obligation or by the Mortgage or release such other security, may release any party primarily or secondarily liable on the Obligation, may grant or make extensions, renewals, modifications, or indulgences with respect to such Obligation or Mortgage and replacements thereof, which replacement of said Obligation or Mortgage may be on the same or on terms different from the present terms of said Obligation or Mortgage, and may apply any other security therefor held by it to the satisfaction of such Obligation without prejudice to any of its rights hereunder.

14. Owner shall give Mortgagee notice immediately upon entering into a lease of any part of the above described real estate which lease is not hereinabove listed and upon notice from Mortgagee to Owner to that effect, said lease shall be deemed included in this assignment as though originally listed herein.

15. Failure of the Mortgagee 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 constitute a waiver thereof. The rights and remedies of Mortgagee under this instrument are cumulative and are not in lieu of but are in addition to any other rights and remedies which Mortgagee shall have under said Obligation and Mortgage. The rights and remedies of Mortgagee hereunder may be exercised from time to time and as often as such exercise is deemed expedient.

16. No change, amendment, modification, abridgment, cancellation, or discharge hereof or of any part hereof, shall be valid unless consented to in writing by Mortgagee.

17. All covenants and agreements herein shall apply to, inure to the benefit of, and bind the respective heirs, executors, administrators, successors, and assigns of Owner and Mortgagee. IN WITNESS WHEREOF this assignment has been duly executed and sealed by Owner.

By _____

[Add acknowledgment clause]

Notice of Lease Assignment to Tenants

Premises:

Lease between _____ Lessor and _____ Lessee

This is to notify you that in accordance with the terms of the Assignment of Lessor's Interest in Lease, a copy of which Assignment is annexed to this letter and furnished to you so that you may be fully informed of its terms, there was duly assigned to the undersigned Ace Insurance Company, a New York corporation having its principal office at _____, the entire interest of the Lessor in the above mentioned Lease.

You are further notified that all rental payments under your Lease shall continue to be paid as heretofore in accordance with the terms of your Lease unless you are otherwise notified in writing by Ace Life Insurance Company.

Your attention is also particularly called to the following matters:

1. Under the provisions of the Assignment it is expressly provided that unless the written consent of Ace Insurance Company is first obtained, no cancellation, surrender, or modification may be made of the Lease and no rentals shall be paid other than as now provided in the Lease or in such modification of the Lease as may receive the written approval of Ace Insurance Company.
2. The interest of the Lessor in the Lease has been assigned to Ace Insurance Company solely as security for the purposes specified in the Assignment and Ace Insurance Company assumes no duty, liability, or obligation under the Lease or any extension or renewal of the Lease either by virtue of the Assignment or by any subsequent receipt or collection of rents under the Assignment. Very truly yours,

Ace Insurance Company

By: _____

Enclosure

Sample Buy-Sell Agreement Provisions for Problem 4-5

First: Transfer of Loan Document

(a) The Temporary Lender agrees to accept payment of its loan and thereupon to transfer the Loan Documents to the Permanent Lender, and subject to compliance by the Borrower with all of the terms and conditions of the Commitment and of this Agreement, the Permanent Lender agrees to take from the Construction Lender, the Loan Documents and to fund to Borrower the full amount of its loan as set forth in the Commitment and to cause Borrower to pay to the Temporary Lender the full amount of the outstanding principal balance, together with all accrued interest thereon, and all other sums due to Temporary Lender under the Loan Documents. However, the amount to be loaned to Borrower by Permanent Lender shall not exceed the sum of Two Million Five Hundred Five Thousand Dollars (\$2,505,000) or, if the requirement of Condition 21 of the Commitment (rent roll requirement) shall not have been fulfilled, Two Million Dollars (\$2,000,000). Provided, however, that if the amount funded by the Permanent Lender shall be less than the amount owed by the Borrower to the Temporary Lender, the Temporary Lender shall not be obligated to transfer the Loan Documents to the Permanent Lender unless and until the difference between the amount to be funded by the Permanent Lender and the amount owed to the Temporary Lender shall be paid by the Borrower to the Temporary Lender.

(b) The funding and payment contemplated by this paragraph will be offered to Permanent Lender by Temporary Lender prior to the expiration date of the Commitment unless Temporary Lender is prevented from doing so by causes beyond its control; but in no event shall Temporary Lender be obligated to accept payment of its loan prior to five (5) days before expiration date of the Permanent Commitment. Temporary Lender agrees not to accept payment of its loan prior to five (5) days before the expiration date of the Commitment without Borrower's written consent thereto, unless such transfer is occasioned by an election by Permanent Lender [that] shall be accomplished as follows:

(i) In the event that Temporary Lender desires that Permanent Lender fund its loan prior to five (5) days before the expiration of the Commitment and Borrower consents thereto, Temporary Lender shall certify to Permanent Lender and Borrower the total amount due to Temporary Lender under the Loan Documents and the additional daily amount to accrue each day thereafter and Permanent Lender shall within ten (10) days of such certification designate, by written notice to Temporary Lender and Borrower, a date within twenty (20) days of such certification on which date Permanent Lender shall, subject to the provisions of this paragraph hereof, pay or cause to be paid, to Temporary Lender, all sums due to Temporary Lender under the Loan Documents as of such date.

(ii) In the event that Temporary Lender has not arranged for Permanent Lender to fund its loan prior to fifteen (15) days before the expiration date of the Commitment, Temporary Lender shall at such time certify to Temporary Lender and Borrower the total amount due to Temporary Lender under the Loan Documents and the additional daily amount to accrue each day thereafter and Permanent Lender shall, within five (5) days of such certification, designate, by written notice to Temporary Lender and

Borrower, a date within five (5) days of the expiration date of the Commitment, on which date Permanent Lender shall, subject to the provisions of this paragraph, pay or cause to be paid to Temporary Lender, all sums due to Temporary Lender under the Loan Documents as of such date.

(c) In the event of any default by Borrower under the Loan Documents, Temporary Lender agrees to give written notice to Borrower and Permanent Lender of such default prior to taking any action with respect to such default and give Permanent Lender the opportunity, provided such default has not been cured by Borrower, within twenty (20) days after written notice is given by Temporary Lender to Permanent Lender of any such default, to either:

(i) notify Temporary Lender in writing that Borrower's defaults as specified in such notice shall not affect Permanent Lender's agreements hereunder or affect any other of Permanent Lender's obligations to Temporary Lender hereunder and that Permanent Lender will indemnify Temporary Lender for any loss to Temporary Lender resulting from Temporary Lender's reliance on such waiver in the event Permanent Lender does not waive any subsequent default by Borrower under the Loan Documents; or

(ii) offer Temporary Lender in writing to fund its Loan on a date specified not more than ten (10) days thereafter by payment to Temporary Lender of the then outstanding balance of principal, accrued unpaid interest and all other sums due to Temporary Lender under the Loan Documents as of such date in which event Temporary Lender agrees to accept repayment of Temporary Lender's loan on said date.

Building (Construction) Loan Agreement

THIS BUILDING LOAN AGREEMENT is made and entered into this ____ day of____, 20___, by and between _____, a _____ (herein called “Borrower”), and _____, a _____ (herein called “Lender”).

W I T N E S S E T H:—

WHEREAS, Borrower is owner of all that certain real property (herein called “Property”) more particularly described in Exhibit “A,” attached hereto and incorporated herein by reference thereto, and Borrower proposes to construct or cause to be constructed upon the Property certain improvements (herein called “Improvements”) consisting of a 260-unit apartment complex in accordance with plans and specifications (herein called “Plans and Specifications”) previously delivered to and approved by lender.

WHEREAS, Borrower desires to borrow from Lender, and Lender has agreed to loan to Borrower the sum of _____ Dollars (\$) (herein called “Loan”) to provide Borrower with funds for the purpose of constructing the Improvements and such other purposes as provided herein, in accordance with the terms of this Agreement. The Loan shall be evidenced by a Promissory Note (herein called “Note”) bearing even date herewith, repayment of which shall be secured respectively by a Deed of Trust, Security Agreement with Assignment and Assignment of Rents (herein collectively called “Mortgage”) which are intended to be a first and a second lien respectively upon the Property and the improvements.

WHEREAS, as further consideration to Lender for making the Loan, Borrower desires to undertake various covenants to assure the completion of the Improvements in accordance with the Plans and Specifications in a manner which will preserve to Lender the security of the Mortgage during the course of construction, and the repayment to the Lender of the Loan upon completion of the construction of the Improvements.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises of the parties and in further consideration for making the Loan, the parties hereto agree as follows:

A. LOAN DISBURSEMENTS

A.1. Right to Disbursements.

(a) Lender shall, so long as there is no default hereunder and after receipt of all of the items required under paragraph 3.14 below, make disbursements of the Loan to Borrower at the time and in accordance with the Disbursement Schedule attached hereto as Exhibit “B” and incorporated by reference herein. Borrower shall also follow the procedure and comply with the requirements of this part A. The occurrence of a default under this agreement shall suspend Lender’s obligation to make further disbursements hereunder, which shall not be reinstated upon the curing of such default without Lender’s written consent.

(b) The final balance, if any, referred to on Exhibit "B" need not be disbursed until all of the following have occurred: (i) the Improvements have been fully completed; (ii) the applicable lien periods have expired or, in lieu thereof, Lender has received lien waivers or lien subordinations or releases from all contractors, subcontractors, laborers and materialmen employed or furnishing materials in connection with the construction of the Improvements; (iii) any mechanics' or materialmen's lien that may have been recorded has either been paid in full or Borrower has posted an appropriate surety bond to discharge the same; and (iv) Borrower shall have procured and delivered to Lender title insurance indorsements satisfactory to Lender showing the Mortgage to be a first lien or charge upon the property, excepting only such items as shall have been approved by Lender.

(c) Notwithstanding any contrary provision of the Note, interest shall be payable thereunder only on such portions of the loan as have been actually disbursed by lender hereunder and only from the date of actual disbursement.

A.2. Requests for Disbursements.

Borrower shall, when it believes it is entitled to a disbursement hereunder, furnish Lender with the following:

(a) A Request for Disbursements setting forth such details concerning construction of the Improvements as Lender shall require, including a detailed breakdown of percentages of various phases of construction showing the amounts expended to the date of the Request for Disbursements for the construction of the Improvements and the amounts then due and unpaid, and an itemized estimate of the amount necessary to complete the Improvements;

(b) The certification by the Borrower that:

(i) Construction of the Improvements to the date of the certificates has been performed strictly in accordance with the Plans and Specifications;

(ii) All governmental licenses and permits required for the Improvements as completed to the applicable stage have been obtained and will be exhibited to the Lender upon request;

(iii) The Improvements as completed to the applicable stage do not violate any law, ordinance, rule or regulations; and

(iv) There is no default under this Agreement.

(c) Such other information and documents as Lender may reasonably require.

A.3. To Whom Made.

The Loan funds shall be disbursed at Lender's option, either by Lender's check drawn upon Lender's disbursement account and delivered to Borrower, or by depositing the amount of the disbursement to Borrower's account in a Bank approved by Lender.

A.4. Balance of Undisbursed Loan.

In no event shall Lender in its sole discretion be required to disburse any amount which will reduce the undisbursed amount of the Loan below the amount necessary to pay for the balance of work, labor, and materials necessary fully to complete the Improvements. If at any time it shall appear to Lender that the undisbursed portion of the Loan is insufficient to pay for the completion of the Improvements, Borrower shall forthwith upon three (3) days' notice deposit with Lender the amount lender deems to be such deficit.

B. CONSTRUCTION OF IMPROVEMENTS

B.1. Construction.

Borrower shall cause the construction of the improvements to be prosecuted with diligence and continuity and in accordance with the Plans and Specifications and shall cause the construction to commence within thirty (30) days from the date hereof. Improvements shall be completed on or before _____; provided, however, that the time within which the Improvements must be completed may be extended for a period equal to the period of delays beyond the control of Borrower, but in no event, however, may the time for completion of the Improvements extend beyond _____. Borrower shall strictly enforce all contracts for the construction of the Improvements and not agree to any alterations or amendments thereof to the end that all contractors promptly and diligently perform all of the obligations on their part to be performed thereunder, such performance to be in a manner preserving to Lender its security on the Property and Improvements thereon.

B.2. Approval of Working Drawings and Changes in Plans and Specifications.

(a) There shall be no change in the Plans and Specifications without the prior written approval of Lender of each such change. With respect to those areas of work designated by Lender, no working drawings shall be approved or changed without the prior written approval of Lender. Changes shall be submitted for approval on a form acceptable to Lender which shall be accompanied by a copy of the plans and specifications and/or working drawings applicable to the changes. Such changes must, prior to being effective, be duly approved by the Lender and all other persons required by Lender.

(b) As a condition to any such approval, Lender may require, in its sole discretion, confirmation satisfactory to Lender that performance of the work shown on such working drawings or changed plans and specifications or working drawings shall not increase the total cost of the Improvements; and if it appears that performance of such work shall increase the total

cost of the Improvements, Lender may, in its sole discretion, condition its approval upon deposit by Borrower with Lender of the total amount of increase.

(c) Borrower acknowledges that the process of obtaining the information and confirmations needed to put Lender in a position to approve such working drawings or changes in Plans and Specifications or working drawings may cause delays, and Borrower consents to such delays and agrees to cooperate diligently with Lender in the gathering of the information required. All contracts let by Borrower shall, to the extent reasonably possible, contain provisions implementing the provisions of this paragraph.

B.3. Lists and Approval of Contractors, Subcontractors and Materialmen.

Borrower shall furnish to Lender promptly upon request of Lender from time to time correct lists of all contractors and subcontractors employed in connection with the construction of the Improvements. Each said list shall show the name, address, and telephone number of each contractor or subcontractor, a general statement of the nature of the work to be done, the labor and materials to be supplied, the names of materialmen if known, and the approximate dollar value of such labor or work with respect to each. Borrower agrees that Lender has the right to disapprove any contractor, subcontractor and/or materialmen who, in Lender's good faith determination are deemed to be financially or otherwise unqualified. Failure by Lender to disapprove a contractor, subcontractor, and/or materialmen shall not constitute a warranty or representation, that any such person not so disapproved, is in fact qualified. Lender shall have the right to telephone or otherwise communicate with each contractor, subcontractor and materialman to verify the facts disclosed by said list or by any Request for Disbursements, or for any other purpose. All contracts let by Borrower or its contractors relating to construction of the Improvements shall require disclosure to Lender of information sufficient to make said verification.

B.4. Purchase of Materials Under Conditional Sales Contract.

No materials, equipment, fixtures or any other part of the Improvements, or articles of personal property placed in the Improvements, shall be purchased or installed under any security agreement or other arrangements wherein the seller reserves or purports to reserve the right to remove or to repossess any such items or to consider them personal property after their incorporation in the work of construction, unless authorized by lender in writing.

B.5. Compliance With Applicable Laws.

All work on the Improvements shall be performed in strict compliance with all applicable laws, ordinances, rules and regulations of federal, state, county, or municipal governments or agencies now in force or that may be enacted hereafter, and with all directions, rules and regulations of the fire marshal, health officer, building inspector or other officers of every governmental agency now having or hereafter acquiring jurisdiction.

B.6. Inspection.

Lender, through its officers, agents or employees, shall have the right at all reasonable times:

(a) To enter upon the Property and inspect the work of construction to determine that the same is in conformity with the Plans and Specifications and all the requirements hereof; and

(b) Subject to the limitation hereinafter set forth, to examine the books, records, accounting data and other documents (and to make extracts therefrom or copies thereof) of Borrower and all contractors and their subcontractors supplying goods and/or services in connection with the work of constructing the Improvements; provided, however, that the right of inspection set forth herein shall only extend to books, records, accounting data and other documents pertaining to construction of the Improvements, or any part thereof; or materials supplied therefor. Said books, records and documents shall be made available to lender promptly upon written demand therefor. All contracts let by Borrower or its contractors relating to construction of the Improvements shall require agreement to the foregoing inspection rights, except where such rights have been waived by lender in writing.

It is expressly understood and agreed that Lender is under no duty to supervise or to inspect the work of construction or any books and records, and that any such inspection is for the sole purpose of preserving Lender's rights hereunder. Failure to inspect the work or any part thereof shall not constitute a waiver of any of Lender's rights hereunder. Inspection not followed by notice of default shall not constitute a waiver of any default then existing; nor shall it constitute a representation that there has been or will be compliance with the Plans and Specifications or that the construction is free from defective materials or workmanship.

B.7. Protection Against Lien Claims.

Borrower agrees to fully pay and discharge all claims for labor done, material and services furnished in connection with the construction of the Improvements, and to take all other reasonable steps to forestall the assertion of claims of lien either against the Property, any part thereof or right or interest appurtenant thereto, and the Improvements and/or of claims against the Loan. On Lender's request, Borrower will post signs, or allow Lender to post signs, on the Property for the purpose of identifying Lender as the "Construction Lender" on the project. The size and placement of such sign or signs shall be such as to notify as many contractors, subcontractors, laborers and materialmen on the job as is reasonably possible of the name, address, and telephone number of Lender. Upon demand by Lender, Borrower shall make such demands or claims upon laborers, or claimed to have furnished labor, services or materials in connection with construction of the Improvements as shall require diligent assertion of lien claims upon penalty of loss or waiver thereof. Nothing herein contained shall require Borrower to pay any claims for labor, materials, or services which Borrower in good faith disputes and which Borrower, at its own expense, is currently and diligently contesting; provided, however, that Borrower shall, within ten (10) days after filing of any claim of lien that is disputed or

contested by Borrower, obtain and record, if required, a surety bond sufficient to release said claim of lien.

B.8. Title Insurance.

Borrower shall procure and deliver to Lender prior to the making of any advance hereunder a policy of title insurance in the amount of the Loan with indorsements satisfactory to lender showing the mortgage to be a first lien or charge upon the Property, excepting only such items as shall have been approved by Lender. Such policy must insure Lender that the Mortgage will have priority over any and all liens which could be filed in connection with the construction of the Improvements. During the course of construction, Borrower shall procure, at its expense, and deliver to Lender such title insurance indorsements as Lender may require to establish that the Improvements have been constructed within the boundaries of the Property and in accordance with all applicable laws, covenants, and restrictions. Upon completion of the Improvements the Borrower shall procure, at its expense, and deliver to lender such title insurance indorsements as Lender may require.

B.9. Insurance.

Prior to the recordation of the Mortgage, Borrower shall procure and deliver to Lender, and Borrower shall maintain in force until each of the obligations of Borrower contained herein or in the Note or Mortgage or in any other agreements entered into by and between Borrower and lender have been fully paid or performed, a policy or policies of public liability insurance, workmen's compensation insurance, and builder's risk insurance with course of construction indorsement against such risks including, but not limited to, fire and extended coverage, vandalism, and malicious mischief, in such amount or amounts, in such form and issued by such company or companies as may be approved by lender. Such insurance shall contain a standard form noncontributory mortgagee's clause in favor of Lender.

B.10. Performance and Labor and Material Payment Bond.

Borrower shall procure and deliver to Lender, if so required by Lender, a performance and labor and material payment bond or bonds from such companies and in such form, substance, and amount as are satisfactory to Lender. Such bond or bonds shall name Lender as an additional obligee.

B.11. Building Permits, Permits of Occupancy, and Certificates of Completion.

Borrower shall furnish to Lender such building permits and/or permits of occupancy as may be required by any applicable public authority and, if required by Lender, a Certificate of Completion signed by the architect employed by Borrower, who shall first have been approved by Lender, attesting to the completion of the Improvements in a good and workmanlike manner.

B.12. Takeout Commitment.

If Borrower has obtained a commitment from another lender to provide the permanent financing of the Improvements, Borrower represents and warrants that the Plans and Specifications submitted to and approved by said takeout lender are identical to the Plans and Specifications approved by Lender; said commitment is in full force and effect and has not been modified (except for modifications approved in writing by Lender); Borrower has done all things necessary as of the date hereof to keep unimpaired his rights thereunder; and Borrower agrees to comply fully with all requirements and conditions provided in said commitment.

B.13. VA or FHA Compliance.

If payment of the indebtedness secured by the Mortgage is to be insured or guaranteed by any governmental agency, Borrower shall comply with all rules, regulations, requirements and statutes relating thereto or provided in any commitment issued by any such agency to insure or guarantee payment of such indebtedness.

B.14. Delivery of Certain Documents.

(a) No disbursement of any kind shall be made pursuant to part A hereof until the Mortgage shall have been recorded as provided therein and until Lender shall have received such of the following as lender in its discretion may require: (1) additional security agreements, assignments, and financing statements, duly executed by Borrower, as additional security for the Note, (2) a survey of the Property meeting ALTA standards, (3) the building permit or permits referred to in paragraph B.11 above, (4) the lists referred to in paragraph B.3 above, (5) the bonds, and evidence of their recordation if required by Lender, referred to in paragraph B.10 above, (6) the policies of insurance referred to in paragraph B.9 above, (7) a copy of the agreement, if any, between Borrower and the architect who prepared the Plans and Specifications, (8) the policy of title insurance referred to in paragraph B.8 above, and (9) any other documents required by Lender.

(b) If Lender so requires, no work of any character shall be commenced nor shall any materials be delivered upon the Property until (1) the policy of title insurance referred to in paragraph B.8 above has been received by Lender, and (2) the Bonds referred to in paragraph B.10 above have been properly recorded.

B.15. General Cooperation.

Borrower agrees to cooperate with Lender in bringing about the expeditious completion of the work of construction. For the purposes hereof, Borrower's cooperation shall include, but without limiting the generality of the foregoing, prompt execution of contact change orders required or reasonably necessary (a) to resolve ambiguities in the Plans and Specifications, working drawings or shop drawings, (b) conform the work to prior changes or (c) resolve difficulties or inefficiencies which would arise as a result of strict adherence to the Plans and Specifications.

Borrower agrees that disputes with contractors, subcontractors, materialmen, architects, engineers, supervisory personnel or any other persons working on or supplying material to the work of construction shall, wherever possible, be resolved (or handled pending final resolution) in a manner which will allow work to proceed expeditiously.

C. DEFAULT AND REMEDIES

C.1. Events of Default.

The following events shall constitute events of default hereunder:

(a) Failure of Borrower to make any deposit of funds required hereunder within ten (10) days after written demand therefor;

(b) Any deviations in the work of construction from the Plans and Specifications without the prior written approval of Lender, or the appearance of defective workmanship or materials, which said deviations or defects are not corrected within ten (10) days after written notice thereof;

(c) The appearance on any survey required hereunder of encroachments which have occurred without the approval of Lender and which are not removed or corrected within ten (10) days after receipt of Lender's notification to Borrower of the existence thereof;

(d) Cessation of the work of construction prior to completion of the Improvements for a continuous period often (10) days or more for causes other than those beyond the control of Borrower and consented to in writing by Lender;

(e) The filing of any claim or lien against the Property, the Improvements or any part thereof, or any interest or right made appurtenant thereto, or the service of any notice to withhold funds and the continued maintenance of said claim of lien or notice to withhold for a period of ten (10) days without discharge or satisfaction thereof or provision therefor satisfactory to Lender in accordance with the terms hereof;

(f) Any representation or warranty contained herein or any representation to Lender concerning the financial condition or credit standing of either Borrower or of any party ("Guarantor") obligated to Lender under any agreement guaranteeing performance of any of the obligations of Borrower referred to herein proves to be false or misleading, or Lender reasonably feels threatened as to its security by reason of a material adverse change in the financial condition or credit standing of either Borrower or of any Guarantor;

(g) Any person obtains an order or decree in any court of competent jurisdiction enjoining the construction of the Improvements or enjoining or prohibiting Borrower or Lender or either of them from performing this agreement, and such proceedings are not discontinued and such decree is not vacated within ten (10) days after the granting thereof;

(h) Borrower neglects, fails, or refuses to keep in full force and effect any permit or approval with respect to the construction of the Improvements;

(i) The conveyance of the Property or any portion thereof by Borrower without Lender's prior written consent; [provided, however, Lender hereby consents to the sale of the Property and Improvements to _____, a _____ in which _____ is the general partner].

(j) The breach of any covenant, warranty, promise, or representation herein contained and the continuance of such breach for a period of ten (10) days after written notice whereof to Borrower;

(k) Borrower shall have committed any act of insolvency or suffered insolvency proceedings to be taken against it including, but without limiting the generality of the foregoing, the following:

- (i) a general assignment by Borrower for the benefit of creditors;
- (ii) the filing of a voluntary petition in bankruptcy by Borrower;
- (iii) the filing of an involuntary petition under any bankruptcy or insolvency law against Borrower;
- (iv) the appointment by any court of a receiver to take possession of substantially all of Borrower's assets or of the Property; or
- (v) attachment, execution or other judicial seizure of substantially all of Borrower's assets or the Property.

(l) The occurrence of a default under the Note or Mortgage.

C.2. Acceleration.

Upon the happening of an event of default, the entire unpaid balance of the Note including all accrued interest shall, at the option of Lender upon notice to Borrower, become immediately due and payable.

C.3. Right to Complete Construction.

Upon the happening of an event of default, Lender shall have the right, in addition to all other rights and remedies available to Lender hereunder or under the Note or Mortgage, to enter into possession of the premises and perform any and all work and labor necessary to complete the Improvements substantially according to the Plans and Specifications, and employ watchmen to protect the premises from injury. All sums so expended by the lender shall be deemed to have been paid to the Borrower and secured by the Mortgage. Effective upon such a default, Borrower

hereby assigns to Lender all of Borrower's interest in contracts relating to the construction of the Improvements, but this assignment shall not, in the absence of affirmative ratification of such contracts by Lender, be deemed to impose upon Lender any of Borrower's obligations under any such contract. The Borrower hereby constitutes and appoints the Lender its true and lawful attorney-in-fact, with full power of substitution in the premises, to complete the Improvements in the name of the Borrower. The Borrower hereby empowers said attorney as follows: (a) to use any funds of the Borrower, including any funds which may remain undisbursed hereunder, for the purpose of completing the Improvements in the manner called for by the Plans and Specifications; (b) to make such additions, changes, and corrections in the Plans and Specifications as shall be necessary or desirable to complete the Improvements in substantially the manner contemplated by the Plans and Specifications; (c) to employ such contractors, subcontractors, agents, architects, and inspectors as shall be required for said purposes; (d) to pay, settle, or compromise all existing bills and claims which may be liens against the Property or Improvements, or as may be necessary or desirable for the completion of the Improvements or for clearance of title; (e) to execute all applications and certificates in the name of the Borrower which may be required by any of the contract documents; (f) to prosecute and defend all actions or proceedings in connection with the Property or the construction of the Improvements and to take such action and require such performance as he or she deems necessary under any guaranty of completion; and (g) to do any and every act which the Borrower might do in its own behalf. It is further understood and agreed that this power of attorney, which shall be deemed to be a power coupled with an interest, cannot be revoked. The Borrower hereby assigns and quitclaims to the Lender all sums undisbursed under the Loan, such assignment and quitclaim to be effective only in case of the Borrower's default.

C.4. Right to Advance or Post Funds.

Where disputes have arisen which, in the good faith opinion of Lender, may endanger timely completion of the Improvements or fulfillment of any condition precedent or covenant herein, Lender may agree to advance funds for the account of Borrower without prejudice to Borrower's rights, if any, to recover said funds from the party to whom paid. Such agreement or agreements may take the form which Lender, in its discretion, deems proper, including, but without limiting the generality of the foregoing, agreements to indemnify a title insurer against possible assertion of lien claims, agreements to pay disputed amounts to contractors in the event Borrower is unable or unwilling to pay the same, and the like. All sums paid or agreed to be paid pursuant to such undertaking shall be for the account of Borrower, and Borrower agrees to reimburse Lender for any such payments made upon demand therefor with interest at the rate of _____ percent () per annum from the date of payment until date of reimbursement. Such advances are secured by the Mortgage.

C.5. Stoppage of Construction by Lender.

Where any deviations from the Plans and Specification (or, where designated by Lender, working drawings or shop drawings) appear or defective or unworkmanlike labor or materials are being used in the construction of the Improvements or upon receipt of knowledge of

encroachments to which there has been no consent, Lender shall have the right to immediately order stoppage of construction and demand that the condition be corrected. After issuance of such an order in writing, no further work shall be done on said Improvements without the prior written consent of Lender unless and until said condition has been fully corrected.

C.6. Curing of Defaults by Disbursement.

Upon the happening of any event of default which may be cured by payment of money, Lender shall have the right to make such payment from the Loan thereby curing the default. If the payment of any such sums results or may, in Lender's good faith determination, result in the reduction in the amount of undisbursed Loan funds below that required to complete construction of the Improvements, the amount which Lender determines in good faith to be necessary to provide for such completion shall be deposited by Borrower with Lender within three (3) days after written demand by Lender.

C.7. Remedies Are Cumulative.

All remedies of Lender provided for herein are cumulative and shall be in addition to any and all other rights and remedies provided by law. The exercise of any right or remedy by Lender hereunder shall not in any way constitute a cure or waiver of default hereunder or under the mortgage, or invalidate any act done pursuant to any notice of default, or prejudice Lender in the exercise of any of its rights hereunder or under the Mortgage, unless, in the exercise of said rights, Lender realizes all amounts owed to it under the note, the Mortgage, and hereunder.

C.8. Right of Contest.

Borrower shall have the right to contest in good faith any claim, demand, levy, or assessment by a third party, the assertion of which would constitute an event of default hereunder. Any such contests shall be prosecuted diligently and in a manner not prejudicial to Lender or the rights of Lender hereunder. Upon demand by Lender, Borrower shall make suitable provision by payment to Lender or by bond satisfactory to Lender for the possibility that the contest will be unsuccessful. Such provision shall be made within five (5) days after demand therefor and, if made by payment of funds to Lender, the amount so deposited shall be disbursed in accordance with the resolution of the contest either to Borrower or the adverse claimant.

D. MISCELLANEOUS

D.1. No Waiver.

No waiver of any default or breach by Borrower hereunder shall be implied from any omission by Lender to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver and it shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the

same covenant, term, or condition. The consent or approval by Lender to or of any act by Borrower requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

D.2. No Third Parties Benefited.

This Agreement is made and entered into for the sole protection and benefit of Lender and Borrower, their successors and assigns, and no other person or persons shall have any right to action hereon or rights to the Loan funds at any time.

D.3. Plural Borrowers Jointly and Severally Liable.

All persons, firms and/or entities identified by the designation “Borrower” herein shall be jointly and severally liable to Lender for the faithful performance of the terms hereof.

D.4. Notices.

All notices required to be given hereunder shall be deemed served twenty-four (24) hours after deposit in registered or first-class United States mail, postage prepaid, and addressed to the parties as follows:

Borrower:

Lender:

Such addresses may be changed by notice to the other parties given in the same manner as above provided. Also, Borrower agrees to forward to Lender, without delay, any notices, letters or other communications delivered to the Property or to Borrower naming Lender or the “Construction lender” as addressee.

D.5. Authority to File Notices.

Borrower irrevocably appoints, designates, and authorizes Lender as its agent (said agency being coupled with an interest) to file for record any notices of completion, cessation of labor, or any other notice that Lender deems necessary or desirable to protect its interest hereunder, or under the Note or Mortgage.

D.6. Expenses.

Borrower agrees to pay promptly all costs, charges, and expenses incurred or to be incurred by Lender in connection with the Loan or payable pursuant to this Agreement, the Mortgage, the Note, or any other agreements securing the Loan, including, but not limited to, loan fees and service charges, costs of inspection, recording fees, escrow fees, appraisal fees, legal fees, real

property taxes and assessments, insurance premiums, and fees payable in connection with any commitment to provide permanent financing of the Improvements.

D.7. Actions.

Lender shall have the right to commence, appear in or defend any action or proceeding purporting to affect the rights, duties, or liabilities of the parties hereunder, or the disbursement of any funds. In connection therewith, Lender may incur and pay costs and expenses, including a reasonable attorney's fee. Borrower agrees to pay to Lender on demand all such expenses, and Lender is authorized to disburse funds from the Loan for said purpose.

D.8. Commissions and Brokerage Fees.

Borrower agrees to indemnify Lender from any responsibility and/or liability for the payment of any commission, charge or brokerage fees to anyone which may be payable in connection with the purchase or refinance of subject Loan, it being understood that any such commission, charge, or brokerage fees will be paid direct by Borrower to the party or parties entitled thereto.

D.9. Applicable Law.

This Agreement shall be governed by and construed in accordance with the laws of _____, unless any obligation hereunder is invalid or enforceable under such laws, in which event the laws of that state whose law can apply to and validate the obligations hereunder shall apply.

D.10. Heirs, Successors, and Assigns.

The terms hereof shall be binding upon and inure to the benefit of the heirs, successors, assigns, and personal representatives of the parties hereto, provided, however, that Borrower shall not assign its rights hereunder in whole or in part without the prior written consent of Lender and that any such assignments without said consent shall be void.

D.11. Acceleration on Sale or Change of Interest.

Borrower covenants and agrees that there shall be no sale, transfer, hypothecation, assignment, or conveyance of any portion of Borrower's interest in and to the Property and Improvements or any part thereof without the prior written consent of Lender, except as provided in this Paragraph D.11. Upon the happening of any conveyance, transfer, or assignment entered into contrary to the terms hereof and without the consent of Lender, Lender shall have the right to declare any and all sums due hereunder and/or under the Note and the Mortgage immediately due and payable; [provided, however, that Lender hereby consents to the sale and conveyance of the Property and Improvements to_____].

D.12. Time.

Time is of the essence of this agreement.

D.13. Supplements Mortgage.

The provisions of this agreement are not intended to supersede the provisions of the Mortgage but shall be construed as supplemental thereto. In the event of any inconsistency between the provisions hereof and of the Mortgage, it is intended that during the continuance of this Building Loan Agreement, this Building Loan Agreement shall be controlling.

D.14. Exhibits.

The exhibits attached hereto, if any, which are dominated Exhibit(s) “A” & “B,” are executed as of the date of this Agreement and are made a part hereof as if fully set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

[Signatures]

LEGAL DESCRIPTION EXHIBIT “A”

DISBURSEMENT SCHEDULE EXHIBIT “B”

1. No disbursements shall be made hereunder until after (1) recordation of the Mortgage, (2) delivery of the documents required under paragraph B. 14., and (3) delivery to Lender of an affidavit by Borrower or by Borrower’s Contractor (a) naming each contractor, subcontractor, and material supplier to the project, (b) stating the work performed or material supplied by each such contractor, subcontractor, or supplier, (c) stating the total amount of each such contract, subcontract, or the amount of the material supplied, (d) stating that each such contractor, subcontractor, or supplier is paid in full or stating the amount due and owing, (e) stating that there were and are no other contracts, subcontracts, or material suppliers, and (f) stating that such information and the balance stated to be due and owing, if any, are accurate to the best of Borrower’s or Contractor’s knowledge and belief.

2. Upon request of Borrower and not more frequently than semimonthly, Lender shall make disbursements in the amount of 90% of cost of work completed on the project but not covered by previous disbursements, upon delivery by Borrower to Lender of the following: (a) additional invoices, vouchers, statements, affidavits, payroll records, and/or other documents approved by Lender which, together with the invoices, vouchers, statements, affidavits, payroll records and/or other documents approved by Lender previously delivered to Lender, substantiate total costs on

the project to justify such an advance together with (b) an affidavit of Borrower or the Contractor either (i) stating that the affidavit delivered under paragraph 1 above is still true and correct as of the date of the new request or (ii) giving all of the information required under paragraph 1 but as of the date of the new request.

3. The 10% of the total costs not disbursed to Borrower under paragraph 2 above shall be disbursed to Borrower when the conditions of paragraph A.1.(b) of the Building Loan Agreement have been fully complied with.
4. The total of all advances under paragraphs 2 and 3 above shall not, however, exceed \$_____.
5. Lender may withhold from a disbursement, or on account of subsequently discovered evidence withhold from a later disbursement under this Agreement, or require Borrower to repay to Lender the whole or any part of any earlier payment to Borrower, to such extent as may be necessary to protect Lender from loss on account of: (i) defective work not remedied or Building Loan Agreement or Disbursement Schedule requirement not performed; (ii) liens or stop notices filed or reasonable evidence indicating probable filing of liens or stop notices; (iii) failure of Borrower to make payments to subcontractors for material or labor; (iv) a reasonable doubt that the construction can be completed for the balance of the Loan then undisbursed. When all such grounds are removed, payment shall be made of any amount so withheld because of them.
6. Lender shall not be obligated to disburse more than \$_____ under this Agreement until Borrower has deposited \$_____ cash with Lender, Lender shall disburse said \$_____ as the next funds to be disbursed under this Agreement provided that a permanent loan commitment satisfactory to Lender has been received.

Contractor’s or Owner-Builder’s Cost Breakdown (Prepare in Triplicate)

To Company	Owner/Builder Project Apartments	Location
<i>Payment</i>		
<i>Breakdown</i>	<i>Item Cost Breakdown</i>	<i>Total</i>
1.	<i>Architecture/engineering</i>	<i>\$ 32,000</i>
2.	<i>Bonds, permits, fees</i>	<i>31,000</i>
3.	<i>Offsites—streets & sewer</i>	<i>50,000</i>
4.	<i>Tree removal, grading, pipe relocation</i>	<i>15,830</i>
5.	<i>On-site-curb, gutter, sidewalk paving</i>	<i>22,518</i>
6.	<i>Sewer system, gas service, TV service</i>	<i>13,300</i>
7.	<i>Trenching & street lights</i>	<i>9,500</i>
8.	<i>Concrete</i>	<i>66,588</i>
9.	<i>Rough Lumber</i>	<i>180,000</i>
10.	<i>Rough hardware & carpentry</i>	<i>181,000</i>

11.	<i>Masonry</i>	16,000
12.	<i>Plumbing & electrical</i>	354,940
13.	<i>Heating air conditioning & sheet metal</i>	158,800
14.	<i>Insulation & roofing</i>	120,388
15.	<i>Aluminum doors, windows & stripping</i>	56,236
16.	<i>Lath & Plaster</i>	141,372
17.	<i>Drywall</i>	125,414
18.	<i>Finish lumber, carpentry</i>	148,460
19.	<i>Bathroom finish T/S, tile, mirrors, etc</i>	70,299
20.	<i>Painting</i>	71,500
21.	<i>Blastizell</i>	18,188
22.	<i>Porch, deck, steel stairs & rails</i>	41,300
23.	<i>Job labor equipment rental & misc</i>	26,800
24.	<i>Cleanup</i>	10,000
25.	<i>Laundry building</i>	6,500
26.	<i>Swimming & therapeutic pools</i>	71,000
27.	<i>Walls, fencing, gates</i>	9,730
28.	<i>Mail box & trash stations, directory</i>	3,200
29.	<i>Deck walls, landscaping & sprinkler</i>	57,412
30.	<i>Field supervision</i>	30,000
31.	<i>Contractors fee</i>	90,808
32.	<i>Contingencies</i>	44,000
33.	<i>Interest</i>	55,000
34.	<i>Carpets, drapes & appliances</i>	184,417
35.	<i>Subtotal</i>	2,460,000
36.	<i>Less amounts to be paid by Borrower</i>	260,000
37.	<i>Total</i>	\$2,200,000

Workout Agreement

This WORKOUT AGREEMENT ('Agreement') is made and entered into as of the ____ day of _____, 20____, by and between _____, having an address at _____ (the "Borrower") and _____, a national banking association, having an address at _____ (the "Lender").

RECITALS

A. The Borrower is the owner of certain real property and the improvements situate thereon located at _____, and more particularly described on Exhibit A attached hereto (the "Property").

B. Lender is the owner and record holder of a certain mortgage loan to the Borrower in the original principal sum of \$_____ (the "Loan"), which Loan is evidenced by and payable to Lender pursuant to the terms of certain notes more particularly described on Exhibit B attached hereto (the "Note") as consolidated and modified by that certain Agreement of Spreader, Consolidation and Modification of Mortgage dated _____, between the Borrower and Lender (the "Consolidation Agreement").

C. The Note is secured by, among other things, those certain mortgage and security agreements encumbering the Property, more particularly described on Exhibit B attached hereto, as consolidated into a single first mortgage lien in the amount of \$_____ by the Consolidation Agreement (as consolidated, the "Mortgage") and by an Assignment of Rents and Leases of even date therewith relating to the Property (the "Assignment").

D. The Note, the Mortgage, the Assignment, the Consolidation Agreement and all other documents securing, guaranteeing or evidencing the Note, or executed in connection therewith, are herein collectively referred to as the "Loan Documents."

E. The Borrower has failed to make timely payments of principal and interest under the Note and is in default under the Note and Mortgage.

F. Lender and the Borrower have agreed that such failure to make timely payment will be cured and the Loan will be repaid as and when set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. Borrower's Estoppel.

(a) The Borrower acknowledges and agrees that (i) the Borrower is in default with respect to the payment of principal and/or interest on account of the Loan in the manner and to the extent set forth on Exhibit C hereto and that no further notice or cure periods are applicable to each such default; (ii) except as provided in this Agreement and in the documents executed pursuant hereto, the Loan and the Loan Documents remain unmodified and in full force and effect as of the date hereof; (iii) the Loan Documents are and remain the valid and binding obligations of the Borrower, enforceable in accordance with their terms; and (iv) the Borrower has no defenses, counterclaims or rights of offset against Lender in connection with or on account of the Loan or any of the Loan Documents as of the date hereof.

(b) Without limiting the generality of the foregoing, the Borrower hereby unconditionally and irrevocably waives and releases any and all claims, charges and causes of action (collectively, "Claims") which the Borrower may have the right to assert against Lender as of the date hereof, whether on account of the loan or otherwise and shall, simultaneously herewith, execute and deliver to Lender a general release of all Claims.

2. The Loan.

Lender and the Borrower represent, covenant and agree as follows:

(a) All interest, charges and other amounts payable to Lender pursuant to and in accordance with the Note will, at all times after _____, be paid when due. The Borrower expressly waives any and all notice and cure periods applicable to such payments.

(b) On or before _____ the Borrower will pay _____ and 00/100 Dollars (\$_____) to Lender, and Lender will apply such payment to the Loan, first to accrued interest, penalties, expenses and other charges (including attorneys' fees) and then to principal.

(c) The Borrower shall abide by all terms, covenants and conditions set forth in the Loan Documents, including, but not limited to, the Borrower's obligations to (i) make monthly payments of principal and interest; (ii) keep the Property insured against loss or damage and pay the premiums for such insurance; (iii) pay all taxes, assessments, water rates and sewer rents, hereafter levied against the Property; and (iv) maintain the Property in a good and safe condition and repair.

(d) Contemplated Sale

- (i) The Borrower anticipates entering into a contract (the "Contract") to sell the Property at a purchase price of no less than _____ and 00/100 Dollars (\$_____) with a closing scheduled for a date no later than _____. Upon the execution of the Contract, but in no event later than _____, the Borrower will assign to Lender, as additional

collateral for the Loan, the Borrower's rights as vendor in and to the Contract, including the Borrower's right to receive the proceeds from the sale effected pursuant to the Contract. Such assignment shall be in form and substance satisfactory to Lender in its sole discretion and the Borrower will execute and deliver such other instruments or documents as are required to provide Lender with a duly perfected first priority security interest in and to the vendor's rights in the Contract.

- (ii) The Borrower will direct the purchaser under the Contract to pay, at the closing, the "Net Proceeds of Sale" (as defined below) to Lender and Lender will apply such payment to the Loan, first to accrued interest, penalties, charges and other expenses (including attorneys' fees) and then to principal. "Net Proceeds of Sale" means the total purchase price stated in the Contract less any brokerage commission actually paid to an independent bona fide third party broker pursuant to the Contract.]

[OR]

[(d) CONTEMPLATED REFINANCING On or before _____, the Borrower will pay the Loan in full including all accrued interest, penalties, expenses and other charges (including attorneys' fees). It is anticipated that such payment in full will be made with the proceeds of a certain refinancing contemplated by the Borrower but such payment is in no way contingent upon such refinancing and the failure of the Borrower to obtain such refinancing does not, in any way, excuse or delay the obligation of the Borrower to make such payment.

(e) Lender may, without further consent or participation by the Borrower, or any of them, discuss the Loan (including the refinancing thereof referred to in Section 2 (c) hereof) directly with _____.]

(f) Simultaneously with the execution and delivery of this Agreement, each of the guarantors of the Loan will ratify and confirm their guarantee by the execution and delivery of a confirmation in form and substance satisfactory to Lender in its sole discretion.

3. Additional Security.

The Borrower represents, covenants and agrees that on or before _____, the Borrower will deliver to Lender as additional security for the Loan, a collateral assignment, in form and substance satisfactory to Lender in its sole discretion, of that certain mortgage, dated _____, given by _____ to the Borrower, which mortgage encumbers certain premises located at _____, (the "Pledged Mortgage"). Simultaneously therewith, the Borrower shall deliver to Lender (i) a title insurance policy, satisfactory to Lender in its sole discretion, insuring Lender's right, title and interest in and to such mortgage as so collaterally assigned, and (ii) estoppel certificates in form and substance satisfactorily to Lender in its sole discretion, from the mortgagor and the Borrower, as mortgagee under the Pledged Mortgage.

[OR]

3. Additional Loan.

Lender shall loan \$_____ in new and additional funds to the Borrower (the “New Loan”), simultaneously with the execution and delivery of this Agreement, on the following terms and subject to the following conditions:

(a) The New Loan shall be evidenced by a promissory note in the form annexed hereto as Exhibit D (the “New Note”).

(b) The New Note shall be secured, *inter alia*, by (i) a second mortgage and security agreement in the form annexed hereto as Exhibit E-1 (the “New Mortgage”) encumbering the Property and (ii) a collateral assignment and security agreement in the form annexed hereto as Exhibit E-2 (the “Security Agreement”) (collectively, the “Collateral Agreements”).

(c) The proceeds of the New Loan shall be used by the Borrower solely to pay (i) accrued but unpaid interest charges on account of the Loan, as more particularly described on Exhibit C hereto; (ii) operating and other costs incurred by the Borrower, on or before the date hereof, in connection with the ownership and operation of the Property (exclusive of interest costs and other sums payable to lenders other than Lender); (iii) certain real estate taxes and assessments with respect to the Property now due and payable but unpaid; and (iv) costs incurred by the Borrower in connection with the making of the New Loan and the closing of the other transactions contemplated by this Agreement (including, without limitation, all legal fees and other expenses of Lender, appraisal costs, loan origination fees to Lender, title insurance premiums, mortgage recording taxes, real estate taxes on the Mortgaged Property in arrears, and interest and penalties thereon, and all legal fees and expenses of the Borrower). Simultaneously with the execution and delivery of this Agreement, the Borrower shall provide Lender with such certificates, affidavits, bills, receipts, invoices, lien waivers and other documentation as Lender may reasonably request to verify that the proceeds of the New Loan will be applied in the manner required by clauses (i)-(iv) above. The Borrower expressly acknowledges and agrees that Lender determines, in its sole discretion, that such funds will be applied in the manner required by clauses (i)-(iv) above. Without limiting the generality of the foregoing, no person or entity other than the Borrower shall have any right to rely upon or enforce any of the agreements contained in this Section 3.

(d) The Borrower shall be personally liable for the payment of any and all sums evidenced by the New Note and/or secured by the instruments and documents described in this Section 3.

(e) The New Mortgage shall be subject only to such liens, claims, encumbrances and other matters as may be acceptable to Lender, in its sole discretion (the “Permitted Exceptions”), and, at the closing of the New Loan, the lien of the New Mortgage shall be insured in favor of

Lender, subject only to the Permitted Exceptions, pursuant to a valid and binding policy of title insurance which is acceptable, in form and substance, to Lender, issued by a title insurance company acceptable to Lender, it being acknowledged and agreed that the Borrower shall pay all premiums due in respect of such title insurance policy on and as of the date on which such policy is issued.

(f) At the closing of the New Loan, the Borrower shall provide Lender with an opinion of counsel in form and substance satisfactory to Lender, in its sole discretion. Simultaneously with the execution and delivery of this Agreement, the Borrower shall pay all costs and expenses (including, without limitation, all legal fees and other expenses of Lender, appraisal costs, loan origination fees, title insurance premiums and mortgage recording taxes) which may be incurred in connection with the transactions contemplated by this Section 3.

4. Default.

The following shall, with no further notice or period for cure, constitute an event of default under the Loan and the Loan Documents entitling Lender to all of the rights and remedies accorded to Lender upon the occurrence of a default after the expiration of any applicable notice and cure period under any of the Loan Documents: (a) a default beyond any applicable notice and cure period (giving effect to the waivers contained in Section 2(a) hereof) by the Borrower in its obligations under the Note, Mortgage, or any of the Loan Documents, (b) a default by the Borrower in its obligations under this Agreement, or (c) a breach in any representation or warranty made in respect of the Loan whether made herein or elsewhere.

5. Further Assurances.

Simultaneously with the execution and delivery of this Agreement, the Borrower will provide Lender with such instruments and documents (including title insurance coverages, legal opinions, proof of Borrower's existence and/or authority) as Lender may require to accomplish the covenants of the Borrower contained herein and will thereafter provide Lender with such instruments and documents as Lender may require to better assure or confirm the rights granted to Lender in this Agreement.

6. Costs.

Simultaneously with the execution and delivery of this Agreement, the Borrower will pay (a) all costs and expenses (including attorneys' fees and other expenses of Lender, appraisal costs, title insurance premiums, recording fees and recording taxes) which may be incurred in connection with the transactions contemplated by this Agreement and (b) all other attorneys' fees heretofore incurred in connection with the Loan. Thereafter, the Borrower will pay all attorneys' fees on demand.

7. Representations.

To induce Lender to execute and deliver this Agreement, the Borrower represents and warrants as follows:

(a) The most recent financial statements of the Borrower furnished to Lender by the Borrower accurately reflect the overall financial condition of the Borrower, as of the date thereof, and the Borrower has not suffered any material adverse change in financial condition since the date of the financial statements referred to above. As of the date hereof, the value of the assets of the Borrower exceeds its liabilities.

(b) The Borrower has all necessary power and authority to (i) enter into this Agreement, (ii) execute and deliver all instruments and documents to be delivered hereunder, and (iii) perform all of the obligations provided for herein and therein. No approval of any governmental or quasi-governmental authority is required as a condition to the execution, delivery or performance of this Agreement or any of the instruments and documents to be delivered hereunder.

(c) This Agreement has been duly executed and delivered by the Borrower and constitutes, and the instruments and documents to be delivered pursuant to this Agreement by the Borrower, when executed and delivered, will constitute, the legal, valid and binding obligations of the Borrower, enforceable in accordance with their respective terms.

(d) The Borrower has disclosed to Lender, in writing, all of the currently pending actions against the Borrower in which damages are sought in excess of _____ and 00/100 Dollars (\$ _____). There are no judgments against the Borrower that have not been satisfied. There are no proceedings pending or threatened before any court or arbitrator or before or by any governmental or quasi-governmental agency which, if decided adversely to the interests of the Borrower, could have a material adverse effect on the business, properties, financial condition or operations, present or prospective, of the Borrower.

(e) There is no statute, regulation, rule, order or judgment, and there is no provision of any contract, agreement, mortgage, indenture, or other obligation to which the Borrower is a party or which is binding upon the Borrower which would in any way prohibit, conflict with or prevent the execution, delivery and performance of this Agreement or any of the instruments and documents to be delivered hereunder. The execution, delivery and performance of this Agreement and the instruments and documents to be delivered hereunder will not result in the creation of any lien upon the property of the Borrower except for the liens to be conveyed pursuant to this Agreement and the instruments and documents to be delivered hereunder.

(f) The Borrower has filed all tax returns (federal, state and local) required to be filed as of the date hereof and has paid all taxes shown thereon to be due, including interest and penalties, if any, or has provided adequate reserves therefor. No assessments have been asserted against the Borrower by any taxing authority, nor has any penalty or deficiency been asserted

against the Borrower by any such authority. Simultaneously with the execution and delivery of this Agreement, the Borrower shall provide Lender with such documentary and other evidence as Lender may require to substantiate the representations contained in this Section 7(f).

(g) The Borrower has obtained all governmental, administrative and other licenses, permits, authorizations and consents required by law to be obtained in order to permit the operation of the respective businesses of the Borrower. The Borrower is in compliance with all applicable laws and regulations affecting their respective businesses, including, without limitation, all environmental, occupational safety and workers' compensation laws and regulations.

(h) The Borrower will promptly provide Lender with a copy of any notice of default which is received, from and after the date hereof, by the Borrower in connection with any debts or other obligations of the Borrower.

(i) Except as previously disclosed to Lender in writing, there are no liens, claims or encumbrances affecting the title to any collateral for any of the Loan *[or any of the additional collateral to be provided to Lender under Section 3 of this Agreement]*. From and after the date hereof, neither the Borrower nor any of them shall create, suffer or permit the creation of any lien, claim or encumbrance upon any of the collateral for any of the Loan *[or any of the additional collateral to be provided to Lender under Section 3 of this Agreement]*.

8. Time of the Essence.

All obligations of the Borrower hereunder shall be performed on or before the dates set forth herein, with time of the essence therefor. All amounts to be paid to Lender hereunder shall be paid in immediately available funds.

9. Governing Law.

This Agreement and all of the instruments and documents to be delivered hereunder shall be governed by and construed in accordance with the laws of the State of_____.

10. No Waiver.

Lender reserves all rights and remedies which may be available to it in connection with all defaults which may exist in respect of the loan as of the date hereof, and Lender shall in no event be deemed to have waived any of its rights or remedies in respect thereof; *provided, however* that for so long as the Borrower has not defaulted hereunder or a default beyond any applicable notice and cure period has not occurred under any of the Loan Documents, Lender will not exercise any of its rights or remedies in respect of the defaults enumerated on Exhibit C.

11. Notice.

All notices or other communications required or permitted to be given hereunder shall be

sufficient if given in writing and personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, to the following addresses:

If to the Borrower:

Attention:

With a copy to:

Attention:

If to Lender:

Attention:

With a copy to:

Attention:

or, as to each party, at such other address as such party shall have designated in a written notice to all of the other parties hereto. All such notices and communications, when mailed in accordance with the foregoing, shall be deemed to have been given three (3) business days after deposit in the United States mail, postage prepaid, return receipt requested.

12. Reliance by Lender.

Notwithstanding anything set forth herein to the contrary, the agreements and undertakings made by Lender in this Agreement were made in consideration of, and in express reliance upon, all of the representations, warranties, agreements and undertakings made by the Borrower in this Agreement, and, without limiting the generality of the foregoing, shall have no obligations of any kind under this Agreement unless (a) the Borrower performs or complies, with time of the essence, with all of its obligations under this Agreement, and (b) all of the representations and warranties made by the Borrower in this Agreement are true and correct on and as of the date hereof.

13. No Joint Venture.

Neither the execution of this Agreement nor anything set forth in this Agreement, *[nor any agreement to share in the proceeds of a sale of the Property pursuant to this Agreement]* is intended to be, nor shall it be construed to be, the formation of a partnership or joint venture between Lender and the Borrower or with any other party. Lender and the Borrower shall have no relationship to each other other than as debtor and creditor.

14. No Amendment.

This Agreement may not be modified, amended, waived, extended, changed, discharged or terminated orally, or by any act or failure to act on the part of the Borrower or Lender, but only by an agreement in writing signed by the party against whom the enforcement of the modification, amendment, waiver, extension, change, discharge or termination is sought.

15. Severability.

If any term, covenant or condition of this Agreement shall be held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.

16. Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the Borrower and Lender and their respective successors and assigns.

17. Headings.

The headings and caption of various paragraphs of this Agreement are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

IN WITNESS WHEREOF, the parties hereto have executed this document as of the _____ day of _____.

[BORROWER]

By:

Name:

Title:

[LENDER]

By:

Name:

Title:

Agreement for Deed in Lieu of Foreclosure of Mortgaged Property

This Agreement for deed in lieu of foreclosure of mortgaged property (“Agreement”) is made as of the _____ day of _____, _____ by, between, and among _____ Limited Partnership, a _____ limited partnership, with a mailing address of c/o _____, Suite _____ (“Borrower”); _____, with a mailing address of c/o _____, Suite _____, (“Guarantor”); and _____, a _____ corporation with a mailing address of _____ (“Lender”).

W I T N E S S E T H:

WHEREAS, Lender is the holder of that certain Promissory Note, dated _____, in the original principal amount of _____ Dollars (\$_____) made by Borrower, as Maker, in favor of Lender, as payee (the “Note”) (the loan indebtedness evidenced by the Note being hereinafter referred to as the “Loan”); and

WHEREAS, the Note is secured by, among other things, a certain Mortgage, Security Agreement, and Assignment of Leases and Rents of even date therewith, and recorded on _____ in the office of the Recorder of _____, _____ County, State of _____ (the “Records”) as Document Number _____ (the “Mortgage”), encumbering, among other things, the land, improvements, and other real property commonly known as _____, and legally described in Exhibit A [omitted] appended to and made a part of this Agreement (the “Real Property”); and

WHEREAS, the Note is further secured by the agreements, assignments, financing statements, and other documents listed on Exhibit B [omitted] appended to this Agreement (the Note, the Mortgage, and such agreements, assignments, financing statements, and other documents listed on Exhibit B being collectively referred to as the “Loan Documents”); and

WHEREAS, payment of the Note and performance of the obligations of the Borrower with regard to the Loan has been guaranteed by Guarantor pursuant to a certain Guaranty of Payment and Performance (“Guaranty”) dated _____; and

WHEREAS, Borrower is the owner of fee simple title to the Real Property; and

WHEREAS, Borrower has failed to pay certain payments under the Note when due and payable under the Note (“Borrower’s Default”); and

WHEREAS, because of the Borrower’s Default the entire unpaid principal balance of the Note (in the amount of \$ _____ as of _____), together with accrued and unpaid interest on the Note (in the amount of \$ _____ as of _____), and all other sums owing under the Note and the other Loan Document is due and payable and remains unpaid as of the date of this Agreement; and

WHEREAS, the fair market value of the “Property” (hereinafter defined) does not exceed the total outstanding unpaid principal of, interest accrued and unpaid on, and other outstanding indebtedness of the Loan; and

WHEREAS, Borrower has requested that the parties resolve Borrower’s Default by providing for the transfer and conveyance of the Property to Lender in exchange for Lender’s agreements that are hereinafter set forth; and

WHEREAS, Borrower has requested Lender to accept a conveyance of the Property to avoid the financial hardship and damage to the Borrower’s reputation that would result from the institution of proceedings to foreclose the Mortgage and the institution of other proceedings with respect to the Loan Documents; and

WHEREAS, Lender wishes to accept the conveyance of the Property under this Agreement to avoid the necessity of litigation, foreclosure, the delays associated with litigation and foreclosure, and to avoid the delays associated with Borrower’s statutory redemption rights for the Property and Lender acknowledges that the provisions of this Agreement directly benefit Lender in this regard; and

WHEREAS, the parties intend to effect a deed in lieu of foreclosure under the purview of Chapter _____ of the _____ Statutes; and

WHEREAS, Lender, in its sole discretion, may elect to assign some or all of its rights under this Agreement and/or direct that conveyance of the Property be made to an affiliate of Lender designated by Lender;

NOW, THEREFORE, for and in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower, Guarantor, and Lender agree as follows:

ARTICLE I Incorporation/Property Transferred in Lieu of Foreclosure

1.1 Incorporation. The preambles to this Agreement are fully incorporated into this Agreement by this reference with the same force and effect as though restated in this Agreement.

1.2 Transfer of Property. Subject to the terms, provisions, conditions, covenants, and agreements contained in this Agreement, and subject to the matters set forth in Exhibit C [omitted] to this Agreement (the “Permitted Exceptions”), Borrower agrees to sell, grant, transfer, assign, and convey to Lender, or Lender’s designee, and Lender, or at Lender’s option, Lender’s designee, agrees to purchase from Borrower absolutely and free of any right of redemption or other right or interest of Borrower or anyone claiming by, through, or under Borrower, the following real and personal property (collectively the “Property”):

(a) Good, valid, indefeasible, and marketable fee simple title to the Real Property, which Real Property includes, but is not limited to, all of Borrower's right, title, and interest in and to and all easements, rights, tenements, and appurtenances thereunto belonging or appertaining, and all buildings, fixtures, and other improvements situated on or within the Real Property (all those buildings and other improvements hereinafter called the "Improvements"), and all of Borrower's right, title, and interest in and to any and all streets, alleys, or public ways adjacent to the Real Property, before or after vacation of the Real Property;

(b) All of Borrower's right, title, and interest as lessor or lessee in all leases, licenses, and other agreements to occupy all or any part of the Real Property together with all rents and other sums due, accrued, or to become due under each such lease, license, and agreement and all guarantees by third parties of the tenants' obligations under those leases and all lease security and other deposits, if any (together, the "Leases");

(c) All right, title, and interest of Borrower in and to all plans and specifications relating to any improvements on, or constituting a part of, the Real Property (the "Plans and Specifications") and all unexpired claims, warranties, guarantees, and sureties, if any, received in connection with the construction, improvement, fixtures, or equipment of or on the Real Property; if and to the extent assignable (all warranties, guarantees, and sureties pursuant to which any affiliate of Borrower or its partners is an obligor, and all claims against any affiliate of Borrower or its partners concerning the design and construction of the Real Property shall be deemed assignable, and Borrower shall cause the applicable obligors to consent to such assignments) (the "Warranties");

(d) All of Borrower's right, title, and interest in and to all service, supply, and maintenance contracts, and equipment leases listed on Exhibit D [omitted] attached to this Agreement and incorporated into this Agreement (the "Contracts");

(e) All licenses, permits, certificates of occupancy and franchises (including, without limitation, those listed on Exhibit E [omitted] appended to this Agreement) issued by any federal, state, county, or other governmental authority relating to the use, maintenance, or operation of the Real Property (the "Licenses and Permits"), running to, or in favor of, Borrower and/or the Real Property; and

(f) All of Borrower's personal property, equipment, and supplies located at or used in connection with the Real Property, including without limitation, the items listed on Exhibit F [omitted] appended to this Agreement and all intangible personal property (not described above in this Paragraph 1.2) now owned or hereafter acquired by Borrower in connection with the development, leasing, management, and/or operation of the Real Property including, but not limited to, logos, trade styles, and trade names (including, without limitation, the name "_____"), assignable contract rights, brochures, manuals, lists of prospective tenants, advertising material, assignable utility contracts, and assignable telephone numbers (together, the "Personal Property").

ARTICLE II Consideration

2.1 Release. In consideration for the transfer by Borrower of the Property to Lender (or at Lender's option, Lender's designee), and subject to the terms, provisions, and conditions contained in this Agreement, upon the "Closing" (defined below), Lender shall:

- (a) Deliver a release of claims against Borrower and certain other persons provided below;
- (b) Pay _____ Dollars (\$) to Borrower; and
- (c) Enter into, or cause its designee to enter into, such other agreements and leases as are hereinafter provided to be entered into by Lender.

2.2 Limitation.

(a) Notwithstanding the provisions of Paragraph 2.1 above, Lender reserves, on its own behalf and on behalf of its designee, the right to sue (including, without limitation, the right to counterclaim against) Borrower and _____ to the full extent of any indemnification (as more fully set forth herein) obligation of Borrower under this Agreement or pursuant to the instruments, documents, or agreements delivered pursuant to this Agreement and/or by reason of causes of action arising out of:

(i) Any breach of the covenants, representations, warranties, and/or agreements set forth in this Agreement and/or in any other instrument, document, or agreement delivered to Lender in accordance with the terms and provisions hereof or in connection with the Closing; and/or

(ii) Fraud.

(b) In addition, any release of claims contemplated by Paragraph 2.1 shall be null, void, and of no force and effect, if:

(i) Borrower or Guarantor commences any action, suit, or proceeding against Lender, Lender's designee, or any affiliate of Lender in connection with this Agreement seeking to rescind this transaction (in whole or in part) or attacking its validity (in whole or in part); or

(ii) Borrower files or there is filed against Borrower a petition under any chapter or section of Title 11 of the United States Code, as amended ("Bankruptcy Code"). Furthermore, Lender shall have the right to sue (including, without limitation, the right to counterclaim against) Borrower if Borrower is a necessary or reasonably necessary party in any action brought against Lender or any affiliate of Lender, or, without causing Borrower to be personally liable for any deficiency or any other sum due in connection with the Loan, to the extent necessary in Lender's reasonable judgment to name Borrower as a party defendant in connection with the foreclosure of the Mortgage.

ARTICLE III
Inspection of Property; Audit of Books and Records;
Pre-Closing Deliveries

3.1 Inspection of Real Property. Immediately following the execution and delivery of this Agreement and continuing up to and including the Closing Date, Lender or such persons as Lender may direct, may, upon reasonable advance notice, enter onto the Real Property from time to time at any reasonable time to examine and inspect the Real Property and any other portions of the Property located on the Real Property. Lender shall not by reason of such inspections knowingly interfere with the daily operation of the Real Property or with Borrower's employees.

3.2 Inspection of Other Property. Within ten (10) days of the date of this Agreement, Borrower shall deliver to Lender the following items to the extent not previously delivered to Lender:

- (a) Certified copies of all Leases, work letter agreements, improvements agreements, and any other agreements or material correspondence relating to use or occupancy of the Real Property;
- (b) Certified copies of all written contracts, material correspondence (pertaining to contracts), and written disclosure of all other contracts, relating to the ownership, leasing, operation, management, or maintenance of the Real Property;
- (c) Certified copies of the Licenses and Permits; and
- (d) To the extent not delivered to Lender before the initial disbursement of the Loan, a legible copy of each underlying recorded document affecting or relating to the Real Property.

3.3 Cooperation. Commencing on the date of this Agreement, Borrower shall cooperate, at Lender's request, direction, and approval, with Lender and Lender's designees, including, without limitation, any management company designated by Lender, to facilitate an orderly transfer of the ownership and management of the Property.

3.4 Audit. Commencing on the date of this Agreement, Borrower shall permit Lender and/or Lender's designated representatives to audit and review Borrower's books and records. Lender may also continue, or commence, an audit or review of Borrower's books and records following Closing provided that audit or review is completed not later than _____ (____) years after the Closing Date. Borrower shall make its books and records available to Lender or Lender's designees at any reasonable time during the periods in question upon reasonable notice to Borrower. Lender and its designees may make and retain such copies of Borrower's books and records as Lender and/or Lender's designated representatives desire. Borrower shall make its employees and managing agents available at all reasonable times upon reasonable notice to discuss its books and records and shall promptly respond to reasonable requests of Lender and/or Lender's designated representatives for information pertaining to the Property.

3.5 Pre-Closing Deliveries.

(a) To the extent not delivered pursuant to Paragraph 3.2, the following documentation shall be delivered to Lender before Closing within the time periods, if any, specified in this Paragraph 3.5:

(i) Not later than _____, a certified statement executed by an authorized officer of Borrower (general partner) listing all nonresidential tenant prospects for leases of portions of Real Property with whom Borrower has engaged in discussions concerning the Real Property, specifying in reasonable detail the status of such discussions, listing the brokers through whom the potential tenants were submitted, and the basis, if any, for payment of commissions for those brokers (that statement, together with its related deliveries, the "Potential Tenant Statement") together with certified copies of any commission agreements with those brokers and lease proposals and/or letter of intent pertaining to those potential tenants and drafts of leases submitted by, or to, those potential tenants. The Potential Tenant Statement shall be accompanied by letters addressed to Lender from the brokers identified in the Potential Tenant Statement confirming the list of prospective tenants and commission arrangements and containing agreements releasing Lender, its designee, and the Real Property for commissions for said tenants if leases are not entered into with such tenants within _____ (_____) days after the Closing Date.

(ii) Not later than _____, a sworn statement executed by an authorized officer of Borrower (general partner) and its general contractor(s) listing all contractors and subcontractors (and other persons who under the mechanic's lien laws of _____ may be entitled to a lien) who have performed work on the Real Property and who remain unpaid and the amounts due and owing each of those contractors or subcontractors (and other persons who under the mechanic's lien laws of _____ may be entitled to a lien) (the "Contractor Statements").

(iii) On or before _____, an accounting certified by the chief financial officer of Borrower (general partner) of all cash receipts and disbursements relating to the Property for the time period commencing _____ through and including _____ (including, without limitation, true and correct copies of all bank statements and related bank reconciliations covered in such period of time) (together with the related deliveries, the "Cash Flow Statement").

(iv) Not later than _____, a reasonably detailed list certified by the chief financial officer of Borrower (general partner) of all expenses in any manner or respect relating to the operation, maintenance, management, and leasing of the Property (the "Expense Statement") for the period of _____.

(v) Not later than _____, a list (certified by the chief financial officer of Borrower (general partner)) of all payables with respect to the Property or with respect to which Borrower is an obligor (the "Payable Statement") of the period ending _____.

(vi) Not later than _____, an inventory certified by an authorized officer of Borrower (general partner) of all of Borrower's tangible personal property (the "Inventory").

(vii) Not later than _____, a list certified by the chief financial officer of Borrower (general partner) of all of Borrower's employees, which list shall recite such employees' then-current salaries and benefits (and the status of the then funding of such benefits), together with true and correct copies of all applicable union, collective-bargaining, and employment agreements relating to those employees, and confirmation that employee withholding and employer taxes, pensions, vacation pay, and other benefits required by applicable law or agreements have been paid or reserved in a manner permitted by law (with the related deliveries, the "Employee Statement").

(viii) On or before _____, a list certified by Borrower's [general partner] of all account numbers for the gas, electric, and other utility companies that serve the Real Property, other than those relating to individual meters for apartments rented to third parties (the "Utility Account List").

(ix) Not later than _____, a list certified by an authorized officer of Borrower (general partner) of all Contracts in existence for the Property together with true and correct copies of each such Contract (with the related deliveries, the "Service Contract Certification").

(x) Not later than _____, a list certified by an authorized officer of Borrower (general partner) of all management agreements and leasing agreements or brokerage contracts with respect to the Property, together with true and correct copies of all of those agreements (with the related deliveries, the "Manager/Leasing Agreement List").

(b) For any of the items identified in this Paragraph 3.5, Lender and/or its designated representatives shall be entitled to review all of such items and consult as deemed appropriate by Lender with all parties involved in the operation, construction, and management of the Property. Lender shall inform Borrower before Closing which terminable contracts, agreements, and employees are to be terminated by Borrower effective upon Closing and, if to be terminated, the same shall be terminated at no cost to Lender. If not terminable, Lender, at its option, may elect to have its lessee accept an assignment of certain of those contracts or may decline to accept an assignment of those contracts. If not to be terminated, Borrower shall pay all costs for those contracts incurred through Closing. Lender is not obligated to accept, or cause its designee to accept, any assignment of such contracts. If the applicable Contract is not to be terminated and is not assigned to Lender, Lender shall have no liabilities by reason of such Contracts.

3.6 Further Assurances. From and after the date of this Agreement to the Closing Date, Borrower shall continue to provide Lender with such other information regarding the Property as Lender may reasonably request.

ARTICLE IV
Title Commitment

4.1 Title Policy.

(a) As a condition to Lender's obligation to close, Lender or its designee must obtain at Closing from _____ Title Insurance Company ("Title Company") an American Land Title Association ("ALTA") Form _____ Owner's Title Insurance Policy or equivalent acceptable to Lender ("Title Policy"), dated as of the Closing Date naming Lender or its designee as the insured, which Title Policy shall show fee simple title to the Real Property vested in Lender or Lender's designee subject only to the Permitted Exceptions (and which Title Policy must insure as separate parcels any easements appurtenant to the Real Property). The Title Policy shall be in the amount of the indebtedness evidenced by the Note that is outstanding on the Closing Date (or such lesser amount as Lender shall accept), shall contain full extended coverage insurance over all general exceptions set forth in such policy, shall delete any so-called creditors' rights exclusion or exceptions, and shall include such reinsurance (with such reinsurers) as Lender may require, together with direct access agreements with such reinsurers. As an additional condition to Lender's obligation to close, Lender shall receive the following endorsements to the ALTA Loan Policy (_____Form) issued by Title Company as Policy No. _____ ("Loan Policy") (which endorsements shall be dated as of the Closing Date):

(i) A date-down endorsement showing fee simple title in Lender or its designee, and insuring the Mortgage as a first priority encumbrance on the Real Property, subject only to the Permitted Exceptions; and

(ii) At Lender's option, a nonmerger endorsement acceptable to Lender (collectively, the "Loan Policy Endorsements").

(b) The Loan Policy Endorsements must also be approved by all reinsurers of the Loan Policy. Borrower shall cooperate with Lender and Lender's designee to permit Lender to obtain the Title Policy and the Loan Policy Endorsements.

ARTICLE V
Closing

5.1 Closing. Provided that all terms, provision, and conditions contained in this Agreement to be satisfied on or before Closing have been timely satisfied so as to provide for the closing of the transaction contemplated by this Agreement, including without limitation, the vesting in Lender or its designee of good valid, indefeasible, and marketable fee simple title to the Real Property (and good title to the other Property), subject only to the Permitted Exceptions, closing of the transaction contemplated hereby ("Closing") shall take place at the office of _____, in _____ County, _____ State, on _____, ("Closing Date") through a deed and money escrow, or on such other date and/or such other place as may be mutually agreed on in writing by Beneficiary and Lender. The escrow shall be in the form of

Exhibit G [omitted] appended to this Agreement. Each party shall have the right to inspect all documents before, at the time of, and after their deposit in escrow. To accommodate Closing, the parties shall enter into the deed and money escrow agreement with Title Company concurrently with their execution and delivery of this Agreement. This Agreement shall not be merged into the escrow agreement, but the escrow agreement shall be deemed auxiliary to this Agreement, and as between the parties hereto, upon failure of the escrow or otherwise, the provisions of this Agreement shall be controlling.

5.2 Closing Deliveries, Etc. The following deliveries, showings, and/or actions shall constitute the Closing and, as described in Paragraph 5.1 above, shall be effected through the deed and money escrow described above in Paragraph 5.1. The deliveries, showings, and actions shall be deemed to be taken simultaneously and no one of which shall be deemed completed until all of such deliveries, showings, and actions have been completed.

A. Title Documents. The following title, transfer, and original documentation and other matters shall be duly authorized, properly executed, acknowledged (if applicable) and delivered:

(a) The Title Policy. The Title Policy together with direct access agreements with all reinsurers shall be delivered to Lender.

(b) Endorsements to the Loan Policy. The Loan Policy Endorsements shall be delivered to Lender.

(c) ALTA Statements. Borrower shall deliver to Lender and Title Company its duly executed ALTA Loan and Extended Coverage Statement.

(d) GAP Affidavit. Borrower shall execute and deliver to Title Company a GAP Undertaking and Affidavit satisfactory to Title Company so as to permit issuance of the Title Policy and Loan Policy Endorsements.

(e) Searches. Borrower shall deliver to Lender Uniform Commercial Code Financing statement, tax lien, and judgment searches of Borrower and its general partner issued by a search firm acceptable to Lender confirming the existence of no financing statements, tax liens, or judgments other than the Permitted Exceptions.

(f) Search Certificate. Borrower shall deliver to Lender a certificate of Borrower to the effect that Borrower has not executed any financing statements other than the financing statements constituting a part of the Loan Documents.

(g) Trade Name. Borrower shall deliver to Lender:

(i) Evidence reasonably acceptable to Lender confirming that Borrower is vested with, and has not assigned or licensed, the right to use the name “_____”; and

(ii) That upon Closing, Lender shall be vested with the right to use the name “_____”.

B. Transfer Documents. The following Property transfer documentation shall be duly authorized, properly executed, acknowledged (if applicable), and delivered to Lender or Lender’s designee:

(a) Deed. Borrower shall deliver to Lender, Borrower's duly executed, acknowledged, and stamped recordable [limited] warranty deed in form and substance as set forth on Exhibit H [omitted] appended to this Agreement.

(b) Bill of Sale. Borrower shall deliver to Lender Borrower's duly executed bill of sale in form and substance as set forth in Exhibit I [omitted] appended to this Agreement.

(c) Assignment of Leases, Rents, and Security Deposits. Borrower shall deliver to Lender Borrower's duly executed Assignment of Rents, Leases, and Security Deposits in the form of Exhibit J [omitted] appended to this Agreement. Lender shall execute and deliver (or cause its designee to so execute and deliver) to Borrower an acceptance of such assignment in the form of the Acceptance attached as part of the Exhibit referred to in the preceding sentence.

(d) Assignment of Contracts. Borrower shall deliver to Lender Borrower's duly executed Assignment of Contracts in the form of Exhibit K [omitted] appended to this Agreement. Lender shall execute and deliver (or cause its designee to so execute and deliver) to Borrower an acceptance of the assignment in the form of the Acceptance attached as part of the Exhibit referred to in the preceding sentence.

(e) Assignment. Borrower shall deliver to Lender Borrower's duly executed Assignment of Warranties, Guarantees, Certificates of Occupancy Permits, Licenses, Engineering Reports, and Intangibles in the form of Exhibit L [omitted] appended to this Agreement.

(f) Non-Foreign Status Certificate Statement. Borrower shall deliver to Lender Borrower's duly executed non-foreign status statement in the form of Exhibit M [omitted] appended to this Agreement.

(g) Certified Rent Roll. Borrower shall deliver to Lender a schedule of Leases certified by an authorized officer of Borrower's general partner that shall contain:

- (i) The name and mailing address of each tenant;
- (ii) The commencement and expiration dates of each lease;
- (iii) Base rent and "step-ups," if any;
- (iv) "Pass-throughs," if any;
- (v) Rent abatements, if any;
- (vi) Security deposits;
- (vii) Delinquencies; and
- (viii) Options, if any.

(h) Tenant Letters. Borrower shall deliver to Lender Borrower's duly executed letters to the tenants of the Real Property in the form of Exhibit N [omitted] appended to this Agreement.

(i) Estoppel Certificate. Borrower shall deliver to Lender estoppel certificates from each nonresidential tenant of the Real Property, in the form required under the lease in question.

(j) Non-Tenant Estoppel Certificates. Borrower shall deliver to Lender an

estoppel certificate satisfactory to Lender from:

- (i) Each party to a Contract that is assigned to Lender or its designee; and
- (ii) Each beneficiary of an easement, restriction, or condition of record.

(k) Transfer Declarations. Borrower shall deliver to Lender completed and executed state, county, and municipal transfer or exemption declarations. If the declarations have been properly completed, Lender or Lender's designee shall execute such declarations.

(l) Water Department. Borrower shall deliver to Lender a water department certification from the City of _____ confirming payment of all water bills for the Real Property.

(m) Deed-in-Lieu Certificate. Beneficiary shall deliver to Lender Borrowers Deed in Lieu of Foreclosure Certificate dated the Closing Date in the form of Exhibit O [omitted] appended to this Agreement.

(n) Trade Name Transfer. Borrower shall deliver to Lender such documentation as may be reasonably required by Lender to permit Lender or Lender's designee to use the name "_____."

C. Original Documents. The following documentation shall be delivered:

- (a) Leases/Contracts. Borrower shall deliver to Lender the original Leases and Contracts.
- (b) Licenses and Permits. Borrower shall deliver to Lender the original Licenses and Permits.
- (c) Warranties. Borrower shall deliver to Lender the original Warranties.
- (d) Plans and Specifications. Borrower shall deliver to Lender the original Plans and Specifications.
- (e) Management Documents. Borrower shall deliver to Lender copies of all books, records, bills, invoices, lease files, credit reports, and other documents related to the ownership, operation, management, use, maintenance, or leasing of the Property (the "Management Documents") or, with Lender's permission, only for any such items not physically delivered to Lender on the Closing Date, a letter from Borrower to Lender stating where the item is located, and a letter from Borrower and its managing agents addressed to the keeper of such records, directing such keeper to turn over all such Management Documents to Lender or to Lender's designee.

D. Borrower Documents. The following documents of Borrower shall be delivered to Lender:

- (a) Partnership Agreement and Certificates. Certified copy of Borrower's Partnership Agreement together with Borrower's Certificate of Limited Partnership issued by the _____ Secretary of State (dated not earlier than the day before the Closing Date) and a Certificate of Existence for Borrower from the _____ Secretary of State

dated not earlier than the day before the Closing Date.

(b) Corporate Documentation. Certified copy of the articles of incorporation of the general partner (certified by the _____ Secretary of State) (dated not earlier than the day before the Closing Date) together with a certificate of good standing for the general partner of Borrower from the _____ Secretary of State (dated not earlier than the day before the Closing Date), a certified copy of the bylaws of the general partner of Borrower, a certified copy of the general partner's directors' resolution and shareholder consent approving this transaction, and a certificate of incumbency for the general partner.

(c) Consents. Consents of all the partners of Borrower authorizing the execution of this Agreement and the execution and delivery of all documents required by this Agreement.

E. Other Deliveries. The following deliveries, showings, and occurrences shall have been delivered or shall have occurred:

(a) Security and Other Deposits. Borrower shall deliver to Lender or Lender's designee, all cash and noncash security and other deposits.

(b) Possession. Borrower shall deliver possession of the Real Property and the other Property to Lender, subject to the rights of existing tenants and the Permitted Exceptions.

(c) Keys to Premises. Borrower shall deliver to Lender or Lender's designee a key code inventory and all keys to the Real Property or, with Lender's permission, a letter executed by Borrower and the managing agents addressed to the keeper of the keys directing the keeper to turn over same to Lender or Lender's designated representative together with a letter addressed to Lender identifying the keeper of those keys.

(d) Legal Opinion. Borrower shall cause to be delivered to Lender an opinion to Lender and Lender's designee from counsel to Beneficiary and Guarantors, dated as of the Closing Date, in the form of Exhibit P [omitted] appended to this Agreement.

(e) Department of Revenue Release. Borrower shall deliver to Lender evidence satisfactory to Lender that the transfer of the Property to Lender or Lender's designee does not subject Lender to liability under Chapter____, Section____of the____Revised Statutes.]

(f) Evidence of Termination. Borrower shall deliver to Lender evidence of termination of all management and/or brokerage or leasing commission agreements and all Contracts not being assigned to Lender.

(g) Recertification. Borrower shall deliver to Lender a certification executed by an authorized officer of Borrower (general partner), dated on and as of the Closing Date, remarking all of Borrower's representations and warranties set forth in this Agreement and recertifying:

- (i) The Potential Tenant Statement
- (ii) The Utility Account List
- (iii) The Contractor Statement, showing no additional obligees or amounts payable to obligees disclosed on the previous Contractor Statements

- (iv) The Cash Flow Statement
- (v) The Expense Statement
- (vi) The Payable Statement
- (vii) The Inventory
- (viii) The FEE List
- (ix) The Employee Statement
- (x) The Service Contract Certification
- (xi) The Manager/Leasing Agreement List

(h) Rents and Income. Borrower shall pay to Lender with any necessary endorsements, an amount equal to the excess of (i) rents and other income received with respect to the Property from and after _____ over (ii) payments by Borrower of current legitimate operating expenses for said _____ period approved by Lender paid to third parties not affiliated with Borrower or any of its partners (and/or affiliates).

(i) Property Manager's Waiver. Borrower shall deliver to Lender a lien waiver from any property manager for the Property and waiver of any and all rights or claims to real estate brokerage, leasing, or management fees and commissions for any sale, lease, or the operation of the Property.

(j) Miscellaneous Waivers. Borrower shall deliver to Lender lien waivers and lien releases from each person listed in the Payable Statement or Expense Statement who, under applicable law, may have a right to a lien on the Property or any portion of the Property. Borrower may, in lieu of providing such lien waivers, deliver to the issuers of the Title Policy and Loan Policy Endorsements such documentation and funds as the issuers may require to insure against any of such claims on the Title Policy and Loan Policy (as modified by the Loan Policy Endorsements); in any event, Borrower shall notwithstanding nondelivery of any such releases or waivers, induce the issuer of the Loan Policy Endorsements and the Title Policy to waive any exceptions for any of those claims.

(k) Account Payments. Borrower shall pay to Lender an amount equal to the funds remaining in any account ("Bank Accounts") at any bank or other financial institution relating to the Property to the extent not delivered in item (h) above.

(l) Check Copies. Borrower shall deliver to Lender true and correct copies of all checks drawn on the Bank Accounts from and after _____.

(m) Release of Lender by Borrower et al. Borrower and Guarantor shall deliver to Lender a release of Lender and Lender's designees, and their respective affiliates, successors, and assigns and other parties reasonably designated by Lender, in the form of Exhibit Q [omitted] appended to this Agreement.

(n) Release of Borrower et al. Lender shall deliver to Borrower, a release of Borrower, Borrower's partners, and Guarantor in the form of Exhibit R [omitted] appended to this Agreement.

(o) Title and Escrow Payments (Borrower and Lender). [Insert provisions concerning the payment of closing costs.]

(p) Safes. Borrower shall deliver to Lender a statement certifying to Lender the combination of any and all safes located at the Real Property used by Borrower or its managing agents or if no such safes are used at the Real Property, the letter shall certify

that no such safes are located at the Property

(q) Additional Consents. Borrower shall deliver to Lender, any and all consents from persons whose consent is required by Borrower for the Closing of this transaction.

(r) Settlement Statement. Beneficiary and Lender shall jointly execute and deliver a settlement statement to each other.

(s) Payments to Borrower. Lender shall pay Borrower the sum of _____ Dollars (\$). [Conform to transaction.]

5.3 Approvals and Monetary Deposits. All items to be delivered pursuant to the provisions of Paragraphs 5.1 and 5.2 shall be subject to the approval of the parties and their respective counsel, which approval shall not be unreasonably or in bad faith withheld or delayed. All deliveries and deposits of funds described in paragraph 5.2 shall be in good, immediately available funds.

5.4 Cooperation to Effect Closing. Borrower and Lender shall each use reasonable good faith efforts to prepare and deliver, as soon as is reasonably practicable, draft copies of the items described in Paragraphs 5.1 and 5.2 for review by the other parties and their respective counsels. Inasmuch as Borrower is responsible for making certain payments to Lender, the amount of which payments depend on, among other things, reconciliation of various payments to others and disbursements from various accounts, Borrower shall deliver a tentative reconciliation of all such payments not later than three (3) business days in advance of the Closing Date to Lender for Lender's review. That tentative reconciliation shall be accompanied by supporting schedules and information setting forth with reasonable specificity the derivation of the amounts in question.

5.5 Expenses of Closing. [Conform to deal.]

5.6 Conditions to Lender Obligation to Close. Lender's obligation to close the transaction described in this Agreement is subject to satisfaction of each and every one of the conditions specified in this Agreement to its performance, including, without limitation, the conditions specified below (any of which conditions, may, in the exercise of Lender's sole discretion, be freely waived by Lender at any time on or before the Closing Date, but no such waiver shall be effective unless an express written waiver of that condition is delivered to Borrower on or before the Closing):

(a) No Hazardous Materials. Lender shall have confirmed to its satisfaction that the Property is free and clear of all hazardous, toxic, and/or other dangerous materials or substances, and Lender's inspection of the Property being satisfactory to Lender in its sole and absolute discretion.

(b) No Default. On the Closing Date, Borrower shall not be in default in the performance of any covenant or agreement to be performed by Borrower under this Agreement.

(c) Representations and Warranties. On the Closing Date, all representations made by Borrower and Guarantor in this Agreement shall be true and correct as if made on and as of the Closing Date.

- (d) Performance. Borrower and Guarantors shall have performed each and every one of their covenants and agreements set forth in this Agreement to be performed by such persons on or before the Closing.
- (e) Deliveries. All documents, funds, showings, and other items to be delivered to Lender under this Agreement shall have been timely delivered to Lender, each item to be in form and substance acceptable to Lender in its sole discretion.
- (f) Inspection. Lender shall have completed its audit and review of the books and records of the Property and shall have been satisfied with the review in its sole discretion.
- (g) Insolvency-Type Events: Litigation. No petition by or against the Borrower or the Guarantor shall have been filed under any federal or state bankruptcy, reorganization, or arrangement law, and neither Borrowers nor the Guarantors shall have filed an answer or otherwise admitted in writing their insolvency or inability to pay their debts and none of such persons shall have made an assignment for the benefit of creditors or consented to the appointment of a receiver or trustee for all or any major part of their property. None of those persons shall have filed any proceeding against Lender or any affiliate of Lender.
- (h) Article IX Events. Lender shall not have terminated this Agreement under Article IX of this Agreement.
- (i) Value. Lender shall have confirmed, to its satisfaction, that the fair market value of the Property does not exceed the indebtedness due Lender.

5.7 Conditions to Borrower Obligations to Close. The obligation of Borrower to close is conditioned on the satisfaction of each of the following conditions (any of which conditions may be waived by Borrower by an express written waiver addressed to Lender):

- (a) No Default. On the Closing Date, Lender shall not be in default in the performance of any covenant or agreement to be performed by Lender under this Agreement.
- (b) Representations and Warranties. On the Closing Date, all representations and warranties made by Lender in its Agreement shall be true and correct as if made on and as of such Closing Date.
- (c) Termination by Lender. Lender shall not have previously terminated this Agreement.
- (d) Deliveries. All deliveries of funds and documents to be delivered by Lender or Lender's designee under Paragraph 5.2 of this Agreement shall have been delivered in accordance with Paragraph 5.2 of this Agreement.

ARTICLE VI

Covenants

6.1 Post-Closing Covenants.

[Insert post-closing obligations, if any.]

6.2 Rent Collections. Borrower agrees that if Borrower or any affiliate of Borrower

receives any rental payment or other payment from any tenant or other occupant or user of the Property following Closing, Borrower shall deliver to Lender or Lender's designee, with proper endorsements, those funds not later than two (2) business days following receipt of those funds.

6.3 Additional Covenants of Borrower. [Modify if this Agreement is signed at closing.]
Borrower covenants to and for the benefit of Lender that Borrower shall:

[Delete or complete as appropriate to transaction.]

ARTICLE VII Representations and Warranties

7.1 Representations and Warranties of Lender. Lender does hereby represent and warrant to Borrower and Guarantor as follows:

- (a) Lender is an organized and existing corporation in good standing under the laws of the state of its incorporation and if the state of incorporation is other than the State of _____, Lender is authorized to do business in _____.
- (b) Lender has and shall through the Closing continue to have the right, power, and authority to execute this Agreement and to perform its obligations under this Agreement. The execution and delivery of this Agreement by Lender and the performance by Lender under this Agreement have been authorized by all necessary corporate action of Lender.

7.2 Representations and Warranties of Borrower. Borrower does hereby represent and warrant to Lender as follows:

- (a) Organization and Authority. Borrower is an _____ [limited partnership,] and duly formed, organized, validly existing, and, as applicable, in good standing under the laws of _____. As of the date of this Agreement and at all following times, Borrower and Guarantor have and shall continue to have the capacity, right, power, and authority to execute this Agreement and to perform their respective obligations under it and to consummate the transaction described in this Agreement and/or contemplated by it including the execution and delivery of all legal and other documentation required under it. The execution of this Agreement has been authorized by all necessary partnership or corporate authorizations of Borrower. The execution, delivery, and performance of this Agreement by Borrower and Guarantor does not breach, conflict with, or contravene:
 - (i) Borrower's partnership agreement;
 - (ii) Any agreement, instrument, document, or indenture to which Borrower or Guarantors are a party or by which they or the Property are bound;
 - (iii) Any applicable law; or
 - (iv) Any judgment, writ, or order directed to Borrower or Guarantors or by which Borrower or Guarantors may be bound.

(b) Bankruptcy. Guarantor and Borrower have not filed a petition in any case, action, or proceeding under the Bankruptcy Code or any similar state law; no petition in any case, action, or proceedings under the Bankruptcy Code or any similar state law has been filed against Borrower or Guarantor that has not been dismissed or vacated; and neither Borrower nor Guarantor have filed an answer or otherwise admitted in writing insolvency or inability to pay their debts or made an assignment for the benefit of creditors or consented to an appointment of a receiver or trustee of all or a material part of their property.

(c) Absence of Litigation. Neither Borrower nor Guarantor has received any written notice of any, nor is there any, pending or, to the best of Borrower's knowledge, any threatened, litigation, or administrative proceeding involving in any manner the Real Property or the ownership, leasing, operation, management, use, or maintenance of the Real Property or this transaction.

(d) Arm's-Length Transaction. Borrower and Guarantor have requested conveyance of title to the Property in lieu of the exercise of Lender's remedies under the Loan Documents and throughout the negotiation, preparation, and execution of this Agreement have been, and shall through the Closing be represented by competent legal counsel of their own choosing. This Agreement was entered into out of the free will of Borrower and Guarantor and pursuant to arm's-length negotiations and Borrower and Guarantor believe this Agreement is fair. Lender has not taken advantage of Borrower or Guarantor by threats, intimidation, overreaching, unconscionable conduct, or otherwise, and Borrower and Guarantors are proceeding in this transaction as volunteers in what they perceive to be their own best interests.

(e) Bankruptcy, Etc. The transaction contemplated by this Agreement is not a preference, voidable transfer, fraudulent conveyance, or otherwise in violation of the Bankruptcy Code or any other similar state or federal law. [Consider making a confirmation/affirmation here.]

[Insert or delete representations and warranties as appropriate.]

7.3 Representations and Warranties of Guarantor. Guarantor represents and warrants to Lender as follows:

(a) Guarantor is older than age 18, is competent, and has sufficient legal capacity to enter into, deliver, and perform its respective obligations under this Agreement and the documents to be executed and delivered by it under this Agreement.

(b) Guarantor has not filed a petition in any case, action, or proceeding under the Bankruptcy Code or any similar state law; no petition, in any case, action, or proceeding under the Bankruptcy Code or any similar state law has been filed against Guarantor that has not been dismissed or vacated; and Guarantor has not filed an answer or otherwise admitted in writing insolvency or inability to pay its debts or made an assignment for the benefit of creditors or consented to an appointment of a receiver or trustee of all or any material part of its property.

(c) Guarantor has requested Lender to enter into this Agreement of its own free will and has been represented by competent legal counsel of its own choosing. Guarantor agrees that this Agreement is fair. Lender has not taken advantage of Guarantor by threats, intimidation, overreaching, unconscionable conduct, or otherwise. Guarantor is proceeding in this transaction as a volunteer in what it perceives to be its own best interests.

7.4 Survival. Each representation and warranty set forth in this Agreement shall survive the Closing and delivery of the deed and other documents to be delivered to Lender under the terms of this Agreement.

ARTICLE VIII Indemnification

[Draft to reflect deal.]

ARTICLE IX Casualty and Condemnation

9.1 Casualty. In the case of damage or destruction to the Real Property before the Closing Date, Borrower shall promptly give Lender written notice of that damage or destruction, together with such reasonable details of which Borrower may have knowledge, including, without limitation, an estimate of the reasonable and necessary cost of restoration of the Real Property as nearly as practicable to its condition immediately before that damage or destruction. After Borrower's notice is given, Lender at its option may terminate this Agreement by giving written notice of termination to Borrower on or before the Closing Date without further obligation under this Agreement, or if Lender shall elect not to so terminate this Agreement, the parties to this Agreement shall close the transaction contemplated by this Agreement in accordance with the terms of this Agreement and shall receive from Borrower an assignment by Borrower of all insurance proceeds, including rental loss insurance proceeds for the period from and after the Closing Date until the Real Property is fully restored, for such damage or destruction.

9.2 Condemnation. If before the Closing Date written notice shall be received by Borrower of any action, suit, or proceeding to condemn or take all or any part of the Real Property under the powers of an eminent domain, Borrower shall promptly send written notice thereof to Lender, and Lender shall have the right to terminate its obligations under this Agreement by notice in writing to Borrower given on or before the Closing Date. If Lender shall not elect to terminate its obligations under this Agreement under this Paragraph 9.2, Lender shall receive an absolute assignment on the Closing Date of the entire proceeds of or right to the condemnation award. Borrower shall convey the Real Property less that part so taken or subject to the condemnation proceeding, as the case may be.

ARTICLE X
No Obligation of Lender to Third Parties

10.1 No Third-Party Beneficiary. Borrower acknowledges and agrees that the acceptance by Lender or its designee of title to the Real Property under the terms of this Agreement and the assignment to Lender of various contracts and agreements pertaining to the Real Property shall not create any obligations on the part of Lender to third parties that have claims of any kind whatsoever against Borrower for the Real Property and Lender does not assume or agree to discharge any liabilities pertaining to the Real Property that occurred before the date of Closing except as otherwise expressly provided in this Agreement.

ARTICLE XI
Absolute Conveyance

11.1 Conveyance. Borrower agrees that the conveyance of the Property to Lender or its designee according to the terms of this Agreement is an absolute conveyance of all of its right, title, and interest in and to the Property in fact as well as form and was not and is not now intended as a mortgage, trust conveyance, deed of trust, or security instrument of any kind, and that the consideration for that conveyance is exactly as recited in this Agreement and that Borrower has no further interest (including rights of redemption) or claims in and to the Property or to the proceeds and profits that may be derived from the Property, of any kind whatsoever.

ARTICLE XII
No Merger

12.1 Merger. The parties to this Agreement agree that notwithstanding Lender's or its designee's acquisition of the Property, the indebtedness evidenced by the Note shall not be canceled and shall survive the Closing and delivery of any deeds and/or releases and all of the Loan Documents shall remain in full force and effect after the transaction contemplated by this Agreement has been consummated. The parties to this Agreement further agree that the interest of Lender or its designee in the Property after Lender's or its designee's acquisition of the Property shall not merge with the interest of Lender in the Property under the Loan Documents. It is the express intention of each of the parties to this Agreement that such interests of Lender and its designee in the Property shall not merge, but be and remain at all times separate and distinct, notwithstanding any union of that interest in Lender at any time by purchase, termination, or otherwise and that the lien of the Mortgage in the Property shall be and remain at all times a valid and continuous lien on the Property.

ARTICLE XIII
Notice

13.1 Notice. All notices, requests, demands, and instructions (collectively, for purposes of this

Agreement, “notices”) to be given under this Agreement shall be personally delivered or sent registered or certified mail, return receipt requested, with postage prepaid, to the parties at the following addresses (or to such other or further addresses as the parties may hereafter designate by like notice similarly sent):

To Borrower and Guarantor: _____

Attention: _____

with a copy to: _____

Attention: _____

To Lender: _____

Attention: _____

with a copy to: _____

Attention: _____

All notices shall be deemed effectively given on the date that the notice is received or refused.

ARTICLE XIV Miscellaneous

14.1 Entire Agreement. This Agreement, and the Exhibits appended to this Agreement [omitted], and all other instruments and documents executed and delivered at Closing by either party to this Agreement, embody the entire agreement between the parties in connection with the transaction contemplated by this Agreement and there are no oral or parol agreements, representations, or inducements existing between the parties relating to the transaction contemplated hereby that are not expressly set forth herein and covered hereby. This Agreement may not be modified except in writing signed by all of the parties hereto.

14.2 Successors and Assigns. This Agreement shall be binding on and shall inure to the benefit of the parties, Lender’s designee, and the respective successors and assigns of the parties to this Agreement and Lender’s designee.

14.3 Waivers. No written waiver by any party at any time of any breach of any provision of this Agreement shall be deemed a waiver of a breach of any other provision in this Agreement or a consent to any subsequent breach of the same or any other provision. If any

action by any party shall require the consent or approval of another party, such consent or approval of such action on any one occasion shall not be deemed a consent to or approval of such action on any subsequent occasion or a consent to or approval of any other action on the same or any subsequent occasion.

14.4 Captions. The caption, section numbers, and article numbers appearing in this Agreement are inserted only as a matter of convenience and do not define, limit, construe, or describe the scope or intent of the paragraphs or articles of this Agreement or in any way affect this Agreement.

14.5 Time Is of Essence; Counterparts; Governing Law. All parties to this Agreement agree that time is of the essence in this transaction and that this Agreement may be executed in counterparts and shall be governed by and interpreted in accordance with the laws of the State of _____.

14.6 Appointment of Designee. Lender does hereby reserve the right to appoint a designee or designees to accept title to the Property at the time of the Closing. Such designee may take the form of a trust, corporation, limited liability company, or a partnership, whether a general, limited, limited liability, or other partnership. Borrower and Guarantor hereby agree that all representations, warranties, covenants, and indemnifications shall inure to the benefit of Lender and such designee or designees and their respective successors and assigns.

14.7 Day for Performance. Whenever under the terms and provisions of this Agreement the time for performance of a condition or the giving of a notice falls on a Saturday, Sunday, or holiday, such time for performance or for the giving of notice shall be extended to the next business day.

14.8 Brokers. Lender and Borrower represent and warrant to the other that it has had no direct dealings with any real estate brokers, salesmen, agents, finders, or consultants in connection with the conveyance of the Property to Lender.

14.9 Lender Liability. [Modify to conform to deal.] If this Agreement is terminated before Closing for any reason whatsoever, Lender shall not be liable for any obligations under this Agreement. It is acknowledged that Lender has, and shall continue to incur, substantial expenses from the date of this Agreement for the purpose of completing this transaction and that Lender's incurring of such expenses constitutes fair, adequate, sufficient, and good consideration. Nothing contained in this Agreement modifies the Loan Documents or shall be deemed to waive, modify, or limit any of Lender's rights and remedies, all those rights and remedies being expressly reserved. Nothing contained in this Agreement shall be construed, before Closing, as a waiver of any defaults by Borrower under the Loan Documents. Lender reserves the right at any time before Closing to enforce any or all of its rights and remedies arising under the Loan Documents or otherwise pursuant to law or equity without notice. In no event shall Lender following Closing be personally or individually liable for any obligation set forth in this Agreement.

14.10 Borrower's Liability; Guarantor's Liability. [Conform to deal.]

Notwithstanding any provision contained in this Agreement to the contrary, or in any agreement to be delivered under this Agreement, it is agreed that the limited partners of Beneficiary and the officers, shareholders, and directors of general partner shall not be individually or personally liable to Lender by reason of a breach of any obligation of Borrower under this Agreement, all recourse of Lender or Lender's designee against Borrower to be satisfied solely from the assets of Beneficiary (it being agreed that any obligation of a limited partner, shareholder, director, or officer of General Partner to contribute funds or loan funds to Borrower and any negative capital account on the part of a limited partner of Beneficiary shall not be deemed an asset of Borrower for the purposes of this Agreement); proceeds of the Property received by Borrower or paid to any affiliate of Borrower shall be deemed assets of Borrower.

14.11 Value. Borrower hereby confirms to Lender that the value of the Property does not exceed the indebtedness owing to Lender pursuant to the Loan Documents.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties to this Agreement have executed this Agreement as of the day and year first above written.

[BORROWER]:

_____ Limited Partnership, a
_____ limited partnership

[Signature block for general partner]

[LENDER]:

_____ a corporation

By: _____

Name: _____

Title: _____

[GUARANTOR]:

Borrower's Environmental Disclosure Statement

Borrower: _____ Date:

Loan Number: _____ Loan:

Property: _____

CERTIFICATION

The undersigned in order to induce you to make the Loan to Borrower, hereby certifies to ACE LIFE INSURANCE COMPANY that as the present owner of the Property, I am familiar with the operations presently conducted on the Property, have made a reasonably diligent inquiry into the former uses of the Property and hereby declare that to the best of my knowledge the information disclosed below is true and correct.

IN WITNESS WHEREOF, I have set my hand as of the date first written above.

BORROWER:

BY:

ITS:

I. COMMERCIAL/OFFICE PROPERTY (all properties fill out this section)

A. Current/Former Uses of Property

- I. Name of Owner(s): Prior Owner: Current Owner:
- 2. Description of current use of the Property (if other than office use exclusively, please provide name(s) of current occupant(s) and time(s) of occupancy):
- 3. Date of completion of original construction and any substantial renovations:
- 4. Names of previous occupants:
- 5. Description of previous uses of the property:
- 6. Description of adjacent property uses:

B. Asbestos

1. Is there asbestos currently in any of the construction materials contained in the building?
2. If so, has a survey been conducted to assess the type, amount, location, and conditions of asbestos? (If so, please attach a copy of any survey report.)
3. Have asbestos air samples been taken? If so, what are the results?

C. Polychlorinated Biphenyls (“PCBs”)

1. Have polychlorinated biphenyls (“PCBs”) been used in electrical transformers, capacitors or other equipment at the property?
2. If so, please describe the use and quantity of PCBs used on the property.

D. Fuel/Chemical Storage Tanks, Drums, and Pipelines

1. Are there any above ground or underground gasoline, diesel, fuel oil or other chemical storage tanks on the property? If so, please describe substances stored and capacity of tank(s).
2. Have the tanks been inspected or tested for leakage? When was the most recent test? Results?
3. Are any other chemicals stored on the property in drums or other containers? If so, please describe the substances, quantities stored, and types of containers.
4. Have there been any spills, leaks or other releases of chemicals on the property? If so, please describe the chemicals and quantities released, any cleanup measures taken, and the results of any soil or groundwater samples performed to detect the presence of the chemicals spilled, leaked, or released on the property.
5. Please attach copies of any permits or licenses pertaining to the use, storage, handling, or disposal of chemicals on the property.

E. Air Emissions

1. Describe air emissions from each source of air pollutants, including fuel burning equipment (describe type of fuel burned.)
2. Describe air pollution control equipment used to reduce emissions for each source of air emissions.

3. Are air emissions monitored? If so, indicate frequency of monitoring.
4. Please attach copies of any air permits or licenses pertaining to operations of the property.

F. Water Discharges

1. List all sources of wastewater discharges to surface waters, septic systems, or holding ponds:
2. List all sources of wastewater discharges to public sewer systems:
3. For each discharge list the average daily flow:
4. Please attach copies of any water discharge permits or licenses pertaining to operations on the property.

G. Waste Disposal

1. Describe the types of liquid wastes (other than wastewater described in part F above) and solid wastes generated at the property.
2. Describe how the liquid and solid wastes generated at the property are disposed.
3. Please attach copies of any waste disposal permits or licenses pertaining to operations on the property.

II. INDUSTRIAL PROPERTY

If the property has been or is used for industrial purposes, the following additional information should be provided.

1. Has the Property been used for disposal of any liquid or solid waste? If so, describe the location of all disposal sites, the type of wastes disposed at each site, the results of any soil or groundwater samples taken in the vicinity of each site, and the manner in which each site not presently in use was closed.
2. Have evaporation or storage ponds been located on the Property? If so, describe the location of all ponds, the type of wastes placed in each pond, the results of any soil or groundwater samples taken in the vicinity of each pond, and the manner in which each pond not presently in use was closed.
3. Have wastewater treatment facilities, such as acid neutralization vaults, been located on the Property? If so, please describe the location of all facilities, the type of wastes treated in each facility, the results of any soil or groundwater samples taken in the vicinity of each facility, and the manner in which each facility not presently in use was closed.

4. Are there raw chemical or waste chemical storage areas on the Property? If so, please describe the location of all such areas, the type of products or wastes stored in each area, the amount of products or wastes stored in each area, the results of any soil or groundwater samples taken in the vicinity of each area, and the manner in which each area not presently in use was disclosed.

III. AGRICULTURAL PROPERTY

If the property has been or is used for agricultural purposes, the following additional information should be provided.

1. Have pesticides, herbicides, or other agricultural chemicals been applied to the Property? If so, please describe the locations where such pesticides, herbicides, or chemicals were applied, the type of pesticides, herbicides, or chemicals applied in each area, and the results of any soil or groundwater analyses performed to detect pesticides, herbicides, or chemicals used at the site.

2. Have pesticides, herbicides, or other agricultural chemicals been mixed, formulated, rinsed, or disposed of on the Property? If so, please describe the locations where such pesticides, herbicides, or chemicals were mixed, formulated, rinsed, or disposed of, the type of pesticides, herbicides, or chemicals mixed, formulated, rinsed, or disposed of at each location, and the results of any soil or groundwater analyses performed to detect pesticides, herbicides, or chemicals mixed, formulated, rinsed, or disposed of at the site.

As the present owner of the Property or as an officer or a general partner of the present owner of the Property (or the duly authorized representative of such owner), I am familiar with all of the operations presently conducted on the Property, have made a diligent inquiry into the former uses of the Property, and hereby certify to and for the benefit of any purchaser of the Property that, to the best of my knowledge, information, and belief, the information disclosed above is true and correct.

(Signature)

(Title)

(Date)

Selected Lease Provisions for Problem 11-1

The following are some clauses from an actual office building lease and an actual shopping center lease. They are based on a sample lease agreement that appeared in J. Casner and B. Leach, *Cases and Text on Property* 634-655 (3d ed. 1984).

Sections 1 and 2 of an Office Building Lease

RENTAL

1. Lessee shall pay to Lessor for the demised premises an annual rental of Fifty Thousand Dollars (\$50,000), which shall be payable in equal monthly installments in advance on the first day of each month throughout the term; the aforesaid payments of rental to be made without demand at _____ Street, New York, N.Y., or such other place as Lessor may designate by notice in writing to Lessee and by checks drawn to the order of Lessor without any offset or deduction whatsoever. At or prior to the execution and delivery of this Agreement, Lessee has paid to Lessor the sum of Five Thousand Dollars (\$5,000), the receipt of which is hereby acknowledged by Lessor, to be applied to the payment of the rent first coming due hereunder.

OCCUPANCY

2. Lessor does not warrant that actual occupancy shall be available to Lessee at the date fixed for the commencement of the term of this lease since the demised premises are presently rented to another tenant. In the event that such tenant shall not have removed from the demised premises on or before January 1, 2005, then Lessee shall be entitled to a prorating of rent and other charges with respect to such period as it shall not be in occupancy of the said premises following January 1, 2005. Lessor agrees, however, in the event that the present tenant vacates the said premises at any time on or before January 1, 2005 to deliver possession of the said premises to Lessee hereunder immediately thereafter, in which event Lessor shall be entitled to, and Lessee shall pay, rent and other charges on a pro rata basis for the period beginning on the date of such delivery and ending on December 31, 2004. The term of this lease, in any event, shall begin on January 1, 2005, and terminate on December 31, 2019.

Sections 4, 5, and 12 of an Office Building Lease

REPAIRS

4. Lessee shall take good care of the demised premises and of the fixtures, and of all alterations, additions and improvements in the demised premises throughout the term hereof, and shall promptly make all repairs, alterations and changes, ordinary and extraordinary, in, to and about the said premises necessary to preserve them in good order and condition, which shall be in quality and class equal to the original work, and Lessee shall promptly pay the expense of such repair, suffer no waste or injury, and at the end of the term, deliver up the demised premises in good order and condition in all respects, damage attributable to acts of God or the elements

excepted. If Lessor shall deem that Lessee has not duly and promptly made the necessary repairs, alterations and changes in this paragraph referred to, and Lessor shall give to Lessee written notification of the requirement to so do during the term of this lease, Lessee shall have a reasonable time following the giving of said notice in which to comply therewith.

INSPECTION

5. Lessor shall have the right to inspect the demised premises, at reasonable times, provided that the Lessee is provided reasonable notice beforehand and such inspection does not interfere with the conduct of Lessee's business.

LESSOR'S LIABILITY

12. Lessor shall be exempt from any and all liability for any damage or injury to persons or property caused by or resulting from steam, electricity, gas, water, rain, ice or snow, or any leak or flow from or into any part of said building or from any damage or injury resulting or arising from any other cause or happening whatsoever unless damage or injury be caused by or be due to the negligence of Lessor.*

Sections 7 and 22 of an Office Building Lease

ASSIGNMENT AND SUBLETTING

7. Lessee, its successors or assigns, shall not assign this agreement or sublet the demised premises or any part thereof without prior consent of Lessor, which consent shall not be unreasonably withheld. In the prevent of any such assignment or subletting, Lessee shall remain liable to Lessor for the payment of rent and the performance of all other obligations of the Lessee hereunder.

NON-WAIVER

22. The failure of either party to demand strict performance of any of the terms, conditions and covenants herein shall not be deemed a waiver of any rights or remedies of such party and shall not be deemed a waiver of any subsequent default in any of the terms, conditions or covenants herein contained.

Sections 9, 19, and 21 of an Office Building Lease

DEFAULT

* In some jurisdictions exculpatory provisions in commercial as well as residential leases are void as against public policy. E.g., N.Y.G.O.L. §5-321 (McKinney 1989); see also Uniform Residential Landlord and Tenant Act § 1.403(a)(4) (1972).

9. If default be made in the payment of the said rent or any part thereof, or if default be made in the performance of any of the covenants herein contained, Lessor or its representatives may re-enter the premises by force, summary proceedings or otherwise, and remove all persons therefrom without being liable to prosecution therefor, and Lessee hereby expressly waives the service of any notice in writing of intention to reenter. In the event of re-entry by reason of such default or the removal of Lessee by summary proceedings or otherwise, Lessee shall pay at the same time as the rent becomes payable under the term hereof the sum equivalent to the rent reserved herein, and Lessor may rent the premises on behalf of Lessee, reserving the right to rent the premises for a longer period of time than fixed in the original lease without releasing Lessee from any liability, applying any moneys collected, first to the expense of resuming or obtaining possession, second to restoring the premises to rentable condition, and then to the payment of the rent and all other charges due and to become due to Lessor, any surplus to be paid to Lessee, who shall remain liable for any deficiency.

19. Notwithstanding and in addition to any other rights, privileges or actions available to Lessor hereunder or at law or in equity, if Lessee shall default in the payment of rent or any part thereof, or if default be made in the performance of any of the covenants herein contained, or if Lessee shall file a petition in bankruptcy or make an assignment for the benefit of creditors, or take advantage of any insolvency act, Lessor may at its election at any time thereafter terminate this lease and the term hereof, promptly upon the giving of written notice of Lessor's intention to do so; and this lease and the term hereof shall expire and come to an end upon the giving of such notice, as if the said date were the date originally fixed in this lease for the expiration thereof.

LESSOR'S DEFAULT

21. In the case of a monetary default by Lessor, Lessor shall have a period of ten (10) days after notice thereof from Lessee to cure such monetary default. In the case of a non-monetary default, Lessor shall commence promptly to cure such default immediately after receipt of written notice from Lessee specifying the nature of such default and shall complete such cure within thirty (30) days thereafter, provided that if the nature of the non-monetary default is such that it cannot be cured within said thirty (30) day period, Lessor shall have such additional time as may be reasonably necessary to complete its performance so long as Lessor has proceeded with diligence since its receipt of Lessee's notice and is then proceeding with diligence to cure such default.

Section 13 of an Office Building Lease

SUBORDINATION TO MORTGAGES

13. This instrument shall be subject and subordinate to any mortgages which are now on or which hereafter may be placed against said premises to the limit of the principal sum of One Million Dollars (\$1,000,000), and upon recording, any such mortgage or mortgages not in excess of such principal amount shall have preference and precedence and be superior and prior

in lien to this lease, irrespective of the date of recording, and Lessee agrees to execute any instrument without cost which may be deemed necessary or desirable to any such mortgagee to further effect the subordination of this lease to any such mortgage or mortgages, and a refusal to execute such instrument shall entitle Lessor, or its successors and assigns, to cancel this lease at its option without incurring any expense, liability or damage, and the term hereby granted is expressly limited accordingly.

Section 18 of an Office Building Lease

CONDEMNATION

18. If all or substantially all of the demised premises shall be taken by condemnation, the lease hereby created shall terminate upon such taking by the acquiring authority and the rent and other charges shall be apportioned accordingly. No part of any award, however, shall belong to Lessee. If less than all or substantially all of the demised premises shall be so taken, the rent for the remaining premises shall thereupon be proportionately apportioned.

Section 20 of an Office Building Lease

ALTERATIONS

20. In the event Lessee desires to make any alterations and changes in the demised premises, it is understood and agreed that the same shall not be made without the prior consent of the Lessor, which shall not be unreasonably withheld. All alterations, decorations, additions and improvements, including paneling, partitions, railings, galleries and the like, except movable trade or banking fixtures, shall become the property of Lessor upon installation. It is understood and agreed that upon the expiration or prior termination of the term of this lease Lessor may require Lessee, at the election of Lessor and at the expense of Lessee, to restore the demised premises to the character and condition which prevailed before any said alterations or changes were made by Lessee.

Section 3 of a Shopping Center Lease

CO-TENANCY REQUIREMENT

3(a). Landlord agrees that there shall be completed and opened for business in the Shopping Center of which the demised premises are a part prior to or in conjunction with Tenant's opening, an Angel's Hardware store containing approximately forty-six thousand five hundred (46,500) square feet, or more, of ground floor space and a Lucky Discount Center store containing approximately twenty-seven thousand (27,000) square feet, or more, of ground floor space. Landlord also agrees that it shall have completed and have ready to open in the Shopping Center prior to or in conjunction with the opening of Tenant's store for business a Thrifty Drug Store containing approximately twenty thousand one hundred (20,100) square feet of ground floor space. Landlord also agrees that it shall have under construction at the time of Tenant's opening a Pic N' Save store containing approximately twenty-one thousand (21,000) square feet

of ground floor space.

(b). It is understood and agreed that Tenant shall not be required to open for business nor be liable for the payment of rent unless and until the conditions contained in paragraph (a) of this Section 3 have been and continue to be fulfilled; provided, however in the event the conditions should not be fulfilled but Tenant nevertheless opens its store for business, the conditions contained in the foregoing paragraph (a) shall be deemed satisfied and fulfilled in all respects and the lease term and Tenant's obligations hereunder shall commence as of the date Tenant opens for business.

Sections 4(a), 4(b), 4(c), 4(d), and 13 of a Shopping Center Lease

FIXED MINIMUM AND ADDITIONAL RENT

4(a). Tenant agrees to pay to Landlord an annual fixed minimum rent for the use and occupancy of the demised premises (which constitutes a portion of the Shopping Center property described in Exhibit A) during the term hereof in the sum of Fifty Thousand (\$50,000) Dollars. In addition to the fixed minimum rent Tenant agrees to pay Landlord Tenant's pro rata share of costs incurred by Landlord to maintain the parking lot and other areas used in common by all the Tenants.

PERCENTAGE RENT

4(b). In addition to the minimum and additional rent hereinabove provided, Tenant shall pay to Landlord on or before the sixtieth day after the expiration of each of Tenant's fiscal years during the term of this lease, a percentage rent equal to five percent of the gross sales, as hereinafter defined, made by Tenant on the demised premises during such fiscal year less the amount of fixed minimum rent received therefor by Landlord from Tenant. For the purpose of this Section 4, any fraction of a fiscal year at the commencement of such term shall be deemed a part of the first full fiscal year thereof, and any fraction of a fiscal year at the end of such term shall be deemed a part of the last full fiscal year thereof.

The term "gross sales" as used in this lease shall mean the aggregate of all moneys received by Tenant from sales of goods, wares, merchandise and services to the public made for cash or credit on the demised premises during the term thereof (including sales by Tenant's concessionaires and sublessees and including the net proceeds to Tenant from sales through vending machines) after deducting therefrom (i) all refunds, discounts and allowances made to customers by Tenant, in connection with merchandise sold or returned to Tenant, (ii) any federal excise tax on retailers' sales and (iii) any amount of any city, county, state or federal sales, luxury, excise, or other tax on such sales which is both added to the selling price (or absorbed therein) and paid to the taxing authority by Tenant, or any other impost or levy payable by Tenant and measured by the volume of Tenant's sales of any particular item or items, whether such impost or levy be denominated a "tax" or otherwise. There shall not be deducted therefrom any income, excess profits, franchise or other taxes based upon or measured by Tenant's income. The return or transfer of merchandise from one of Tenant's stores to another, or to any of

Tenant's warehouses, shall not be deemed a sale, nor shall the sale of Tenant's fixtures or equipment or all or substantially all of its stock-in-trade and merchandise at a sale other than at retail.

4(c). Insurance premiums paid by Tenant pursuant to section 9(a) hereof, property taxes paid by Tenant pursuant to section 7(b) hereof, and property taxes paid by Tenant pursuant to section 4(a) hereof as a portion of Tenant's reimbursement to Landlord for common area maintenance costs, shall be credited against and deducted from additional rent payable pursuant to paragraph (b) of this Section 4.

4(d). Tenant shall keep accurate records of all sales made on the premises in accordance with good accounting practices applicable to Tenant's business, and shall furnish Landlord, as soon as possible and in any event within sixty days after the end of each fiscal year of Tenant, a verified statement showing the total gross sales on the demised premises for such fiscal year calculated as herein provided. Such annual statement shall be taken as final and correct, except that Landlord (by a certified public accountant selected by it) shall have the right after the close of each fiscal year to examine and audit Tenant's records of sales made on the demised premises during such fiscal year, upon giving Tenant written notice to that effect within six months after the expiration of such fiscal year. Such audit or examination shall not be made more often than once for any year, and shall be at the sole cost and expense of Landlord, and must be completed with all reasonable diligence. On termination of this lease by lapse of time or otherwise, Tenant shall report to Landlord as "gross sales" the unpaid balance of all credit sales, excluding only those past due more than one year and those balances which have been written off Tenant's books as uncollectible.

ASSIGNMENTS AND SUBLETTING

13. Tenant shall not assign or sublet all or any part of the premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld. Every such assignment or sublease shall recite that it is and shall be subject and subordinate to the provisions of this lease, and the termination or cancellation of this lease shall constitute a termination and cancellation of every such assignment or sublease. No such assignment or subletting shall relieve Tenant of any of its obligations as Tenant hereunder.

Section 6 of a Shopping Center Lease

USE

6. Tenant shall use the demised premises for the purpose of primarily conducting thereon a sporting goods store, and for the purpose of selling other items compatible with the items offered for sale in other sporting goods stores of like character. Tenant covenants and agrees that at no time shall the premises be used for any of the following purposes: a commercial bank, savings and loan or other lending institution; a prescription pharmacy and/or a drug store for handling or selling any items of merchandise which under any law, rule, or regulation or order promulgated by a competent governmental authority, must be sold by, or in the presence of, a registered pharmacist; a hardware store, a lumber store or yard, a nursery store, a paint store, a builders' supply store, or a toy store; a variety store; a bowling alley, a skating rink or

theater; or a barber shop, beauty shop, dry cleaners or fabric store, provided that nothing contained in this paragraph shall in any way be deemed to prohibit or restrict Tenant from operating the premises or selling the products customarily sold in its other locations in this state.

Landlord agrees that none of the property described in Exhibit A, other than the demised premises, and none of the other property owned by the Landlord within a 5 mile radius of the property described in Exhibit A shall, at any time during the term of this lease, be occupied by any other sporting goods store or any store which carries sporting goods as a major line of merchandise.

Ground Lease on Encumbered Fee

THIS AGREEMENT OF LEASE is made the _____ day of _____, 20____, between _____ TRUST (with the right in either to act for both)* having its principal place of business at _____ (“Landlord”), and _____ (“Tenant”).

WITNESSETH:

ARTICLE 1—Lease of Property—Term of Lease

Section 1.01.

Landlord, for and in consideration of the rents to be paid and of the covenants and agreements hereinafter contained to be kept and performed by Tenant, hereby leases to Tenant, and Tenant hereby hires from Landlord, all that certain plot, piece or parcel of land, situate, lying and being in _____, bound and described in Exhibit A attached hereto and made part of this Lease; Subject, however, to all agreements, easements, mortgages, encumbrances, and all other liens, charges or other matters affecting the said land.

TO HAVE AND TO HOLD the same, subject as aforesaid, for a term commencing on the date hereof (hereinafter sometimes referred to as the “Commencement Date”) and ending on the last day of the calendar month in which occurs the day preceding the _____ anniversary of the Commencement Date (unless this Lease shall sooner terminate as hereinafter provided), upon and subject to the covenants, agreements, terms, provisions and limitations hereinafter set forth, all of which Tenant covenants and agrees to perform and observe.

ARTICLE 2—Definitions

Section 2.01.

The terms defined in this Section shall, for all purposes of this Lease, and all Agreements supplemental hereto, have the meanings herein specified.

(a) The term “Demised Land” shall mean the parcel of land described in Exhibit A and all improvements thereon other than improvements as defined in subsection (b) of this Section 2.01.

*Any agreement, obligation or liability made, entered into or incurred by or on behalf of _____ Trust binds only its trust property, and no shareholder, trustee, officer, or agent of the Trust assumes or shall be held to any liability therefor.

(b) The term “Improvements” shall mean the buildings and structures and the building machinery, equipment and fixtures of Tenant, erected or located on the Demised Land at the date of this Lease and any buildings and structures or building machinery, equipment and fixtures of Tenant which may be erected or located on the Demised Land during the term of this Lease by or on behalf of Tenant.

(c) The term “Demised Premises” shall mean the Demised Land and the Improvements.

(d) The phrase “term of this Lease” shall mean the term described under Article 1 hereof, and any renewal term.

(e) The term “Lease Year” shall mean the twelve-month period commencing on the first day of January, 20___ and ending on the 31st of December of that same year and each successive calendar year until the end of the lease term.

(f) The term “Impositions” shall mean all taxes, assessments, use and occupancy taxes, water and sewer charges, rates and rents, charges for public utilities, excises, levies, license and permit fees, real estate taxes, personal property taxes, privilege taxes, business and occupation taxes, gross sales taxes, occupational license taxes, and all other governmental impositions and charges of every kind and nature whatsoever, whether or not now customary or within the contemplation of the parties hereto and regardless of whether the same shall be extraordinary or ordinary, general or special, unforeseen or foreseen, or similar or dissimilar to any of the foregoing (each such tax, water charge, sewer charge, assessment and other governmental imposition and charge which Tenant is obligated to pay hereunder be herein sometimes called “Tax” or Taxes) which, at any time during the Demised Term shall be or become due and payable, the appurtenances thereto or the sidewalks, streets or vaults adjacent thereto or the rent and income received by or for the account of Tenant from any subtenants or for any use or occupation of the Demised Premises, and such franchises, licenses and permits as may be appurtenant to the use of the Demised Premises, this transaction or any documents to which Tenant is a party, creating or transferring an interest or estate in the Demised Premises; but shall not include any municipal, state or federal income taxes, assessed against Landlord, or any municipal, state or federal capital levy, estate, succession, inheritance, or transfer taxes of Landlord, or any franchise taxes imposed upon any corporate owner of the Demised Land, or any part thereof, or any income, profits, or revenues tax, assessments or charge imposed upon the rent received as such by Landlord under this Lease; *provided, however*, that if at any time during the term of this lease, the present method of taxation or assessment shall be so changed that there shall be substituted for the whole or any part of the taxes, assessments, levies, impositions or charges now or hereafter levied, assessed or imposed on real estate and the improvements, thereon, a capital levy or other tax levied, assessed and/or imposed on the rents received by Landlord from said real estate or the rents reserved herein or any part thereof, then all such capital levies or other taxes shall, to the extent that they are so substituted, be deemed to be included within the term “Impositions.”

(g) The term “Permitted Mortgage” shall mean the permanent mortgage described on Exhibit B annexed hereto and any mortgage hereafter made in compliance with all of the provisions and conditions of Section 10.06 of this Lease.

(h) The term “Institutional Investor” shall mean any national bank, or any commercial

or savings bank, pension fund, trust company or life insurance company organized under the laws of the State of New York or the State in which the Demised Premises are located or any life insurance company organized under the laws of the States of Connecticut, Massachusetts, or New Jersey (or such other state or states as have substantially similar statutory limitations and requirements with respect to investments) and authorized to do business in the State in which the Demised Premises are located.

(i) The term “unavoidable delays” shall mean delays due to strikes, lock-outs, acts of God, inability to obtain labor or materials, government restrictions, enemy action, civil commotion, fire, unavoidable casualty.

(j) the term “subtenant” shall mean any tenant, subtenant licensee or other occupant of space in the Demised Premises (other than Tenant); and the term “sublease” shall mean any lease, sublease or other agreement for the use or occupancy of any such space.

Section 2.02.

The Captions under the Article numbers of this Lease are for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease nor in any way affect this Lease.

ARTICLE 3—Rent

Section 3.01.

Tenant covenants and agrees to pay to Landlord during the term of this Lease:

(a) A net rental (herein sometimes referred to as the “fixed rental”) at the rate of \$_____ per annum and

(b) Additional rent (herein sometimes referred to as the “percentage rental”) equal to of the amount by which the gross rentals from the Demised Premises for each Lease Year, or fraction thereof, falling within the terms of this Lease shall exceed the Percentage Rental Base (as hereinafter defined) or an appropriate percentage thereof if the period in question shall be less than a full Lease Year. As used herein, the term “Percentage Rental Base” shall mean \$_____.

The term “gross rentals” as used in subsection (b) of this Section shall include:

- (i) all rentals and other sums or consideration actually received (as determined on a cash and not an accrual basis) by or for the account of Tenant or any subsidiary or affiliate of Tenant from subtenants or other persons for or in respect of any use or occupation of the Demised Premises or any part thereof (whether pursuant to Lease, concession, license, franchise or otherwise), including the rental or other consideration payable for, or, at the option of Landlord, the fair rental value of, any portion of the Demised Premises that may be used or occupied by Tenant or by any employee of

Tenant or by any person, firm or corporation in which Tenant has any interest, directly or indirectly, other than such minor portions of the Demised Premises as may be used solely for administrative offices in connection with the Demised Premises; and

- (ii) an amount equal to the aggregate of all allowances, concessions, credits, reductions in rent or other consideration to any subtenants resulting directly or indirectly from any present or future waiver, change, substitution or elimination of services, maintenance, furnishings, repairs or installations which Tenant is presently furnishing to such subtenants or would customarily furnish to such subtenants, it being understood that if and when each sublease is made Tenant shall promptly certify in writing to Landlord the nature and amount of any and all such allowances, concessions, credits, reductions in rent or other consideration.

Notwithstanding the foregoing, so long as Landlord shall be a real estate investment trust, the term "gross rentals" shall not include any amounts referred to in (i) and (ii) of this subsection (b) which, if included in the definition of "gross rentals" would result in any part of the fixed rental or percentage rental payable to Landlord hereunder being held not to constitute "rents from real property" as that term is defined in Section 856(d) of the Internal Revenue Code of 1954 and the Treasury Regulations promulgated thereunder, as the same may from time to time be amended.

All rentals, sums or other considerations which are to be included in gross rentals pursuant to clause (i) of this subsection (b) shall be included on a cash accounting basis, and shall include, for each Lease Year, all such amounts actually received in such year whether or not such amounts are attributable to a charge arising in such year or in a prior or subsequent year and shall not include amounts due and payable in such year, unless the same are actually received in such year. Fair rental values which are to be included in gross rentals pursuant to clause (i) of this subsection (b) and all amounts which are to be included in gross rentals pursuant to clause (ii) of this subsection (b) shall be included in the year to which the same are attributable.

Section 3.02.

Tenant shall pay the fixed rental provided for in subsection (a) of Section 3.01 hereof in equal monthly installments in advance on the first day of each month of each Lease Year during the term of this Lease, except that Tenant shall, at the Commencement Date, pay Landlord the pro-rata portion of the fixed rental which shall be attributable to the period beginning with the Commencement Date and ending on the last day of that month of the first Lease Year in which the Commencement Date occurs.

Section 3.03.

Tenant shall pay the percentage rental provided for in subsection (b) of Section 3.01 hereof as

follows:

(a) Within 90 days after the end of each lease year, Tenant shall deliver to Landlord a statement in a reasonable form prescribed by Landlord and verified by Tenant (by any officer, if Tenant be a corporation) showing the amount of gross rentals from the Demised Premises attributable to such year and shall pay to Landlord the percentage rental, if any, for the first year in one lump sum as shall be payable under subsection (b) of Section 3.01.

(b) If the period beginning with the Commencement Date and ending on the last day of the Lease Year in which the Commencement Date occurs (the "Initial Period") shall be less than a full Lease Year, Tenant shall include, as a separate item, within the statement delivered to Landlord within thirty (30) days after the end of the Initial Period, the gross rentals attributable to such Initial Period, and shall pay to Landlord the percentage rental, if any, for such Initial Period as shall be payable under subsection (b) of Section 3.01. The percentage rental payable under said subsection (b) of Section 3.01 for such Initial Period shall be in amount equal to _____ of the excess of gross rentals from the Demised Premises for the Initial Period over that portion of the Percentage Rental Base attributable to the Initial Period.

(c) Commencing with the second lease year after the first lease year or after the "Initial Period," as the case may be, the percentage rental determined for the preceding year shall be the estimated percentage rental for the subsequent year due and payable in pro rata monthly installments.

If at the end of a year, the actual percentage rental for that year is found to be less than the estimated amount paid (that being the Percentage Rental of the preceding year), then such excess shall be credited against the percentage rental for the following year. If there is no percentage rental for the following year or the percentage rental is inadequate to satisfy the credit, then the remaining credit balance shall be carried forward each succeeding year and applied against the percentage rental until such credit is satisfied. If the actual percentage rental is found to be greater than the estimated percentage rental paid, then the difference shall be paid in one lump sum within thirty (30) days.

Section 3.04.

The fixing of a portion of the rent to be paid by tenant on a percentage of the gross rentals from the Demised Premises shall not be deemed to constitute Landlord as a partner or an associate in business with, or responsible in any way for the business of Tenant. Landlord and Tenant further agree that they are not partners or joint venturers and that, except in respect to the proceeds of insurance and condemnation awards under the provisions of Articles 7, 8 and 9 hereof, they do not stand in any fiduciary relationship one to the other.

Section 3.05.

All payments of fixed rental, percentage rental and other payments required to be made to

Landlord shall be in lawful money of the United States of America and shall be paid to Landlord, at the address of _____ or to such other person and/or at such other place as Landlord may designate from time to time in writing.

Section 3.06.

This Lease shall be deemed and construed to be a ‘net lease’ and Tenant shall pay to Landlord, absolutely net throughout the term of this Lease, the fixed rental, percentage rental and other payments hereunder, free of any charges, assessments, impositions or deductions of any kind and without abatement, deduction or set-off, other than those herein expressly provided for, and under no circumstances or conditions, whether now existing or hereafter arising, or whether beyond the present contemplation of the parties, shall Landlord be expected or required to make any payment of any kind whatsoever or be under any other obligation or liability hereunder except as herein otherwise expressly set forth.

Section 3.07.

All percentage rental under this Lease shall constitute rent payable hereunder with the same effect as if the same were the fixed rental reserved and provided for herein, and in the event of the nonpayment by Tenant of any such percentage rental when due according to the terms of this lease, Landlord shall have the same rights and remedies in respect thereof as Landlord shall or may have in respect of the fixed rental reserved and provided for.

Section 3.08.

Except to the extent provided in Section 9.01 no happening, event, occurrence, or situation during the term of this Lease, whether foreseen or unforeseen, and however extraordinary shall permit Tenant to quit or surrender the Demised Premises or this Lease or shall relieve Tenant from its liability to pay the full fixed rental and percentage rental and other charges under this Lease, or shall relieve Tenant from any of its other obligations under this Lease, and Tenant waives any rights now or hereafter conferred upon it by statute, proclamation, decree or order, or otherwise, to quit or surrender the Demised Premises or this Lease, or any part thereof, or to any abatement, diminution, reduction or suspension of rent on account of any such event, happening, occurrence or situation.

ARTICLE 4—Payment of Taxes, Assessments, Etc. (Impositions)

Section 4.01.

Throughout the term of this Lease Tenant will pay or cause to be paid as and when the same become due, all Impositions as defined in subsection (f) of Section 2.01 hereof, except that:

(a) All Impositions for the fiscal year or tax year in which the term of this Lease expires shall be apportioned; and

(b) Where any assessment is permitted by law to be paid in installments, Tenant may pay such assessment in installments as and when each such installment becomes due.

Section 4.02.

(a) Tenant shall pay all such Impositions directly to the taxing authority and shall exhibit and deliver to Landlord photostatic copies of the receipted bills or other evidence satisfactory to Landlord showing such payment promptly after such receipts shall have been received by Tenant, and, in any event, within thirty (30) days after such payment.

(b) If an Institutional Investor, while the holder of a permitted Mortgage, shall require Tenant to deposit with such Institutional Investor the amounts necessary to pay said Impositions, Tenant may make such deposits directly with the Institutional Investor, provided, however, that such Institutional Investor shall notify Landlord of said requirement in advance of Tenants making the first such deposit, and provided further that any non-payment by such Institutional Investor of any Impositions for which Tenant was required to make such a deposit shall be deemed a non-payment by Tenant of such Impositions whether or not Tenant made such deposit. In any case where Tenant is required to deposit with the Institutional Investor the amount necessary to pay said Impositions, Tenant shall cause said Impositions to be paid as and when the same become due and payable, and shall cause to be delivered to Landlord the receipted bills or photostatic copies thereof showing such payment within thirty (30) days after such receipted bills shall have been issued by the taxing authority. If not required to do so by the holder of the permanent mortgage, Tenant will make monthly payments of real estate taxes and insurance premiums into an escrow account satisfactory to Landlord.

Section 4.03.

In the event that Tenant shall fail to pay any such Tax or Imposition as defined in Section 2.01 (f) which is required to be paid, after the same shall become due and payable, and at least ten (10) days prior to the expiration of any grace period allowed by law or by the governmental authority imposing such Tax or Imposition, and such failure shall continue for five (5) days after notice by Landlord, Landlord shall have the right, at its option to pay the same with all interest and penalties thereon and the amount so paid with interest thereon from the date of such payment at the rate of ____% shall be deemed to be additional rent hereunder and shall be due and payable

by Tenant on the first day of each month following the month in which payment by Landlord was made.

Section 4.04.

Tenant may, if it shall so desire, contest the validity or amount of any such Imposition, in which event, Tenant may defer the payment thereof during the pendency of such contest; *provided*, that within fifteen (15) days after the same shall have become due, Tenant shall have deposited with a bank or trust company acceptable to Landlord, as Trustee for Taxes, an amount sufficient to pay such contested item together with the interest and penalties thereon (as reasonably estimated by Landlord), which amount the Trustee for Taxes shall apply to the payment of such item when the amount thereof shall be finally fixed and determined. At the request of Landlord, Tenant shall cause the Trustee for Taxes to deliver to Landlord a certificate stating that such a deposit has been made with the maker of such certificate in accordance with the terms of this Lease. Nothing herein contained, however, shall be so construed as to allow such items to remain unpaid for such length of time as shall permit the Demised Premises, or any part thereof, or the lien thereon created by such item to be sold by governmental, city or municipal authority for the non-payment of the same; and if at any time in the judgment of Landlord it shall become necessary or proper so to do, Landlord, after written notice to Tenant, may cause the Trustee for Taxes to pay out or apply the said moneys so deposited or so much thereof as may be required to prevent the sale of the Demised Premises or any part thereof, or the lien created thereon by such item. If the amount so deposited as aforesaid shall exceed the amount of such payment, the excess (or the entire amount if no such payment is required) shall be paid to Tenant, or in case there shall be any deficiency, the amount of such deficiency shall be forthwith paid to Tenant.

Section 4.05.

Tenant at its expense may, if it shall so desire, endeavor at any time or times, upon prior written notice to Landlord, seek to obtain a lowering of the assessed valuation upon the Demised Premises for the purpose of reducing taxes thereon and, in such event, Landlord will order no objection and, at the request of Tenant, will cooperate with Tenant, but without expense to Landlord, in effecting such a reduction. Tenant shall be authorized to collect any tax refund payable as a result of any proceeding Tenant may institute for that purpose and any such tax refund shall be the property of Tenant to the extent to which it may be based on a payment made by Tenant, *subject, however*, to an apportionment between Landlord and Tenant with respect to taxes paid in the year in which the term of this lease ends, after deducting from such refund the cost and expenses, including legal fees, incurred in connection with obtaining such refund.

Section 4.06.

Landlord shall not be required to join in any action or proceeding referred to in Section 4.05 hereof unless required by law or any rule or regulation in order to make such action or proceeding effective, in which event, any such action or proceeding may be taken by Tenant in the name of, but without expense to, Landlord, Tenant hereby agreeing to save Landlord harmless from all costs, expenses, claims, loss or damage by reason of, in connection with, on

account of, growing out of, or resulting from, any such action or proceeding.

ARTICLE 5—Improvements

Section 5.01.

Title to the Improvements (as defined in Section 2.01 (b)) located on the Demised Premises as of the date of this Lease has not been conveyed to Landlord, and such Improvements are now and shall remain the property of Tenant, subject nevertheless to the terms and conditions of a certain remainder interest presently vested in Landlord to receive title to the Improvements by operation of law on the expiration or termination of this Lease. All Improvements hereafter erected or located on the Demised Land by or on behalf of Tenant pursuant to Section 6.04 of this Lease shall also remain the property of Tenant, subject to the terms and conditions of a certain remainder interest presently vested in Landlord to receive title to the Improvements by operation of law on the expiration or termination of this Lease.

Section 5.02.

Tenant shall have no right to remove any of the Improvements from the Demised Land except to the extent provided in Section 6.04 and Section 6.05.

Section 5.03.

Upon the expiration or earlier termination of the term of this Lease, all Improvements then located on the Demised Land shall, with the Demised Land, be vacated and surrendered free of all liens by Tenant to Landlord and shall become the property of Landlord, and Tenant agrees to execute and deliver to Landlord such deeds, assignments, or other instruments of conveyance as Landlord may deem necessary to evidence such transfer of title to Landlord. It nevertheless being understood that upon expiration or termination, title to the Improvements shall automatically vest in Landlord by operation of law and no Tenant's execution of a Deed or Assignment requested by Landlord to satisfy SEC requirements shall in any manner be deemed a condition precedent to the automatic vesting of title. For the purpose of carrying out the provisions of this Section 5.03, Tenant hereby irrevocably constitutes and appoints Landlord its true and lawful attorney-in-fact with full power of substitution to execute, acknowledge and deliver any instruments referred to in this Section 5.03 in the name and on behalf of Tenant. The power vested in said attorney-in-fact is, and shall be deemed to be, coupled with an interest and irrevocable.

ARTICLE 6—Use, Maintenance, Alterations, Repairs, Etc.

Section 6.01.

Tenant has leased the Demised Land after a full and complete examination thereof, as well as the title thereto and its present uses and non-uses, and Tenant accepts the same without any representation or warranty, express or implied in fact or by law, by Landlord and without

recourse to Landlord, as to the title thereto, the nature, condition or usability thereof or the use or uses to which the Demised Premises or any part thereof may be put. Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations in or to the Demised Premises, throughout the term of this Lease, Tenant hereby assuming the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the entire Demised Premises.

Section 6.02.

Tenant shall not use or occupy or permit the Demised Premises to be used or occupied, nor do or permit anything to be done in or on the Demised Premises, in whole or in part, in a manner which would in any way violate any construction permit or certificate of occupancy affecting the Demised Premises, or make void or voidable any insurance then in force with respect thereto, or which may make it impossible to obtain fire or other insurance thereon required to be furnished by Tenant hereunder, or as will cause or be apt to cause structural injury to the Improvements or any part thereof, or as will constitute a public or private nuisance, and shall not use or occupy or permit the Demised Premises to be used or occupied, in whole or in part, in a manner which may violate any present or future, ordinary or extraordinary, foreseen or unforeseen laws, regulations, ordinances or requirements of the federal, state or municipal governments, or of any departments, subdivisions, bureaus or offices thereof, or of any other governmental public or quasi-public authorities now existing or hereafter created, having jurisdiction in the premises, *provided, however,* that Tenant may, in good faith, upon prior written notice to Landlord, (and wherever necessary in the name of but without expense to Landlord) and after having secured Landlord to its reasonable satisfaction by cash or by a surety company bond in an amount, in a company and in substance reasonably satisfactory to Landlord, against loss or damage, contest the validity of any such laws, regulations ordinances or requirements and pending the determination of such contest may postpone compliance therewith, except that Tenant shall not so postpone compliance therewith as to subject Landlord to any fine or penalty or to prosecution for a crime, or to cause the Demised Premises or any part thereof to be condemned or to be vacated. Tenant will indemnify and save harmless Landlord, in Landlord's individual as well as Landlord's representative capacity, against any recovery or loss to which Landlord may be subject or which Landlord may sustain, including reasonable attorney's fees and expenses incurred by Landlord arising from any breach of this covenant or by reason of any action or proceedings which may be brought against Landlord or against the Demised Premises, or any part thereof; by virtue of any such laws, regulations, ordinances or requirements.

Section 6.03.

Tenant shall take good care of the Demised Premises, make all repairs, thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the Demised Premises and the sidewalks and curbs adjacent thereto in good order, repair and condition. Tenant shall also keep such sidewalks as well as all common areas within the Demised Premises free and clear from rubbish, ice and snow and shall not encumber or obstruct the same or allow the same to be encumbered or obstructed in any manner. Tenant shall indemnify and hold Landlord harmless of and from any and all claims, demand, or

demands, upon or arising out of the failure of Tenant to perform this covenant or arising out of any accident, injury or damage to any person or property which shall or may happen in or upon the said Demised Premises or any part thereof, or upon the sidewalks about said premises, however caused, and shall keep the Demised Premises free and clear of any and all mechanical liens or other similar liens or charges incidental to work done or material supplied in or about the premises.

Section 6.04.

Tenant shall have the right to make, at its sole cost and expense, additions alterations and changes (hereinafter sometimes referred to as “alterations”) in or to the Demised Premises, provided Tenant shall not then be in default in the performance of any of Tenant’s covenants or agreements in this Lease, subject, however, in all cases to the following:

(a) no structural alterations shall be commenced except after twenty (20) days’ prior written notice to Landlord;

(b) no alterations of any kind shall be made without the prior written consent of Landlord which would tend (i) to change the general character or structure of the Improvements located on the Demised Land at the date of this Lease, or (ii) to reduce or impair the value, rental, rental value, rentability or usefulness of the Demised Premises or any part thereof;

(c) no alterations shall be undertaken until Tenant shall have procured and paid for, so far as the same may be required from time to time, all permits and authorizations of all municipal departments and governmental subdivisions having jurisdiction;

(d) any structural alterations involving in the aggregate an estimated cost of more than \$100,000 shall be conducted under the supervision of an architect or engineer selected by Tenant and approved in writing by Landlord (which approval shall not be unreasonably withheld), and no such structural alterations shall be made, except in accordance with detailed plans and specifications and cost estimates prepared and approved in writing by such architect or engineer and approved in writing by Landlord (which approval shall not be unreasonably withheld);

(e) any alterations shall be made promptly (unavoidable delays excepted) and in a good and workmanlike manner and in compliance with all applicable permits and authorizations and building and zoning laws and with all other laws, ordinances, orders, rules, regulations, and requirements, of all federal state and municipal governments, departments, commissions, boards and officers, and in accordance with the orders, rules and regulations of the National Board of Fire Underwriters, the local Board of Fire Underwriters or any other body or bodies hereafter exercising similar functions;

(f) the cost of any such alterations shall be paid in cash or its equivalent, so that the Demised Premises shall at all times be free of liens for labor and materials supplied or claimed to

have been supplied to the Demised Premises;

(g) workmen's compensation insurance covering all persons employed in connection with the work and with respect to whom death or bodily injury claims could be asserted against Landlord, Tenant or the Demised Premises, and general liability insurance for the mutual benefit of Landlord and Tenant with limits of not less than \$500,000 in the event of bodily injury or death to one person and not less than \$2,000,000 in the event of bodily injury or death to any number of persons in any one accident, and with limits of not less than \$100,000 damages or injury to property with not more than \$5,000 deductible, shall be maintained by Tenant at Tenant's sole cost and expense at all times when any substantial work is in progress in connection with any alterations. All such insurance, if readily obtainable, shall be effected under standard form policies issued by insurers of recognized responsibility, which are well rated by national rating organizations and have been approved in writing by Landlord, such approval not to be unreasonably withheld. All policies or certificates therefor issued by the respective insurers, bearing notations evidencing the payment of premiums or accompanied by other evidence satisfactory to Landlord of such payment, shall be delivered to Landlord; except that if this Lease shall be mortgaged to the holder of a Permitted Mortgage the originals of such policies of insurance may be lodged with the holder of the Permitted Mortgage and duplicate originals of such policies or certificates thereof shall be delivered to Landlord; and

(h) if the estimated cost of any such structural alteration shall be in excess of \$200,000 Tenant, at Tenant's sole cost and expense, shall furnish to Landlord a surety company performance bond, issued by a company reasonably acceptable to Landlord, or other securities satisfactory to Landlord, in an amount at least equal to the estimated cost of such change or alteration, or other assurances reasonably satisfactory to Landlord, guaranteeing the completion thereof within a reasonable time, subject to unavoidable delays, free and clear of all encumbrances, chattel mortgages, conditional bills of sale, and other charges, and in accordance with the plans and specifications approved by Landlord.

Whether under the provisions of this Lease or otherwise, neither Tenant, nor any subtenant, nor any agent, employee, representative, contractor, or subcontractor of either Tenant or any subtenant, shall have any power or authority to do any act or thing or to make any contract or agreement which will bind Landlord or which may create or be the foundation for any mechanics' lien or other lien or claim upon or against Landlord's interest in the Demised Premises, and Landlord shall have no responsibility to Tenant or to any subtenant, contractor, subcontractor, supplier, materialman, workman or other person, firm or corporation who shall engage in or participate in any construction of any Improvements or in any additions, alterations, changes or replacement thereto unless Landlord shall expressly undertake such obligation by an agreement in writing signed by Landlord and made between Landlord and Tenant, or such subtenant, contractor, subcontractor, supplier, materialman, workman, or other person, firm or corporation.

Section 6.05.

Tenant will not do, permit or suffer any waste, damages, disfigurement or injury to or upon the Demised Premises or any part thereof. Tenant shall have the right at any time and from time to time to sell or dispose of any building machinery, equipment or fixtures subject to this Lease which may have become obsolete or unfit for use or which is no longer useful, necessary or profitable in the conduct of Tenant's business, *provided*, that Tenant shall then or theretofore substitute for the same other building machinery, equipment or fixtures not necessarily of the same character, but of a value at least equal to that of the property so disposed of.

Section 6.06.

Tenant shall comply with and execute at its own expense during the term of this Lease, all present and future laws, acts, rules, requirements, orders, directions, ordinances and/or regulations, ordinary or extraordinary, foreseen or unforeseen, concerning the Demised Premises or any part thereof, or the use thereof, or the streets adjacent thereto, applicable to Landlord, Tenant or subtenants thereof, or of any federal, state, municipal or other public department, bureau office or authority or of the National Board of Fire Underwriters, any local Board of Fire Underwriters, or other body having similar functions, or of any liability, fire or other insurance company having policies outstanding with respect to the Demised Premises, whether or not such laws, acts, rules, requirements, orders, directions, ordinances and/or regulations require the making of structural alterations or the use or application of portions of the Demised Premises for compliance therewith or interfere with the use and enjoyment of the Demised Premises, and shall protect, hold harmless and indemnify Landlord, in Landlord's individual as well as Landlord's representative capacity, of and from all fines, penalties, claim or claims for damages of every kind and nature arising out of any failure to comply with any such laws, acts, rules, requirements, orders, directions, ordinances and/or regulations, the intention of the parties being with respect thereto that Tenant during the term hereby granted, shall discharge and perform all the obligations of Landlord, as well as all the obligations of Tenant, arising as aforesaid, and save Landlord harmless therefrom, so that at all times the rental of the Demised Premises shall be net to Landlord without deductions or expenses on account of any such law, act, rule, requirement, order, direction, ordinance and/or regulation whatever may be; *provided, however*, that Tenant may, in good faith upon prior written notice to Landlord (and wherever necessary, in the name of, but without expense to, Landlord), and after having secured Landlord to its reasonable satisfaction by cash or by a surety company bond in an amount, in a company and in substance reasonably satisfactory to Landlord against loss or damage, contest the validity of any such law, act, rule, requirement, order, direction, ordinance or regulation and pending the determination of such contest, may postpone compliance therewith but not so as to subject Landlord to any fine or penalty or to prosecution for a crime, or to cause the Demised Premises or any part thereof to be condemned or to be vacated.

Section 6.07.

Landlord shall not be responsible or liable for any damage or injury to any property, fixtures,

merchandise or decorations or to any person or persons at any time on the Demised Premises from steam, gas or electricity or from water, rain, or snow, whether the same may leak into, issue or flow from any part of the buildings on the Demised Premises or from pipes or plumbing work of the same, or from any other place or quarter; nor shall Landlord be in any way responsible or liable in case of any accident of injury including death to any of Tenant's servants, employees, agents, or to any person or persons in or about the Demised Premises or the streets, sidewalks or vaults adjacent thereto; and Tenant agrees that it will not hold Landlord in any way responsible or liable therefor and will further indemnify and hold Landlord harmless from and against any and all claims, liability, penalties, damages, expenses and judgments arising from injury to persons or property of any nature and also for any matter or thing growing out of the condition, use or occupation of the Demised Premises, or of the streets or sidewalks adjacent thereto.

Section 6.08.

Landlord shall have the right to show the Demised Land at any time during the term of this Lease to any prospective purchasers of the same, and may enter upon the Demised Premises, or any part thereof, for the purpose of ascertaining the condition of said premises or whether Tenant is observing and performing the obligations assumed by it under this Lease, all without hindrance or molestation from Tenant. Where Tenant shall fail, after written notice, to make repairs or perform work required of Tenant hereunder, Landlord shall also have the right to enter upon the Demised Premises for the purpose of making such repairs or performing such work in which event Tenant shall pay, as additional rent upon demand therefor, the cost to Landlord of such repairs and/or such work, plus interest at the rate of ___% from the date of payment by Landlord until payment by Tenant. The above mentioned rights of entry shall be exercisable at reasonable times, at reasonable hours and on reasonable notice. Nothing contained herein, however, shall impose or imply, any duty on the part of Landlord to make any such repairs or perform any such work.

Section 6.09.

Notice is hereby given that Landlord shall not be liable for any labor or materials furnished or to be furnished to Tenant upon credit, and that no mechanical or other lien, for any such labor or materials shall attach to or affect the estate or interest of Landlord in and to the Demised Premises. Whenever and as often as any such lien shall have been filed against the Demised Premises whether or not based upon any action or interest of Tenant or any subtenant or if any conditional bill of sale shall have been filed for or affecting any materials, machinery or fixtures used in the construction, repair or operation thereof, or annexed thereto by Tenant, Tenant shall forthwith take such action by bonding, deposit or payment as will remove or satisfy the lien or conditional bill of sale.

Section 6.10.

Upon the expiration of the term of this Lease or on the sooner termination thereof, Tenant shall peaceably and quietly leave, surrender and yield up unto Landlord all and singular the Demised

Premises free of occupants other than subtenants under leases expiring not more than one year from the date of such expiration or sooner termination. Any removable property of Tenant which shall remain in or upon the Demised Premises after the expiration of the term of this Lease or sooner termination thereof and the removal of Tenant from the premises may, at the option of Landlord, be deemed to have been abandoned, and either may be retained by Landlord as its property or may be disposed of in such manner as Landlord may see fit.

ARTICLE 7—Insurance

Section 7.01.

From and after the date of this Lease, Tenant will, at its sole cost and expense, keep and maintain policies of

(a) insurance on the Improvements against loss or damage by fire and against loss or damage by other risks now embraced by the so-called broad extended coverage endorsement in amounts at all times sufficient to prevent Landlord or Tenant from becoming a co-insurer under the terms of the applicable policies, but in any event in an amount not less than 90% of the then full insurable value of the Improvements. The term “full insurable value” shall mean actual replacement value (exclusive of cost of excavation, foundations and footings). Such “full insurable value” shall be determined from time to time at the request of Landlord, by one of the insurers or, at the option of Tenant, by an appraiser, engineer, architect or contractor approved in writing by Landlord (which approval shall not be unreasonably withheld) and paid by Tenant. No omission on the part of Landlord to request any such determination shall relieve Tenant of any of its obligations under this Article;

(b) general public liability insurance protecting and indemnifying Tenant, and Landlord, in Landlord’s individual as well as Landlord’s representative capacity, against any and all claims for damages to person or property or for loss of life or of property occurring upon, in, or about the Demised Premises and the adjoining streets and passageways, such insurance to afford immediate protection, to the limit of not less than \$500,000 in respect of bodily injury or death to any one person, and to the limit of not less than \$2,000,000 in respect of any one accident or occurrence and to the limit of not less than \$100,000 for property damage with not more than \$5,000 deductible;

(c) boiler and pressure vessel insurance including pressure pipes;

(d) war risk insurance upon the Improvements as and when such insurance is obtainable from the United States Government or any agency or instrumentality thereof, and a state or war or national or public emergency exists or threatens, in an amount not less than the full insurable value thereof;

(e) rent, or use and occupancy or rental value insurance in an amount at least sufficient to meet the payments for two years of the fixed rental provided for in Article 3, the Impositions provided for in Article 3, the Impositions provided for in Article 4 and the debt

charges on any permitted Mortgage, which insurance shall be payable to Landlord, Tenant and the holder of any permitted Mortgage, as their interests may appear, but which policies shall be delivered to and held by Landlord or the holder of such Permitted Mortgage and, in the event that the Improvements or any substantial portion thereof, shall be destroyed or seriously damaged, Tenant shall assign to Landlord the interest of Tenant in said policies and all proceeds thereunder, which proceeds, when collected in cash by Landlord, shall be held in trust and applied to the payment of any debt charges then due and payable under any Permitted Mortgage, and to the performance by Tenant of all the covenants, agreements, terms and provisions of the Lease until the repair, restoration or reconstruction of the Improvements shall be completed as provided for in Article 8 hereof;

(f) such other insurance on the Improvements and in such amounts as may from time to time be reasonably required by Landlord against other insurable hazards which at the time are commonly insured against in the case of premises similarly situated.

Section 7.02.

All insurance provided for in subsections (a), (b), (c), (e) and (f) of Section 7.01 hereof, is readily obtainable, shall be effected under standard form policies issued by insurers of recognized responsibility, authorized to do business in the State wherein the Demised Premises are located which are well rated by national rating organizations and have been approved in writing by Landlord, such approval not to be unreasonably withheld. Any policies of insurance of the character described in subsections (a), (c), (d) and (f) of Section 7.01 hereof shall expressly provide that any losses thereunder shall be adjusted with Landlord, Tenant and the holder of any Permitted Mortgage. All such insurance shall be carried in the name of Landlord and Tenant and loss thereunder shall be payable to the holder of any Permitted Mortgage, Landlord and Tenant, as their respective interests may appear.

Section 7.03.

Upon the execution and delivery of this Lease and thereafter not less than thirty (30) days prior to the expiration dates of the expiring policies theretofore furnished pursuant to this Article, originals or duplicate originals of the policies, bearing notations evidencing the payment of premiums or accompanied by other evidence satisfactory to Landlord of such payment, shall be delivered by Tenant to Landlord.

Each policy delivered hereunder shall, to the extent obtainable, contain an agreement by the insurer that such policy shall not be cancelled without at least thirty (30) days prior written notice to Landlord and to any mortgagee named in such policy.

Section 7.04.

Tenant shall not take out separate insurance concurrent in form or contributing in the event of loss with that required in this Article to be furnished by, or which may reasonably be required to

be furnished by Tenant unless Landlord is included therein as an insured, with loss payable as in this Lease provided. Tenant shall immediately notify Landlord of the taking out of any such separate insurance and shall deliver the policy or policies as provided in Section 7.03 hereof.

Section 7.05.

Tenant will protect, indemnify and save harmless Landlord from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorney's fees and expenses) imposed upon or incurred by or asserted against Landlord by reason of (a) ownership of the Property or any interest therein, or receipt of any rent or other sum therefrom (except that Tenant shall not be responsible for any income tax imposed upon Landlord with respect thereto), (b) any accident injury to or death of persons or loss of or damage to property occurring on or about the Property or any part thereof or the adjoining sidewalks, curbs, vaults and vault space, if any, streets or ways, (c) any use, non-use or condition of the Property or any part thereof or the adjoining sidewalks, curbs, vaults and vault space, if any, streets or ways, (d) any failure on the part of Tenant to perform or comply with any of the terms of this Lease, or (e) performance of any labor or service or the furnishing of any materials or other property in respect of the Property or any part thereof. In case any action, suit or proceeding is brought against Landlord by reason of any such occurrence, Tenant, upon Landlord's request, will at Tenant's expense resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel designated by Tenant and approved by Landlord. The obligations of Tenant under this section, and which are incurred by Tenant while this Lease is in existence, shall survive any termination of this Lease, subject to limitations on Tenant's liability set out in paragraph 10.10 hereof

ARTICLE 8—Damage or Destruction

Section 8.01.

If, at any time during the term of this Lease, the Improvements or any part thereof shall be damaged or destroyed by fire or other casualty (including any casualty for which insurance coverage was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Tenant, at its sole cost and expense, and whether or not the insurance proceeds, if any, shall be sufficient for the purpose, shall proceed with reasonable diligence (subject to a reasonable time allowance for the purpose of adjusting such loss) to repair, alter, restore, replace or rebuild the same as nearly as possible to its value, condition and character immediately prior to such damage or destruction subject to such changes or alterations as Tenant may elect to make in conformity with the provisions of Section 6.04 hereof. Such repairs, alterations, restoration, replacement or rebuilding, including such changes and alterations as aforementioned and including temporary repairs or the protection of other property pending the completion of any thereof, are sometimes referred to in this Article as the "Work."

Section 8.02.

Except as otherwise provided in this Article, the conditions under which any repairs, alterations, restoration, replacement or rebuilding Work are to be performed and the method of proceeding with and performing the same shall be governed by all of the provisions of Section 6.04 hereof, except subsections (a) and (h) of said Section.

Section 8.03.

All insurance money paid to Landlord on account of such damage or destruction under the policies of insurance provided for in Article 7 hereof, less the cost, if any, incurred in connection with the adjustment of the loss and the collection thereof (herein sometimes referred to as the "insurance proceeds"), shall be applied to the payment of the cost of the Work to the extent such insurance proceeds shall be sufficient for the purpose and shall be paid out to or for the account of Tenant from time to time as such Work progresses. All sums so paid to Tenant and any other insurance proceeds received or collected by or for the account of Tenant (other than by way of reimbursement to Tenant for sums theretofore paid by Tenant) shall be held by Tenant in trust for the purpose of paying the cost of such Work.

Upon receipt by Landlord of evidence reasonably satisfactory to it that the Work has been completed and paid for in full and that there are no liens on the Demised Premises as a result thereof, Landlord shall pay to Tenant any remaining balance of said insurance proceeds. If the insurance proceeds received by Landlord shall be insufficient to pay the entire cost of the Work, Tenant shall supply the amount of any such deficiency and shall first apply the same to the payment of the cost of the Work before calling upon landlord for the disbursement of the insurance proceeds held by Landlord.

Under no circumstances shall Landlord be obligated to make any payment, disbursement or contribution towards the cost of the Work except to the extent of the insurance proceeds actually received by Landlord. If Tenant shall fail to comply with any of the provisions of Section 8.01, or 8.02 hereof, Landlord, shall notify Tenant of such default and thereafter Landlord, in addition to any other remedies Landlord may have, may refuse to make any payment hereunder and may apply the insurance proceeds in any order Landlord may elect towards the payment of the cost of the Work or the payment of any rent or percentage rent in default.

Section 8.04.

In no event shall Tenant be entitled to any abatement, allowance, reduction or suspension of rent because part or all of the Demised Premises shall be untenable owing to the partial or total destruction thereof and anything herein to the contrary, no such damage or destruction shall affect in any way the obligation of Tenant to pay the rent, additional rent and other charges herein reserved or required to be paid, nor release Tenant of or from any obligation imposed upon Tenant under this Lease.

Section 8.05.

If any portion of the Demised Premises from which Tenant shall have been deriving rental income shall have been rendered untenable owing to the partial or total destruction thereof, then until such portion has been repaired and restored and is producing rental income, the Percentage Rental Base shall be reduced by a fraction thereof, the numerator of which shall be the gross rentals derived from that portion of the Demised Premises so destroyed immediately prior to such destruction and the denominator of which shall be the gross rentals derived from the entire Demised Premises immediately prior to such destruction and the percentage rental payable by Tenant for such period shall be computed on the basis of such reduced Percentage Rental Base.

ARTICLE 9—Condemnation

Section 9.01.

If, at any time during the term of this Lease, title to the whole or substantially all of the Demised Premises shall be taken in condemnation proceedings or by any right of eminent domain, this Lease shall terminate and expire on the date of such taking and the fixed and percentage rental and other charges payable hereunder shall be apportioned and paid to the date of such taking. For purposes of this Article 9, “substantially all of the Demised Premises” shall be deemed to have been taken if the untaken portion cannot be practically and economically used or convened for use by Tenant for the purposes permitted by this Lease.

In the event of any such taking and the termination this Lease,

(a) any Permitted Mortgagee shall first be entitled to receive from the award or awards made in connection with such taking the amount required to be applied in reduction of the indebtedness secured by its Permitted Mortgage and the award or awards shall be so applied by the recipient thereof;

(b) Landlord shall then be entitled to receive the balance of such award or awards until Landlord has received the total sum of \$_____;

(c) the balance of said award or awards, if any, shall then be divided between Landlord and Tenant as follows:

- (i) if the taking is prior to _____, 20__, 50% to Landlord and 50% to Tenant;
- (ii) if the taking is after _____, 20__, and prior to _____, 20__, 57-1/2% to Landlord and 42-1/2% to Tenant;
- (iii) if the taking is after _____, 20__, and prior to _____, 20__, 65% to Landlord and 35% to Tenant;

(iv) if the taking is after _____, 20__, and prior to _____, 20__, 72-1/2% to Landlord and 27-1/2% to Tenant;

(v) if the taking is after _____, 20__, 80% to Landlord and 20% to Tenant.

In the event of a dispute between Landlord and Tenant as to whether or not the untaken portion of the Demised Premises can be practically and economically used or conveyed by tenant as aforesaid, and the parties cannot agree within thirty (30) days after such taking, such dispute shall be determined by arbitration in the manner provided in Article 14 hereof.

Section 9.02.

In the event of any such taking of less than the whole or substantially all of the Demised Premises, the term of this Lease shall not be reduced or affected in anyway, and

(a) any Permitted Mortgagee shall first be entitled to receive from the award or awards made in connection with such taking the amount required to be applied in reduction of the indebtedness secured by its Permitted Mortgage and the award or awards shall be so applied by the recipient thereof;

(b) Tenant shall then be entitled to any award or awards which shall be made for the purpose of the restoration of the Demised Premises, as set forth in subsection (e) of this Section 9.02 to the extent required for such restoration;

(c) Landlord shall then be entitled to receive the balance of such award or awards until Landlord has received from such award or awards the total sum in an amount equal to the product of \$_____ multiplied by the percentage of the Demised Premises which shall have been taken;

(d) the balance of said award or awards, if any, shall then be divided between Landlord and Tenant as follows:

(i) if the taking is prior to _____, 20__, 50% to Landlord and 50% to Tenant;

(ii) if the taking is after _____, 20__, and prior to _____, 20__, 57-1/2% to Landlord and 42-1/2% to Tenant;

(iii) if the taking is after _____, 20__, and prior to _____, 20__, 65% to Landlord and 35% to Tenant;

(iv) if the taking is after _____, 20__, and prior to _____, 20__, 72-

1/2% to Landlord and 27-1/2% to Tenant;

(v) if the taking is after _____, 20__, 80% to Landlord and 20% to Tenant;

(e) Tenant, at its sole cost and expense, shall proceed, with reasonable diligence to repair, alter and restore the remaining part of the Demised Premises to substantially their former condition to the extent that the same may be feasible, subject to such changes or alterations as Tenant may elect to make in conformity with the provisions of Section 6.05 hereof; such repairs, alterations or restoration, including such changes and alterations as aforementioned and including temporary repairs, or the protection of other property pending the completion of any thereof, are sometimes referred to in this Section as the "Work;" the conditions under which the Work is to be performed and the method of proceeding with and performing the same shall be governed by all of the provisions of Section 6.04 hereof, except subsections (a) and (g) of said Section;

(f) if Tenant shall have been deriving rental income from the portions of the Demised Premises so taken, the net fixed rental payable for the balance of the term of this lease shall be reduced, effective as of the date of such partial taking, to an amount which bears the same relation to the net fixed rental specified in Section 3.01 as the gross rentals attributable to the Demised Premises remaining after such taking bears to the gross rentals attributable to the Demised Premises prior to such taking;

(g) if Tenant shall have been deriving rental income from the portions of the Demised Premises so taken, the Percentage Rental Base (as defined in Section 3.01(b)) for the balance of the term of this Lease shall be equitably reduced, effective as of the date of such partial taking, to an amount fixed by agreement between Landlord and Tenant or, in the event of their failure to agree within thirty (30) days after such taking, by arbitration in the manner provided in Article 14 hereof

Section 9.03.

If the order or decree in any condemnation or similar proceeding shall fail separately to state the amount to be awarded to Landlord and the amount to be awarded to Tenant under the provisions of Section 9.01 or 9.02 hereof, by way of compensation, damages, rent, the cost of demolition, removal or restoration, otherwise, and if Landlord and Tenant cannot agree thereon within thirty (30) days after the final award or awards shall have been fixed and determined, such dispute shall be determined by arbitration and/or appraisal as the case may be in the manner provided in Article 14 hereof.

ARTICLE 10—Assignment, Mortgage, Subletting, Etc.

Section 10.01.

Tenant shall not (a) assign, mortgage, pledge, encumber or in any manner transfer this Lease, or

any part thereof, or (b) sublease the Demised Land, or any part thereof, or (c) sell, transfer, mortgage, pledge, lease, license or encumber the Improvements or the interest of Tenant in any lease of the Improvements or the rentals thereunder, without the prior written consent of Landlord in each instance, and any attempt to do any of such acts without such consent shall be null and void and of no effect. This covenant shall not be deemed to apply to the leasing of the Demised Premises to occupancy tenants for a term not in excess of two (2) years, it being understood and agreed however, that:

(a) each _____ (other than _____ in effect at the date of this Lease) and each renewal of an _____ shall be subject and subordinate to this Lease and the rights of Landlord hereunder,

(b) any violation of any provision of this Lease, whether by act or omission by any tenant of an _____ shall be deemed a violation of such provision by Tenant, it being the intention and meaning of the parties that Tenant shall assume and be liable to Landlord for any and all acts and omissions of any and all tenants with respect to this Lease; and

(c) each _____ and renewal thereof shall provide for the payment by Tenant thereunder of a rental commensurate with the fair rental value of the _____ at the time of the making of such lease or renewal and shall not provide for any payments which, if included within the definition of "gross rentals" under Section 3.01(b), would result in any part of the fixed rental or percentage rental otherwise payable to Landlord hereunder being held not to constitute "rents from real property" as that term is defined in Section 856(d) of the Internal Revenue Code of 1954 and the Treasury Regulations promulgated thereunder, as in effect at the time of the making of any such lease. It is specifically noted by Tenant that pursuant to the IRS Code section pertaining to Real Estate Investment Trusts, tenant shall not enter into any occupancy lease that measures rental in whole or in part on subtenant's net income or profit.

If the Demised Premises or any part thereof be leased, subleased or occupied by any person or corporation other than Tenant, then in the event of Tenant's default, Landlord may, and is hereby empowered at any time to collect rent from such tenants, subtenants and occupants so long as such default or any other default shall continue, and to apply the same to the curing of any default hereunder in any order of priority Landlord may elect, any unexpended balance to be applied by Landlord against any rental obligations subsequently becoming due. For purposes of this Section 10.01, any agreement whereby the management or operation of any portion of the Demised Premises shall be entrusted or otherwise transferred to a third party and which will have the effect of reducing the gross rentals (as defined in subsection (b) of Section 3.01) attributable to such portion shall be deemed to be a lease or license of such portion and shall require the prior written consent of Landlord.

Section 10.02.

If this Lease be assigned, whether or not in violation of the provisions of this Lease, Landlord may and is hereby empowered to collect rent from the assignee. In such event Landlord may

apply the net amount received by it to the fixed and percentage rental and other payments herein reserved or provided for, and no such collection shall be deemed a waiver of the covenant herein against assignment, mortgage, encumbrance, pledge or subletting, or any acceptance of the assignee or subtenant as a tenant under this Lease, or a release of Tenant from the further performance of the covenants herein contained on the part of Tenant.

Section 10.03.

Except as provided in Section 10.06 the making of any assignment, mortgage, pledge, encumbrance or subletting, in whole or in part, whether or not with the consent of Landlord, shall not operate to relieve Tenant herein named from its obligations under this Lease and, notwithstanding any such assignment, mortgage, pledge, encumbrance or subletting, Tenant herein named shall remain liable for the payment of all fixed and percentage rental and other charges and for the due performance of all the covenants, agreements, terms and provisions of this Lease to the full end of the term of this Lease, and whether or not there shall have been any prior termination of this Lease by summary proceedings or otherwise.

Section 10.04.

Each and every assignee, whether or not approved by Landlord and whether as assignee or as successor in interest of any assignee of Tenant herein named, including any purchaser of the Lease under a foreclosure of any mortgage on this Lease, shall immediately be and become and remain liable for the payment of the fixed and percentage rental and other charges payable under this Lease, and for the due performance of all the covenants, agreements, terms and provisions of this Lease on Tenant's part to be performed to the full end of the term of this Lease and each and every provision of this Lease applicable to Tenant shall also apply to and bind every such assignee and purchaser with the same force and effect as though such assignee or purchaser were Tenant named in this Lease. No transfer to such assignee or to such purchaser shall be binding upon Landlord unless such assignee or purchaser shall deliver to Landlord a recordable instrument which contains a covenant or assumption by said assignee or purchaser to such effect, but the failure or refusal of such assignee or purchaser to deliver such instrument shall not release or discharge such assignee or purchaser from its obligations and liability as above set forth.

Section 10.05.

Any consent by Landlord herein contained or hereafter given to any act of assignment, mortgage, pledge or encumbrance shall be held to apply only to the specific transaction hereby or thereby approved. Such consent shall not be construed as a waiver of the duty of Tenant, or its successors or assigns, to obtain from Landlord a consent to any other or subsequent assignment, mortgage or encumbrance or as a modification or limitation of the right of Landlord with respect to the foregoing covenant by Tenant.

Section 10.06.

Tenant, during the term of this Lease, may make one permanent first Mortgage, with the prior written consent of Landlord, which consent shall not be withheld provided that:

(a) such Permitted Mortgage shall be made to an Institutional Investor (as defined in Section 2.01) or, if a modification or extension of a Permitted Mortgage existing at the date of this Lease, to the holder of said Permitted Mortgage as of the date of this Lease;

(b) the value of the Improvements and the value of the Demised Premises shall be determined by an appraisal made by the appraiser for the Institutional Investor, subject to a final review and approval by Landlord to ascertain the accuracy and fairness of such appraisal;

(c) Tenant or the holder of such Permitted Mortgage shall promptly deliver to Landlord in the manner herein provided for the giving of notice to Landlord, as and when received by Tenant, a copy of the mortgage commitment and any amendments thereto and a true copy of such permitted Mortgage and of any subsequent modification or assignment thereof and shall notify Landlord of the address of the mortgagee to which notices may be sent;

(d) such Permitted Mortgage shall be in form and content that is satisfactory to the Landlord and in addition shall contain provisions permitting the disposition and application of insurance proceeds and condemnation awards in a manner consistent with the provisions of this Lease and shall contain such other provisions as shall be approved by Landlord, such approval not to be unreasonably withheld. Such mortgage shall specifically include provisions requiring written notice to Landlord of any defaults thereunder, permitting Landlord to cure any such defaults and be subrogated to the rights of the holder to the extent thereof and prohibiting any modification or amendment of the mortgage without the prior written approval of Landlord. If Mortgagee will not provide notice, there shall be set up a depository for the purpose of receiving mortgage payments and such Depository shall give the Landlord timely notice of any late mortgage payments. Tenant will deposit mortgage payments with said depository not later than five days before date for payment to Mortgagee. Should the proper amount of funds not be deposited, the Depository shall give immediate written notice to the Landlord;

(e) such Permitted Mortgage shall contain provisions for amortization of the principal indebtedness secured thereby and the present and anticipated future revenues available to Tenant shall, in Landlord's reasonable opinion, be sufficient to justify such amortization provisions; such Permitted Mortgage shall not contain any provision giving the Permitted Mortgagee a percentage of gross or net income of Tenant or of gross rentals (as defined in Section 3.01) or any part thereof or any amount based thereon;

(f) Tenant shall agree by separate agreement satisfactory to Landlord to indemnify Landlord for any claim, damage or loss occasioned by Tenant's failure to pay the indebtedness secured by such Permitted Mortgage or otherwise perform its obligations thereunder, such damage or loss to be deemed to include, without limitation, any payment or payments which Landlord shall make to cure any default under such Permitted Mortgage or to purchase the Demised Premises should the same be sold at foreclosure, together with all court costs and

reasonable attorneys fees incurred by Landlord;

(g) Tenant shall reimburse Landlord for all costs and expenses incurred by Landlord, including reasonable legal fees, in connection with its examination and review of such Permitted Mortgage.

Section 10.07.

Tenant agrees to pay the indebtedness under any Permitted Mortgage when the same shall become due and payable and to perform all obligations of the mortgagor thereunder. Any modification, extension or consolidation of a Permitted Mortgage shall be permitted only if the same shall comply in all respects with the requirements of Section 10.06. Tenant further agrees not to modify any Permitted Mortgage existing at the date of this Lease so as to increase the interest or other charges payable thereunder or extend or decrease the time for payment of the indebtedness secured thereby or any part thereof.

Section 10.08.

Landlord agrees that any Permitted Mortgage shall constitute a lien on the Demised Land as well as upon the Improvements thereon and Tenant's interest under the Lease, and Landlord agrees to execute such documents as Tenant or the mortgagee of such Permitted Mortgage may reasonably require in order to effect such lien.

Section 10.09.

Tenant shall, from time to time, when and as requested by Landlord, deliver to Landlord a letter from the holder of each Permitted Mortgage certifying as to the amount of the unpaid principal and interest thereon and as to the absence of defaults thereunder.

Section 10.10.

Landlord agrees that it will not unreasonably withhold its consent to an assignment by Tenant of its interest in the Lease together with all of its interest in the Improvements to a third person, firm or corporation provided:

(a) such third person, firm or corporation (i) is of good reputation, (ii) is experienced in the maintenance and operation of properties similar to the Demised Premises or covenants with Landlord continuously to employ as managing agent a firm with such experience, and (iii) has sufficient financial worth considering the nature and extent of the obligations hereunder, and Tenant shall have supplied Landlord with satisfactory evidence of the foregoing;

(b) Tenant shall not then be in default under the provisions of this Lease;

(c) If the assignee be a corporation other than a publicly held corporation, the

beneficial owner or owners of a majority of the capital stock of such corporation shall execute and deliver to Landlord a personal guarantee or guarantees of due performance of all the covenants, agreements, terms and provisions of the Lease on Tenant's part to be performed;

(d) Where consent to such assignment is required by the terms of a Permitted Mortgage then in effect, Tenant shall obtain and deliver to Landlord the written consent of the holder of such Permitted Mortgage; and

(e) Tenant shall reimburse Landlord for all costs and expenses incurred by Landlord, including reasonable legal fees, in connection with its examination and review of such assignment. It is understood between the parties that Landlord has relied substantially on the reputation, experience and financial resources of Tenant in entering into this Lease transaction and the provisions of this Section 10.10 shall be interpreted and construed accordingly.

Where Tenant shall assign its interest in the Lease, together with all of its interest in the Improvements, with the consent of Landlord, as provided in this Section 10.10, and the assignee shall execute and deliver to Landlord the recordable instrument containing the covenant of assumption referred to in Section 10.04; the assignor shall be released of all obligations under this Lease from and after the effective date of such assignment.

Section 10.11.

If Tenant shall be a corporation or a partnership and if the controlling interest in Tenant is transferred, sold or otherwise disposed of (except as a result of death) without the prior written approval of Landlord, Landlord shall have the right at any time thereafter to terminate this Lease by giving written notice of such termination to Tenant specifying a day not less than 20 days and not more than 40 days thereafter and, upon the giving of such notice, this Lease and the term and estate hereby granted shall expire and terminate upon the day so specified in the notice as fully and completely and with the same force and effect as if the day so specified were the date hereinbefore fixed for the expiration of the term of this Lease. Landlord agrees that it will not unreasonably withhold its consent to a transfer of such controlling interest where the transferee meets the requirements of Section 10.10(a) and the conditions set forth in Section 10.10(b), (c), (d) and (e) are satisfied.

Section 10.12.

Landlord agrees that it will not unreasonably withhold its consent to any sublease by Tenant of a portion of the Demised Premises for commercial purposes provided such commercial renting is permissible under local law and zoning ordinances. Such sublease shall provide for a rental commensurate with the fair rental value at the time of the making of such sublease and shall not provide for any payments which, if included within the definition of "gross rentals" under Section 3.01(b), would result in any part of the fixed rental or percentage rental otherwise payable to Landlord hereunder being held not to constitute "rents from real property" as that term is defined in Section 856(d) of the Internal Revenue Code of 1954 and the Treasury

Regulations promulgated thereunder, as the same may from time to time be amended and provided further that such sublease shall not have the effect of reducing the gross rentals (as defined in subsection (b) of Section 3.01) otherwise attributable to such portion of the Demised Premises.

ARTICLE 11—Financial Information

Section 11.01.

Tenant will keep or cause to be kept true and complete books or record and accounts, in accordance with generally accepted accounting principles and will deliver or cause to be delivered to Landlord (i) within 30 days after the end of each calendar month in a form acceptable to Landlord a detailed list of the gross rentals, as defined in Section 3.01(b), received during or attributable to such month including, without limitation, the amount of gross rentals received from or attributable to each subtenant or occupant of the Demised Premises, and setting forth pre-payments and any payments which shall be in default, certified by a financial officer of Tenant, (ii) as soon as practicable and in any event within 60 days after the end of each fiscal year of Tenant, statements of income and surplus of Tenant for such fiscal year, and a balance sheet of Tenant as of the end of such fiscal year, all in reasonable detail, certified by the certified public accountants referred to and in form reasonably satisfactory to Landlord, and (iii) with reasonable promptness, such other financial data and information as Landlord may reasonably request. Where Tenant shall have assets or liabilities unrelated to the Demised Premises, the statements required under clause (ii) above shall identify those assets and liabilities and those items of income and expenses relating to the Demised Premises. Landlord shall have the right at any time during business hours, on reasonable prior notice to Tenant, to examine or cause its accountants to examine Tenant's books and records of account relating to the Demised Premises. Tenant will deliver or cause to be delivered to Landlord, within fifteen days after the end of each calendar month, a detailed statement setting forth all subleases which have been entered into with respect to such buildings as of the date of such statements, a statement of all sums and held by Tenant for the benefit of the subtenants under such subleases or as security thereunder.

ARTICLE 12—Default Provisions

Section 12.01.

This Lease and the term and estate hereby granted are subject to the limitations that

(a) whenever Tenant shall default in the payment of any installment of fixed rent, percentage rent, or of any other sum payable by Tenant to Landlord, on any day upon which the same ought to be paid; or

(b) whenever Tenant shall do, or permit anything to be done, whether by action or inaction, contrary to any covenant or agreement on the part of Tenant herein contained or contrary to any of the covenants, agreements, terms or provisions of this Lease, or shall fail in the keeping or performance of any of the covenants, agreements, terms or provisions contained

in this Lease which on the part or behalf of Tenant are to be kept or performed;

(c) whenever, an involuntary petition shall be filed against Tenant under any bankruptcy or insolvency law or under the Reorganization provisions of any law of like import, or a Receiver of Tenant or of or for the property of Tenant shall be appointed without the acquiescence of Tenant, or whenever this Lease or the estate hereby granted or the unexpired balance of the term would, by operation of law or otherwise, except for this provision, devolve upon or pass to any person, firm or corporation other than Tenant or any corporation in which Tenant may be duly merged, converted or consolidated under statutory procedure, and such situation under this subsection (c) shall continue and shall remain undischarged or unstayed for an aggregate period of sixty (60) days (whether or not consecutive) or shall not be remedied by Tenant within sixty (60) days; or

(d) whenever Tenant shall make an assignment of the property of Tenant for the benefit of creditors or shall file a voluntary petition under any bankruptcy or insolvency law, or whenever any court of competent jurisdiction shall approve a petition filed by Tenant under the Reorganization provisions of the United States Bankruptcy Act or under the provisions of any law of like import, or whenever a petition shall be filed by Tenant under the Arrangement provisions of the United States Bankruptcy Act or under the provisions of any law of like import, or whenever Tenant shall desert or abandon the premises;

(e) whenever Tenant shall be in default under any of the terms and provisions of the Permanent Mortgage.

Then with regard to any default arising under sub-Section (a) (b) or (e) of Section 12.01 of Article 12, Landlord shall by registered mail inform Tenant of said default, allow Tenant a ten (10) day period in which to cure said default from the post-marked date of the registered letter, and further notify tenant that this Lease shall terminate on the date specified in said registered letter if said default is not cured within the ten (10) days regardless of and notwithstanding the fact that Landlord has or may have some other remedy under this Lease or by virtue hereof or in law or in equity. The date of termination set forth in the registered letter can be any date selected by Landlord so long as the date of termination is after the twenty (20) day period allowed to Tenant to cure said default.

With regard to any default arising under sub-Section (c) of Section 12.01 of Article 12, at any time after the date of the expiration of any such period of sixty (60) days if such involuntary petition or the appointment of such Receiver shall have remained undismissed or unstayed or the devolution or transfer of this Lease as hereinbefore provided shall not have been remedied then said Lease shall automatically terminate upon the giving of notice of termination by registered mail.

With regard to any default arising under sub-Section (d) of Section 12.01 of Article 12, at any time after the date when Tenant shall make an assignment for the benefit of creditors or shall file a voluntary petition under any bankruptcy, or insolvency law, or upon any date when a court of

competent jurisdiction shall approve a petition filed by Tenant under the Reorganization provisions of the United States Bankruptcy Act or under the provisions of any law of like import, or upon any date when Tenant shall desert or abandon the premises, then said Lease shall automatically terminate upon the giving of notice of termination by registered mail.

Section 12.02.

Upon any such termination or expiration of this lease, Tenant shall peaceably quit and surrender the Demised Land and Improvements to Landlord and shall execute and deliver to Landlord the documents referred to in Section 5.03, and Landlord may without further notice enter upon, re-enter, possess and repossess itself thereof by force, summary proceedings, ejectment or otherwise, and may dispossess and remove Tenant and all other persons and property from the Demised Premises and may have, hold and enjoy the Demised Premises and the right to receive all rental and other income of and from the same, including but not limited to overdue and unpaid rental and other income.

Section 12.03.

It is covenanted and agreed by Tenant that in the event of the expiration or termination of this Lease or reentry by Landlord, under any of the provisions of this Article 12 or pursuant to law, by reason of default hereunder on the part of Tenant, Tenant will pay to Landlord, as damages, at the election of Landlord, either:

(a) a sum which at the time or such termination of this Lease or at the time of any such reentry by Landlord, as the case may be, represents the excess, if any, of:

(i) the aggregate fixed and percentage rent which would have been payable by Tenant for the period commencing with such earlier termination of this Lease or the date of any such re-entry, as the case may be, and ending with this date hereinabove set for the expiration of the full term hereby granted; had this Lease not so terminated or had Landlord not so re-entered the premises over

(ii) the aggregate rental value of the premises for the same period, or

(b) sums equal to the fixed and percentage rent which would have been payable by Tenant had this Lease not so terminated, or had Landlord not so re-entered the premises, payable upon the rent days specified herein, following such termination or such re-entry and until the date hereinabove set for the expiration of the full term hereby granted, *provided, however*, that if Landlord shall re-let the premises during said period, Landlord shall credit Tenant with the net rents, if any, received by Landlord from such re-letting, such rents to be determined by first deducting from the gross rentals as and when received by Landlord from such re-letting the expenses incurred or paid by Landlord in terminating this Lease or of re-entering the premises and of securing possession thereof, as well as the expenses of re-letting, including altering and preparing the premises for new tenants, brokers commissions, and all other expenses properly

chargeable against the premises and the rental therefrom; but in no event shall Tenant be entitled to receive any excess of such net rents over the sums payable by Tenant to Landlord hereunder. Suit or suits for the recovery of such damages, or any installments thereof, may be brought by Landlord from time to time at its election, and nothing contained herein shall be deemed to require Landlord to postpone suit until the date when the term of this Lease would have expired if it had not been terminated under the provisions of this Article 12, or under the provisions of law, or had Landlord not re-entered the premises.

Nothing herein contained shall be construed as limiting or precluding the recovery by Landlord against Tenant of any damages to which Landlord may lawfully be entitled in any case other than those particularly provided for above.

Section 12.04.

Tenant, for Tenant, and on behalf of any and all persons claiming through or under Tenant, including creditors of all kinds, does hereby waive and surrender all right and privilege which they or any of them might have under or by reason of any present or future law, to redeem the premises or to have a continuance of this Lease for the term hereby demised after being dispossessed or ejected therefrom by process of law or under the terms of this Lease or after the termination of this Lease as herein provided.

Section 12.05.

The words “enter,” “entry,” “re-enter” or “re-entry” are not restricted to their technical legal meaning.

ARTICLE 13—Landlord’s Right to Perform—Cumulative Remedies—Waivers

Section 13.01.

If Tenant shall fail to pay any Imposition or make any other payment required to be made under this Lease or shall default in the performance of any other covenant, agreement, term, provision or condition herein contained, Landlord, without being under any obligation to do so and without thereby waiving such default, may make such payment and/or remedy such other default for the account and at the expense of Tenant, immediately and without notice in the case of emergency, or in any other case only provided Tenant shall fail to make such payment or remedy such default with all reasonable dispatch after Landlord shall have notified Tenant in writing of such default. Bills for any expense incurred by Landlord in connection therewith, and bills for all costs, expenses and disbursements of every kind and nature whatsoever, including reasonable counsel fees, involved in collection or endeavoring to collect the rent or additional rent or any part thereof, or enforcing or endeavoring to enforce any right against Tenant under or in connection with this Lease, or pursuant to law, including (without being limited to) any such cost, expense and disbursement involved in instituting and prosecuting summary proceedings, as well as bills for any property, material, labor or services provided, furnished, or rendered, or caused to be, by Landlord to Tenant, with respect to the premises and other equipment,

construction work done for the account of Tenant (together with interest at the rate of ____% from the respective dates of Landlord's making of each such payment or incurring of each such cost or expense), may be sent by Landlord to Tenant monthly, or immediately at Landlord's option, and shall be due and payable in accordance with the terms of said bills and if not paid, when due the amount thereof shall immediately become due and payable as additional rent under this Lease.

Section 13.02.

Landlord may restrain any breach or threatened breach of any covenant, agreement, term, provision or condition herein contained, but the mention herein or any particular remedy shall not preclude Landlord from any other remedy it might have, either in law or in equity. The failure of Landlord to insist upon the strict performance of any one of the covenants, agreements, terms, provisions and conditions of this Lease or to exercise any right, remedy or election herein contained or permitted by law shall not constitute or be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, condition, right, remedy or election, but the same shall continue and remain in full force and effect. Any right or remedy of Landlord in this Lease specified and any other right or remedy that Landlord may have at law, in equity or otherwise upon breach of any covenant, agreement, term, provision or condition in this Lease contained upon the part of Tenant to be performed, shall be distinct, separate and cumulative rights or remedies and no one of them, whether exercised by Landlord or not, shall be deemed to be in exclusion of any other. No covenant, agreement, term, provision or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver be in writing signed by Landlord or Landlord's agent duly authorized in writing. Consent of Landlord to act or to any matter must be in writing and shall apply only with respect to the particular act or matter to which such consent is given and shall not relieve Tenant from the obligation wherever required under this Lease to obtain the consent of Landlord to any other act or matter. Receipt or acceptance of rent by Landlord shall not be deemed to be a waiver of any default under the covenants, agreements, terms, provisions and conditions of this Lease, or of any right which Landlord may be entitled to exercise under this Lease. In the event that Tenant is in arrears in the payment of rent or additional rent, Tenant waives Tenant's right, if any, to designate the items against which any payments made by Tenant are to be credited and Tenant agrees that Landlord may apply any payments made by Tenant to any items Landlord sees fit irrespective of and notwithstanding any designation or request by Tenant as to the items against which any such payments shall be credited. This Lease may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement or any waiver, change, modification, or discharge is sought.

ARTICLE 14—Arbitration and Appraisal

Section 14.01.

In each case specified in this Lease in which it shall become necessary to resort to arbitration or appraisal, such arbitration or appraisal shall be determined as provided in this Article 14. The party desiring such arbitration or appraisal shall give written notice to that effect to the other party, specifying in said notice the name and address of the person designated to act as arbitrator or appraiser on its behalf. Within fifteen (15) days after the service of such notice, the other party

shall give written notice to the first party specifying the name and address of the person designated to act as arbitrator or appraiser on its behalf. If the second party fails to notify the first party of the appointment of its arbitrator or appraiser, as aforesaid, within or by the time specified, then appointment of the second arbitrator or appraiser shall be made in the same manner as hereinafter provided for appointment of a third arbitrator or appraiser in a case where two arbitrators or appraisers are appointed hereunder and neither such arbitrators or appraisers nor the parties are able to agree upon appointment of a third arbitrator or appraiser. The arbitrators or appraisers so chosen shall meet within ten (10) days after the second arbitrator or appraiser is appointed and if, within thirty (30) days after the second arbitrator or appraiser is appointed, the said two arbitrators or appraisers shall not agree upon the question in dispute, they shall themselves appoint a third impartial person; and in the event of their being unable to agree upon such appointment within ten (10) days after the time aforesaid, the third arbitrator or appraiser shall be selected by the parties themselves if they can agree thereon within a further period of fifteen (15) days. If the parties do not so agree, then either party, on behalf of both, may apply to any court of general jurisdiction in the County in which the Demised Premises are located for the appointment of such third arbitrator or appraiser, and the other party shall not raise any question as to the Court's full power and jurisdiction to entertain the application and make the appointment. The decision of the arbitrators or appraisers so chosen shall be given within a period of thirty (30) days after the appointment of such third arbitrator or appraiser. The decision in which any two arbitrators or appraisers so appointed and acting hereunder concur shall in all cases be binding and conclusive upon the parties. Each party shall pay the fees and expenses of the one of the two original arbitrators or appraisers appointed by such party, or in whose stead as above provided, such arbitrator or appraiser was appointed, and the fees and expenses of the third arbitrator or appraiser, if any, shall be borne equally by both parties. Tenant cannot invoke this article to prevent or forestall a termination or eviction by Landlord in the event of a default by Tenant.

ARTICLE 15—Brokerage Fees and Commissions

Section 15.01.

Tenant agrees to pay all brokerage fees and commissions, if any, incurred as a result of this Lease transaction and agrees to indemnify and save Landlord harmless from and against any and all claims for such fees and commissions.

ARTICLE 16—Impairment of Landlord's Title

Section 16.01.

Nothing in this Lease contained on any action or inaction by Landlord shall be deemed or construed to mean that Landlord has granted to Tenant any right, power or permission to do any act or to make any agreement which may create, give rise to, or be the foundation for, any right, title, interest, lien, charge or other encumbrance upon the estate of Landlord in the Demised Premises except to the extent provided in Section 10.08.

Section 16.02.

In amplification and not in limitation of the foregoing, Tenant shall not permit any portion of the Demised Premises to be used by any person or persons or by the public, as such, at any time or times during the term of this Lease, in such manner as might reasonably tend to impair Landlord's title to or interest in the Demised Premises or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse use, adverse possession, prescription, dedication, or other similar claims of, in, to or with respect to the Demised Premises or any part thereof. Landlord may from time to time, but without affecting in any manner its rights or remedies in respect hereof should it elect or fail or refuse to do so, impose upon Tenant such rules or regulations as to the use or possession by any such persons or by the public as may reasonably be consistent with Landlord's protection against any such possible claim, all of which rules or regulations shall be fully and promptly performed and enforced by Tenant at Tenant's own cost and expense.

ARTICLE 17—Quiet Enjoyment—Transfer of Landlord's Interest

Section 17.01.

Landlord covenants that if and so long as Tenant keeps and performs each and every covenant, agreement, term, provision and condition herein contained on the part and on behalf of Tenant to be kept and performed, Tenant shall quietly enjoy the Demised Premises without hindrance or molestation by Landlord, subject to the covenants, agreements, terms, provisions, and conditions of this Lease.

Section 17.02.

It is expressly understood and agreed that the term "Landlord", as used in this Lease, means only the owner for the time being of the Demised Land, and in the event of the sale, assignment or transfer by such owner of its or their interest in said Demised Land, such owner shall thereupon be released and discharged from all covenants and obligations of Landlord thereafter accruing; but such covenants and obligations shall be binding upon each new owner for the time being of the Demised Land.

ARTICLE 18—Waiver of Jury Trial

Section 18.01.

The parties hereto waive a trial by jury of any and all issues arising in any action or proceeding between them or their successors or assigns under or connected with this Lease or any of its provisions or any negotiations in connection therewith or Tenant's use or occupation of the Demised Premises.

ARTICLE 19—Notices

Section 19.01.

All notices, demands, requests or other communications which may be or are required to be given, served or sent by either party to the other shall be in writing and shall be deemed to have been properly given or sent:

- (a) if intended for Tenant—by mailing by registered or certified mail with the postage prepaid, addressed to Tenant at the address hereinabove first set forth;
- (b) if intended for Landlord—by mailing by registered or certified mail with the postage prepaid, addressed to Landlord at _____;
- (c) if intended for the holder of a Permitted Mortgage either by delivery thereof personally (if such holder is an individual) or by delivery thereof personally to an officer (if such holder is a corporation) or by mailing by registered or certified mail with the postage prepaid, addressed to such holder at the address furnished to Landlord pursuant to the provisions of subsection (e) of Section 10.06 hereof. Each party and each Permitted Mortgagee may designate by notice in writing a new address to which any notice, demand, request or communication may hereafter be so given, served or sent. Each notice, demand, request or communication which shall be mailed by registered mail to Landlord, Tenant or the holder of the Permitted Mortgage in the manner aforesaid shall be deemed sufficiently given, served or sent for all purposes hereunder at the time such notice, demand, request or communication shall be mailed by United States registered mail in any post office or branch post office regularly maintained by the United States Government.

Section 19.02.

If a request is received in writing by Landlord or Tenant for a consent or approval required under this Lease or for information to which the party making such request shall be entitled, the party receiving such request shall act with reasonable promptness thereon and shall not unreasonably delay notifying the party making such request as to the granting or withholding of such consent or approval or furnishing to such party the information requested.

ARTICLE 20—Estoppel Certificate

Section 20.01.

The parties mutually agree that at any time and from time to time upon written request of the other party and at the reasonable cost and expense to the party requesting the same, Landlord or Tenant, as the case may be, will execute, acknowledge and deliver to the other party a certificate evidencing whether or not:

(a) the Lease is in full force and effect;

(b) said Lease has been modified or amended in any respect, and submitting copies of such modifications or amendments, if any; and

(c) there are any existing defaults thereunder to the knowledge of the party executing the certificate, and specifying the nature of such defaults, if any.

ARTICLE 21—Invalidity of Particular Provisions—Construction

Section 21.01.

If any term or provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 21.02.

It is understood and agreed that the provisions for the payment of percentage rental set forth in Section 3.01(b) of this Lease are a primary consideration to Landlord. If, at any time during the term of this Lease, all or substantially all of the percentage rental which would be payable under the provisions of Section 301(b) is not payable because of the provisions of Section 3.01 which relate to Section 856(d) of the Internal Revenue Code of 1954 and the Treasury Regulations promulgated thereunder, as the same may from time to time be amended, then Landlord shall have the right to an increase in the fixed rental payable under this Lease which will compensate Landlord for the loss of such percentage rental, the amount of such increase to be thereafter reconsidered and adjusted at 5-year intervals during the term of this Lease. In the absence of an agreement between the Landlord and Tenant as to the amount of such increase in the fixed rental or in the amount of any subsequent adjustment, the matter shall be determined by arbitration in the manner provided for in Article 14.

Section 21.03.

This Lease shall be construed and enforced in accordance with the laws of the State in which the Demised Premises are located.

ARTICLE 22—Disclaimer of Individual Liability of Trustees and Shareholders

Section 22.01.

The Trustees first hereinabove described are acting herein in their representative or fiduciary capacity pursuant to the Declaration of Trust dated as of _____, establishing _____ Real Estate Investment Trust (the "Trust") for the benefit of the holders of

the shares of the Trust (the “Shareholders”) and each and every agreement made by Landlord herein is binding only upon the property of the Trust and no trustee, officer or shareholder of the Trust assumes or shall be held to any liability therefor. The Shareholders shall in no way be held liable for any agreement, debt, demand or liability incurred by or under the authority of the Trustees and no such agreement, debt, demand or liability shall have any force and effect against the Shareholders of the Trust or their respective successors or assigns nor shall any such agreement, debt, demand or liability have any force and effect against the Trustees or against their respective legal representatives, distributees or assigns. Tenant agrees for itself, its successors and assigns, that the Shareholders and the Trustees shall not be personally liable under this Lease or any written agreement, undertaking or obligation made or issued on behalf of the Trust, that it will look solely to the assets of the Trust for any claim which it may have hereunder and that it shall assert no claim against the Shareholders or against the Trustees in their individual capacity. In addition, Tenant covenants that it shall use every reasonable means to assure that all persons having dealings with Landlord through Tenant shall be informed that the private property of the Shareholders and of the Trustees shall not be subject to claims against or obligations of the Trust to any extent whatever.

Section 22.02.

Tenant agrees that Landlord shall be entitled to enforce the terms of this Lease in Landlord’s representative or fiduciary capacity and in Landlord’s company or distinguishing name and without joining the Shareholders as parties plaintiff in any action or proceeding brought for such purpose.

ARTICLE 23—Late Charge

Section 23.01.

In the event that Tenant’s rent is not received by the third of the month, Tenant shall pay a late charge of 10% computed per diem on the monthly rental amount due.

ARTICLE 24—Covenants Binding

Section 24.01.

The covenants, agreements, terms, provisions and conditions of this Lease shall be binding upon and inure to the benefit of the successors and assigns of Landlord and except as otherwise provided herein, the successors and assigns of Tenant.

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument as of the day and year first above written.

By:

§ 7:49 Leasehold mortgage on unencumbered fee

Source: Joe Forte, partner at Alston & Bird LLP, New York, New York.

THIS MORTGAGE AND SECURITY AGREEMENT (THE "Mortgage"), made the _____ day of _____, 20____, by _____, a _____, having its principal place of business at _____ ("Mortgagor") to _____, a _____, having its principal place of business at _____ ("Mortgagee"),

WITNESSETH:

To secure the payment of an indebtedness in the principal sum of _____ Dollars (\$ _____), lawful money of the United States of America, to be paid with interest according to a certain note dated the date hereof made by Mortgagor to Mortgagee (the note together with all extensions, renewals or modifications thereof being hereinafter collectively called the "Note") (said indebtedness, interest and all other sums due hereunder and under the Note being collectively called the "Debt"), Mortgagor has mortgaged, given, granted, bargained, sold, aliened, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated and by these presents does mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, pledge, assign and hypothecate unto Mortgagee the leasehold estate in the real property described in Exhibit A attached hereto (the "Premises") created by that certain instrument dated _____ between _____, as owner ("Owner") and _____, as tenant, recorded in _____ [INCLUDE CHAIN OF ASSIGNMENTS INTO MORTGAGOR] (the "Ground Lease") and the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (the "Improvements");

TOGETHER WITH: all right, title, interest and estate of Mortgagor now owned, or hereafter acquired, in and to the following property, rights, interests and estates (the Premises, the Improvements together with the following property, rights, interests and estates being hereinafter collectively referred to as the "Mortgaged Property"):

(a) the Ground Lease and the leasehold estate created thereby;

(b) all modifications, extensions and renewals of the Ground Lease and all credits, deposits, options, privileges and rights of Mortgagor as tenant under the Ground Lease, including, but not limited to, the right, if any, to renew or extend the Ground Lease for a succeeding term or terms;

(c) all the estate, right, title, claim or demand whatsoever of Mortgagor either in law or in equity, in possession or expectancy, of, in and to the Premises or the Improvements or any part thereof;

(d) all easements, rights-of-way, strips and gores of land, streets, ways, alleys,

passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises and the Improvements under and by virtue of the Ground Lease and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Premises and the Improvements under and by virtue of the Ground Lease and every part and parcel thereof, with the appurtenances thereto;

(e) all machinery, equipment, fixtures (including but not limited to all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Premises and the Improvements (hereinafter collectively called the "Equipment"), and the right, title and interest of Mortgagor in and to any of the Equipment which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the State or states where any of the Mortgaged Property is located (the "Uniform Commercial Code"), superior in lien to the lien of this Mortgage;

(f) all awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Mortgaged Property, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of said right), or for a change of grade, or for any other injury to or decrease in the value of the Mortgaged Property;

(g) all leases, subleases and other agreements affecting the use, enjoyment or occupancy of the Premises and the Improvements, and all extensions, amendments and modifications thereto, heretofore or hereafter entered into (the "Leases") and all rents, issues and profits (Including all oil and gas or other mineral royalties and bonuses) from the Premises and the Improvements (the "Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the Payment of the Debt;

(h) all proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property;

(i) the right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence

any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Mortgagee in the Mortgaged Property;

TO HAVE AND TO HOLD the Ground Lease and the renewals therein provided for, and the above granted and described Mortgaged Property, unto and to the use and benefit of Mortgagee, and the successors and assigns of Mortgagee, for and during the rest, residue and remainder of the term of years yet to come and unexpired in the Ground Lease and the renewals therein provided for; subject nevertheless to the rents, covenants, conditions and provisions in the Ground Lease;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Mortgagor shall well and truly pay to Mortgagee the Debt at the time and in the manner provided in the Note and this Mortgage and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, these presents and the estate hereby granted shall cease, terminate and be void;

AND Mortgagor represents and warrants to and covenants and agrees with Mortgagee as follows:

1. *Payment of Debt and Incorporation of Covenants, Conditions and Agreements.* Mortgagor will pay the Debt at the time and in the manner provided in the Note and in this Mortgage. All the covenants, conditions and agreements contained in (a) the Note and (b) all and any of the documents other than the Note or this Mortgage now or hereafter executed by Mortgagor and/or others and by or in favor of Mortgagee, which wholly or partially secure or guaranty payment of the Note (the "Other Security Documents"), are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein.

2. *Warranty of Title.* Mortgagor warrants that Mortgagor has good title to the Mortgaged Property and has the right to mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, pledge, assign and hypothecate the same and that Mortgagor possesses an unencumbered leasehold estate in the Premises and [*an unencumbered fee estate in*] the Improvements created by and pursuant to the provisions of the Ground Lease and that it owns the Mortgaged Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions shown in the title insurance policy insuring the lien of this Mortgage. In addition, Mortgagor represents and warrants that (a) the Ground Lease is in full force and effect and has not been modified or amended in any manner whatsoever, (b) there are no defaults under the Ground Lease and no event has occurred, which but for the passage of time, or notice, or both, would constitute a default under the Ground Lease, (c) all rents, additional rents and other sums due and payable under the Ground Lease have been paid in full, and (d) neither Mortgagor nor the landlord under the Ground Lease has commenced any action or given or received any notice for the purpose of terminating the Ground Lease. Mortgagor shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Mortgage and shall forever warrant and defend the same to Mortgagee against the claims of all persons whomsoever.

3. *Insurance.*

(a) Mortgagor will keep the Mortgaged Property insured against loss or damage by fire, flood and such other hazards, risks and matters, including without limitation, business interruption, rental loss, public liability, and boiler damage and liability, as Mortgagee may from time to time require in amounts required by Mortgagee, and shall pay the premiums for such insurance (the "Insurance Premiums") as the same become due and payable. All policies of insurance (the "Policies") shall be issued by insurers acceptable to Mortgagee and shall contain the standard New York mortgagee non-contribution clause naming Mortgagee as the person to which all payments made by such insurance company shall be paid. Mortgagor will assign and deliver the Policies to Mortgagee. Not later than fifteen (15) days prior to the expiration date of each of the Policies, Mortgagor will deliver evidence satisfactory to Mortgagee of the renewal of each of the Policies.

(b) If the Mortgaged Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Mortgagor shall give prompt notice thereof to Mortgagee. Sums paid to Mortgagee by any insurer may be retained and applied by Mortgagee, after deduction of Mortgagee's reasonable costs and expenses of collection, toward payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper or, at the discretion of Mortgagee, either in whole or in part, to Mortgagor for such purposes as Mortgagee shall designate. Any reduction of the Debt pursuant to the terms of this paragraph 3 shall not be deemed a prepayment of the Debt and no prepayment consideration, if any, shall be due.

4. *Payment of Taxes, etc.* Mortgagor shall pay all taxes, assessments, water rates and sewer rents, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof (the "Taxes") and all ground rents, maintenance charges, other governmental impositions, and other charges, including without limitation vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Premises, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof (the "Other Charges") as same become due and payable. Mortgagor will deliver to Mortgagee, promptly upon Mortgagee's request, evidence satisfactory to Mortgagee that the Taxes and Other Charges have been so paid or are not then delinquent. Mortgagor shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Mortgaged Property, and shall promptly pay for all utility services provided to the Mortgaged Property. Mortgagor shall furnish to Mortgagee receipts for the payment of the Taxes, Other Charges and said utility services prior to the date the same shall become delinquent.

5. *Escrow Fund.*

(a) Mortgagor shall, at the option of Mortgagee, pay to Mortgagee on the first day of each calendar month (i) one-twelfth of an amount which would be sufficient to pay the Taxes payable, or estimated by Mortgagee to be payable, during the next ensuing twelve (12) months and (ii) one-twelfth of an amount which would be sufficient to pay the Insurance Premiums due for the renewal of the coverage afforded by the Policies upon the expiration thereof (said amounts in (i) and (ii) above hereinafter called the "Escrow Fund"). The Escrow Fund and the payments of interest or principal or both, payable pursuant to the Note shall be added together and shall be paid as an aggregate sum by Mortgagor to Mortgagee. Mortgagor hereby

pledges to Mortgagee any and all monies now or hereafter deposited in the Escrow Fund as additional security for the payment of the Debt. Mortgagee will apply the Escrow Fund to Payments of Taxes and Insurance Premiums required to be made by Mortgagor pursuant to paragraphs 3 and 4 hereof. If the amount of the Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to paragraphs 3 and 4 hereof, Mortgagee shall, in its discretion, return any excess to Mortgagor or credit such excess against future payments to be made to the Escrow Fund. In allocating such excess, Mortgagee may deal with the person shown on the records of Mortgagee to be the owner of the Mortgaged Property. If the Escrow Fund is not sufficient to pay the items set forth in (i) and (ii) above, Mortgagor shall promptly pay to Mortgagee, upon demand, an amount which Mortgagee shall estimate as sufficient to make up the deficiency. Upon the occurrence of an Event of Default (hereinafter defined) Mortgagee may apply any sums then present in the Escrow Fund to the payment of the following items in any order in its uncontrolled discretion:

(i) Taxes and Other Charges:

(ii) Insurance Premiums;

(iii) Interest on the unpaid principal balance of the Note;

(iv) Amortization of the unpaid principal balance of the Note;

(v) All other sums payable pursuant to the Note, this Mortgage and the Other Security Documents, including without limitation advances made by Mortgagee pursuant to the terms of this Mortgage.

Until expended or applied as above provided, any amounts in the Escrow Fund shall constitute additional security for the Debt. The Escrow Fund shall not constitute a trust fund and may be commingled with other monies held by Mortgagee. No earnings or interest on the Escrow Fund shall be payable to Mortgagor.

(b) Compliance by Mortgagor with any provisions of the Ground Lease relating to the deposit of funds by Mortgagor for the payment of all taxes, assessments, water and sewer rents and/or insurance premiums shall constitute compliance with paragraph 5(a) to the extent such Ground Lease provisions cover each of said items; provided that Mortgagor shall in any event be required to deliver to Mortgagee evidence of such payments and receipted bills for all such items.

6. *Condemnation.* Mortgagor shall promptly give Mortgagee notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Mortgagee copies of any and all papers served in connection with such proceedings. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Mortgagor shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Mortgage and the Debt shall not be reduced until any award or payment therefor shall

have been actually received and applied by Mortgagee, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Mortgagee shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award interest at the rate or rates provided herein and in the Note. Mortgagee may apply any such award or payment to the reduction or discharge of the Debt whether or not then due and payable. Any reduction of the Debt pursuant to the terms of this paragraph 6 shall not be deemed a prepayment of the Debt and no prepayment consideration, if any, shall be due. If the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by Mortgagee of such award or payment, Mortgagee shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive said award or payment, or a portion thereof sufficient to pay the Debt.

7. Leases and Rents.

(a) Mortgagee is hereby granted and assigned by Mortgagor the right to enter the Mortgaged Property for the purpose of enforcing its interest in the Leases and the Rents, this Mortgage constituting a present, absolute assignment of the Leases and the Rents. Nevertheless, subject to the terms of this paragraph 7, Mortgagee grants to Mortgagor a revocable license to operate and manage the Mortgaged Property and to collect the Rents. Mortgagor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums. Upon or at any time after an Event of Default, the license granted to Mortgagor herein may be revoked by Mortgagee, and Mortgagee may enter upon the Mortgaged Property, and collect, retain and apply the Rents toward payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper.

(b) All leases shall be written on the standard form of lease which has been approved by Mortgagee. Upon request, Mortgagor shall furnish Mortgagee with executed copies of all Leases. No material changes may be made to the Mortgagee-approved standard lease without the prior written consent of Mortgagee. In addition, all renewals of Leases and all proposed leases shall provide for rental rates comparable to existing local market rates and shall be arms-length transactions. All proposed leases shall be subject to the prior approval of the Mortgagee. All Leases shall provide that they are subordinate to this Mortgage and that the lessee agrees to attorn to Mortgagee. Mortgagor (i) shall observe and perform all the obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to impair the value of the Leases as security for the Debt; (ii) shall promptly send copies to Mortgagee of all notices of default which Mortgagor shall send or receive thereunder; (iii) shall enforce all of the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed, short of termination thereof; (iv) shall not collect any of the Rents more than one (1) month in advance; (v) shall not execute any other assignment of lessor's interest in the Leases or the Rents; (vi) shall not alter, modify or change the terms of the Leases without the prior written consent of Mortgagee, or cancel or terminate the Leases or accept a surrender thereof or convey or transfer or suffer or permit a conveyance or transfer of the Premises or of any interest therein so as to effect a merger of the estates and rights of, or a termination or diminution of the obligations of, lessees thereunder; (vii) shall not alter, modify or change the terms of any guaranty of the Leases or cancel or terminate such guaranty without the prior written consent of Mortgagee; (viii) shall not consent to any assignment of or subletting

under the Leases not in accordance with their terms, without the prior written consent of Mortgagee; and (ix) shall execute and deliver at the request of Mortgagee all such further assurances, confirmations and assignments in connection with the Mortgaged Property as Mortgagee shall from time to time require.

8. *Maintenance of Mortgaged Property.* Mortgagor shall cause the Mortgaged Property to be maintained in a good and safe condition and repair. The Improvements and the Equipment shall not be removed, demolished or materially altered (except for normal replacement of the Equipment) without the consent of Mortgagee. Mortgagor shall promptly comply with all laws, orders and ordinances affecting the Mortgaged Property, or the use thereof. Notwithstanding the provisions of the Ground Lease, Mortgagor shall promptly repair, replace or rebuild any part of the Mortgaged Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be affected by any proceeding of the character referred to in paragraph 6 hereof and shall complete and pay for any structure at any time in the process of construction or repair on the Premises. Mortgagor shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Mortgaged Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Mortgaged Property is or shall become a nonconforming use, Mortgagor will not cause or permit such nonconforming use to be discontinued or abandoned without the express written consent of Mortgagee.

9. *Transfer or Encumbrance of the Mortgaged Property.*

(a) Mortgagor acknowledges that Mortgagee has examined and relied on the creditworthiness of Mortgagor and experience of Mortgagor in owning and operating properties such as the Mortgaged property in agreeing to make the loan secured hereby, and that Mortgagee will continue to rely on Mortgagor's ownership of the Mortgaged Property as a means of maintaining the value of the Mortgaged Property as security for repayment of the Debt. Mortgagor acknowledges that Mortgagee has a valid interest in maintaining the value of the Mortgaged Property so as to ensure that, should Mortgagor default in the repayment of the Debt, Mortgagee can recover the Debt by a sale of the Mortgaged Property. Mortgagor shall not, without the prior written consent of Mortgagee, sell, convey, alien, mortgage, encumber, pledge or otherwise transfer the Mortgaged Property or any part thereof, or permit the Mortgaged Property or any part thereof to be sold, conveyed, aliened, mortgaged, encumbered, pledged or otherwise transferred.

(b) A sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer within the meaning of this paragraph 9 shall be deemed to include (i) an installment sales agreement wherein Mortgagor agrees to sell the Mortgaged Property or any part thereof for a price to be paid in installments; (ii) an agreement by Mortgagor leasing all or a substantial part of the Mortgaged Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgagor's right, title and interest in and to any Leases or any Rents; (iii) if Mortgagor, any Guarantor (hereinafter defined), or any general partner of Mortgagor or Guarantor is a corporation, the voluntary or involuntary sale, conveyance or transfer of such corporation's stock (or the stock of any corporation directly or indirectly controlling such corporation by operation of law or otherwise)

or the creation or issuance of new stock by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders; (iv) If Mortgagor, any Guarantor or any general partner of Mortgagor or any Guarantor is a limited or general partnership or joint venture, the change, removal or resignation of a general partner or managing partner or the transfer of the partnership interest of any general partner or managing partner; and (v) the removal or resignation of the managing agent for the Mortgaged Property or the transfer of ownership, management or control of such managing agent to a person or entity other than the general partner or managing partner of Mortgagor.

(c) Mortgagee reserves the right to condition the consent required hereunder upon a modification of the terms hereof and on assumption of this Mortgage as so modified by the proposed transferee, payment of a transfer fee, or such other conditions as Mortgagee shall determine in its sole discretion to be in the interest of Mortgagee. Mortgagee shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Mortgagor's sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property without Mortgagee's consent. This provision shall apply to every sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property regardless of whether voluntary or not, or whether or not Mortgagee has consented to any previous sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property.

10. *Estoppel Certificates.*

(a) After request by Mortgagee, Mortgagor, within ten (10) days, shall furnish Mortgagee with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest of the Note, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Debt, if any, and (vi) that the Note and this Mortgage are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

(b) After request by Mortgagee, Mortgagor, within ten (10) days, will furnish Mortgagee with estoppel certificates from any lessees under the Leases as required by their respective Leases.

11. *Changes in the Laws Regarding Taxation.* If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Debt from the value of the Mortgaged Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Mortgagee's interest in the Mortgaged Property, Mortgagor will pay such tax, with interest and penalties thereon, if any. In the event Mortgagee is advised by counsel chosen by it that the payment of such tax or interest and penalties by Mortgagor would be unlawful or taxable to Mortgagee or unenforceable or provide the basis for a defense of usury, then in any such event, Mortgagee shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

12. *No Credits on Account of the Debt.* Mortgagor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Mortgaged Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Mortgaged Property, or any part thereof, for real estate tax purposes by reason of this Mortgage or the Debt. In the event such claim, credit or deduction shall be required by law, Mortgagee shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

13. *Documentary Stamps.* If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note or this Mortgage, or impose any other tax or charge on the same, Mortgagor will pay for the same, with interest and penalties thereon, if any.

14. *Usury Laws.* This Mortgage and the Note are subject to the express condition that at no time shall Mortgagor be obligated or required to pay interest on the Debt at a rate which could subject the holder of the Note to either civil or criminal liability as a result of being in excess of the maximum interest rate which Mortgagor is permitted by applicable law to contract or agree to pay. If by the terms of this Mortgage or the Note, Mortgagor is at any time required or obligated to pay interest on the Debt at a rate in excess of such maximum rate, the rate of interest under the same shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Note.

15. *Books and Records.* Mortgagor and Guarantors, if any, shall keep adequate books and records of account in accordance with generally accepted accounting practices consistently applied and furnish to Mortgagee: (a) an annual certified rent roll signed and dated by Mortgagor detailing the names of all tenants of the Improvements, the portion of the Improvements occupied by each tenant, the rent and any other charges payable under each lease, and the term of each lease; (b) an annual operating statement of the Mortgaged Property detailing the total revenues received and total expenses incurred to be prepared and certified by Mortgagor; (c) an annual balance sheet and profit and loss statement of Mortgagor, and of any Guarantor, prepared by or, if required by Mortgagee, audited and certified by a certified public accountant acceptable to Mortgagee within ninety (90) days after the close of each fiscal year; and (d) such annual balance sheets and profit and loss statements and other financial statements as may, from time to time, be required by Mortgagee.

16. *Performance of Other Agreements.* Mortgagor shall observe and perform each and every term to be observed or performed by Mortgagor pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Mortgaged Property.

17. *Further Acts, etc.* Mortgagor will, at the cost of Mortgagor, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and

assurances as Mortgagee shall, from time to time, require, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the property and rights hereby mortgaged, given, granted, bargained, sold, aliened, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage. Mortgagor on demand, will execute and deliver and hereby authorizes Mortgagee to execute in the name of Mortgagor or without the signature of Mortgagor to the extent Mortgagee may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Mortgagee in the Mortgaged Property. Mortgagor grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee at law and in equity, including without limitation such rights and remedies available to Mortgagee pursuant to this paragraph 17.

18. *Recording of Mortgage, etc.* Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of Mortgagee in, the Mortgaged Property. Mortgagor will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property and any instrument of further assurance, and all federal, state, county and municipal, taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance, except where prohibited by law so to do. Mortgagor shall hold harmless and indemnify Mortgagee, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Mortgage.

19. *Prepayment.* If permitted by the Note, the Debt may be prepaid in accordance with the terms thereof.

20. *Events of Default.* The Debt shall become immediately due and payable at the option of Mortgagee upon any one or more of the following events ("Event of Default"):

- (a) if any portion of the Debt is not paid within ten (10) days after the same is due;
- (b) if any of the Taxes or Other Charges is not paid when the same is due and payable;
- (c) if the Policies are not kept in full force and effect, or if the Policies are not assigned and delivered to Mortgagee upon request;

(d) if Mortgagor violates or does not comply with any of the provisions of paragraphs 7, 8, 34 or 35;

(e) if any representation or warranty of Mortgagor, or of any person guaranteeing payment of the Debt or any portion thereof or performance by Mortgagor of any of the terms of this Mortgage (a "Guarantor"), made herein or in any such guaranty, or in any certificate, report, financial statement or other instrument or document furnished to Mortgagee shall have been false or misleading in any material respect when made;

(f) if Mortgagor or any Guarantor shall make an assignment for the benefit of creditors or if Mortgagor shall generally not be paying its debts as they become due;

(g) if a receiver, liquidator or trustee of Mortgagor or of any Guarantor shall be appointed or if Mortgagor or any Guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Mortgagor or any Guarantor or if any proceeding for the dissolution or liquidation of Mortgagor or of any Guarantor shall be instituted; however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Mortgagor or such Guarantor, upon the same not being discharged, stayed or dismissed within sixty (60) days;

(h) if Mortgagor shall be in default under any other mortgage or security agreement covering any part of the Mortgaged Property whether it be superior or junior in lien to this Mortgage;

(i) if the Mortgaged Property becomes subject to any mechanic's, materialman's or other lien other than a lien for local real estate taxes and assessments not then due and payable and such lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of thirty (30) days;

(j) if Mortgagor fails to cure promptly any violations of laws or ordinances affecting or which may be interpreted to affect the Mortgaged Property; or

(k) if for more than ten (10) days after notice from Mortgagee, Mortgagor shall continue to be in default under any other term, covenant or condition of the Note, this Mortgage or the Other Security Documents.

(l) if Mortgagor shall fail in the payment of any rent, additional rent or other charge mentioned in or made payable by the Ground Lease when said rent or other charge is due and payable; or

(m) if there shall occur any default by Mortgagor, as lessee under the Ground Lease, in the observance or performance of any term, covenant or condition of the

Ground Lease on the part of Mortgagor, to be observed or performed, and said default is not cured within _____ (_____) days prior to the expiration of any applicable grace period therein provided, or if any one or more of the events referred to in the Ground Lease shall occur which would cause the Ground Lease to terminate without notice or action by the landlord under the Ground Lease or which would entitle the landlord under the Ground Lease to terminate the Ground Lease and the term thereof by giving notice to Mortgagor, as tenant thereunder, or if the leasehold estate created by the Ground Lease shall be surrendered or the Ground Lease shall be terminated or cancelled for any reason or under any circumstances whatsoever, or if any of the terms, covenants or conditions of the Ground Lease shall in any manner be modified, changed, supplemented, altered, or amended without the consent of Mortgagee, or if Mortgagor shall fail to exercise its option to renew the Ground Lease for the period commencing on _____ and ending on _____ or shall fail or neglect to pursue diligently all actions necessary to exercise such renewal rights pursuant to the terms of the Ground Lease.

21. *Remedies of Mortgagee.* Upon the occurrence of any Event of Default, (a) Mortgagor will pay, from the date of that Event of Default, interest on the unpaid principal balance of the Note at the rate of 24% per annum, or at the maximum interest rate which Mortgagor may by law pay, whichever is lower, (the "Default Rate") and (b) Mortgagee shall have the right to exercise any and all rights and remedies available at law and in equity.

22. *Sale of Mortgaged Property.* If this Mortgage is foreclosed, the Mortgaged Property, or any interest therein, may at the discretion of Mortgagee, be sold in one or more parcels or in several interests or portions and in any order or manner.

23. *Right to Cure Defaults.* Upon the occurrence of any Event of Default or if Mortgagor fails to make any payment or to do any act as herein provided, Mortgagee may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee is authorized to enter upon the Mortgaged Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Mortgaged Property or to foreclose this Mortgage or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this paragraph 23, shall constitute a portion of the Debt and shall be due and payable to Mortgagee upon demand. All such costs and expenses incurred by Mortgagee in remedying such Event of Default or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee. All such costs and expenses incurred by Mortgagee together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Mortgage and the Other Security Documents and shall be immediately due and payable upon demand by Mortgagee therefore.

24. *Late Payment Charge.* If any portion of the Debt is not paid within ten (10) days after the date on which it is due, Mortgagor shall pay to Mortgagee upon demand an amount equal to the lesser of five percent (5%) of such unpaid portion of the Debt or the

maximum amount permitted by applicable law, to defray the expense incurred by Mortgagee in handling and processing such delinquent payment and to compensate Mortgagee for the loss of the use of such delinquent payment, and such amount shall be secured by this Mortgage and the Other Security Documents.

25. *Prepayment After Event of Default.* If following the occurrence of any Event of Default, Mortgagor shall tender payment of an amount sufficient to satisfy the Debt in whole or in part at any time prior to a foreclosure sale of the Mortgaged Property, and if at the time of such tender prepayment of the principal balance of the Note is not permitted by the Note, Mortgagor shall, in addition to the entire Debt, also pay to Mortgagee a sum equal to interest which would have accrued on the principal balance of the Note at the Applicable Interest Rate as defined in the Note from the date of such tender to the earlier of (i) the Maturity Date as defined in the Note or to (ii) the first day of the period during which prepayment of the principal balance of the Note would have been permitted together with a prepayment consideration equal to the prepayment consideration which would have been payable as of the first day of the period during which prepayment would have been permitted. If at the time of such tender prepayment of the principal balance of the Note is permitted, such tender by Mortgagor shall be deemed to be a voluntary prepayment of the principal balance of the Note, and Mortgagor shall, in addition to the entire Debt, also pay to Mortgagee the applicable prepayment consideration specified in the Note and this Mortgage.

26. *Right of Entry.* Mortgagee and its agents shall have the right to enter and inspect the Mortgaged Property at all reasonable times.

27. *Appointment of Receiver.* The holder of this Mortgage, upon the occurrence of an Event of Default or in any action to foreclose this Mortgage or upon the actual or threatened waste to any part of the Mortgaged Property, shall be entitled to the appointment of a receiver without notice and without regard to the value of the Mortgaged Property as security for the Debt, or the solvency or insolvency of any person liable for the payment of the Debt.

28. *Reasonable Use and Occupancy.* In addition to the rights which Mortgagee may have herein, upon the occurrence of any Event of Default, Mortgagee, at its option, may require Mortgagor to pay monthly in advance of Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be occupied by Mortgagor or may require Mortgagor to vacate and surrender possession of the Mortgaged Property to Mortgagee or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise.

29. *Security Agreement.* This Mortgage is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Mortgaged Property. Mortgagor by executing and delivering this Mortgage has granted and hereby grants to Mortgagee, as security for the Debt, a security interest in the Mortgaged Property to the full extent that the Mortgaged Property may be subject to the Uniform Commercial Code (said portion of the Mortgaged Property so subject to the Uniform

Commercial Code being called in this paragraph 29 the "Collateral"). If an Event of Default shall occur, Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Mortgagee, Mortgagor shall at its expense assemble the Collateral and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Mortgagor shall pay to Mortgagee on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Mortgagee in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral sent to Mortgagor in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Mortgagee to the payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper.

30. *Actions and Proceedings.* Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Mortgagee, in its discretion, decides should be brought to protect its interest in the Mortgaged Property. Mortgagee shall, at its option, be subrogated to the lien of any mortgage or other security instrument discharged in whole or in part by the Debt, and any such subrogation rights shall constitute additional security for the payment of the Debt.

31. *Waiver of Counterclaim.* Mortgagor hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Mortgagee, and waives trial by jury in any action or proceeding brought by either party hereto against the other or in any counterclaim asserted by Mortgagee against Mortgagor, or in any matters whatsoever arising out of or in any way connected with this Mortgage, the Note, any of the Other Security Documents or the Debt.

32. *Recovery of Sums Required To Be Paid.* Mortgagee shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.

33. *Marshalling and Other Matters.* Mortgagor hereby waives, to the extent permitted by law, the benefit of all appraisement, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Mortgaged Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage and on

behalf of all persons to the extent permitted by applicable law.

34. *Hazardous Materials.* Mortgagor represents and warrants that, to the best of Mortgagor's knowledge, after due inquiry and investigation, (a) there are no Hazardous Materials (hereinafter defined) on the Mortgaged Property, except those in compliance with all applicable federal, state and local laws, ordinances, rules and regulations, and (b) no owner or occupant nor any prior owner or occupant of the Mortgaged Property has received any notice or advice from any governmental agency or any source whatsoever with respect to Hazardous Materials on, from or affecting the Mortgaged Property. Mortgagor covenants that the Mortgaged Property shall be kept free of Hazardous Materials, and neither Mortgagor nor any occupant of the Mortgaged Property shall use, transport, store, dispose of or in any manner deal with Hazardous Materials on the Mortgaged Property, except in compliance with all applicable federal, state and local laws, ordinances, rules and regulations. Mortgagor shall comply with, and ensure compliance by all occupants of the Mortgaged Property with, all applicable federal, state and local laws, ordinances, rules and regulations, and shall keep the Mortgaged Property free and clear of any liens imposed pursuant to such laws, ordinances, rules or regulations. In the event that Mortgagor receives any notice or advice from any governmental agency or any source whatsoever with respect to Hazardous Materials on, from or affecting the Mortgaged Property, Mortgagor shall immediately notify Mortgagee. Mortgagor shall conduct and complete all investigations, studies, sampling, and testing, and all remedial actions necessary to clean up and remove all Hazardous Materials from the Mortgaged Property in accordance with all applicable federal, state and local laws, ordinances, rules and regulations. The term "Hazardous Materials" as used in this Mortgage shall include, without limitation, gasoline, petroleum products, explosives, radioactive materials, polychlorinated biphenyls or related or similar materials, or any other substance or material defined as a hazardous or toxic substance or material by any federal, state or local law, ordinance, rule, or regulation, but excluding Asbestos, as defined in paragraph 35 hereof. The obligations and liabilities of Mortgagor under this paragraph 34 shall survive any entry of a judgment of foreclosure or the delivery of a deed in lieu of foreclosure of this Mortgage.

35. *Asbestos.* Mortgagor represents and warrants that, to the best of Mortgagor's knowledge, after due inquiry and investigation, that there is no asbestos or material containing asbestos ("Asbestos") on the Mortgaged Property, and that no owner or occupant nor any prior owner or occupant of the Mortgaged Property has received any notice or advice from any governmental agency or any source whatsoever with respect to Asbestos on, affecting or installed on the Mortgaged Property. Mortgagor covenants that the Mortgaged Property shall be kept free of Asbestos, and neither Mortgagor nor any occupant of the Mortgaged Property shall install, or permit to be installed, Asbestos on the Mortgaged Property. Mortgagor shall comply with, and ensure compliance by all occupants of the Mortgaged Property with, all applicable federal, state and local laws, ordinances, rules and regulations with respect to Asbestos, and shall keep the Mortgaged Property free and clear of any liens imposed pursuant to such laws, ordinances, rules or regulations. In the event that Mortgagor receives any notice or advice from any governmental agency or any source whatsoever with respect to Asbestos on, affecting or installed on the Mortgaged Property, Mortgagor shall immediately notify Mortgagee. Mortgagor shall conduct and complete all investigations, studies, sampling, and testing, and all remedial actions necessary to clean up and remove all Asbestos from the Mortgaged Property in accordance with all applicable federal, state and local laws, ordinances, rules and regulations. The

obligations and liabilities of Mortgagor under this paragraph 35 shall survive any entry of a judgment of foreclosure or delivery of a deed in lieu of foreclosure of this Mortgage.

36. *Indemnification.* Mortgagor shall protect, defend, indemnify and save harmless Mortgagee from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including without limitation reasonable attorneys' fees and expenses), imposed upon or incurred by or asserted against Mortgagee by reason of (a) ownership of this Mortgage, the Mortgaged Property or any interest therein or receipt of any Rents; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Mortgaged Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) any use, nonuse or condition in, on or about the Mortgaged Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (d) any failure on the part of Mortgagor to perform or comply with any of the terms of this Mortgage; (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof; (f) the failure of any person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with the Mortgage, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Mortgage is made; (g) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Materials on, from, or affecting the Mortgaged Property or any other property or the presence of Asbestos on the Mortgaged Property; (h) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials or Asbestos; (i) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials or Asbestos; or (j) any violation of laws, orders, regulations, requirements, or demands of government authorities, which are based upon or in any way related to such Hazardous Materials or Asbestos including, without limitation, the costs and expenses of any remedial action, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. Any amounts payable to Mortgagee by reason of the application of this paragraph 36 shall be secured by this Mortgage and shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Mortgagee until paid. The obligations and liabilities of Mortgagor under this paragraph 36 shall survive any termination, satisfaction, assignment, entry of a judgment of foreclosure or delivery of a deed in lieu of foreclosure of this Mortgage.

37. *Notices.* Any notice, demand, statement, request or consent made hereunder shall be in writing and shall be deemed given when postmarked, addressed and mailed by first class mail to the address, as set forth above, of the party to whom such notice is to be given, or to such other address as Mortgagor or Mortgagee, as the case may be, shall in like manner designate in writing.

38. *Authority.*

(a) Mortgagor (and the undersigned representative of Mortgagor, if any) has full power, authority and legal right to execute this Mortgage, and to mortgage, give,

grant, bargain, sell, alien, enfeoff, convey, confirm, pledge, hypothecate and assign the Mortgaged Property pursuant to the terms hereof and to keep and observe all of the terms of this Mortgage on Mortgagor's part to be performed.

(b) Mortgagor represents and warrants that Mortgagor is not a "foreign person" within the meaning of 1445(f)(3) of the Internal Revenue Code of 1986, as amended and the related Treasury Department regulations, including temporary regulations.

39. *Waiver of Notice.* Mortgagor shall not be entitled to any notices of any nature whatsoever from Mortgagee except with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by Mortgagee to Mortgagor and except with respect to matters for which Mortgagee is required by applicable law to give notice, and Mortgagor hereby expressly waives the right to receive any notice from Mortgagee with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by Mortgagee to Mortgagor.

40. *Remedies of Mortgagor.* In the event that a claim or adjudication is made that Mortgagee has acted unreasonably or unreasonably delayed acting in any case where by law or under the Note, this Mortgage or the Other Security Documents, it has an obligation to act reasonably or promptly, Mortgagee shall not be liable for any monetary damages, and Mortgagor's remedies shall be limited to injunctive relief or declaratory judgment.

41. *Sole Discretion of Mortgagee.* Wherever pursuant to this Mortgage, Mortgagee exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Mortgagee, the decision of Mortgagee to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole discretion of Mortgagee and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

42. *Non-Waiver.* The failure of Mortgagee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (a) the failure of Mortgagee to comply with any request of Mortgagor or Guarantors to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Note or the Other Security Documents, (b) the release, regardless of consideration, of the whole or any part of the Mortgaged Property, or of any person liable for the Debt or any portion thereof, or (c) any agreement or stipulation by Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Mortgage or the Other Security Documents. Mortgagee may resort for the payment of the Debt to any other security held by Mortgagee in such order and manner as Mortgagee, in its discretion, may elect. Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Mortgage. The rights of Mortgagee under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Mortgagee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

43. *No Oral Change.* This Mortgage, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Mortgagor or Mortgagee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

44. *Liability.* If Mortgagor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Mortgage shall be binding upon and inure to the benefit of Mortgagor and Mortgagee and their respective successors and assigns forever.

45. *Inapplicable Provisions.* If any term, covenant or condition of the Note or this Mortgage is held to be invalid, illegal or unenforceable in any respect, the Note and this Mortgage shall be construed without such provision.

46. *Headings, etc.* The headings and captions of various paragraphs of this Mortgage are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

47. *Duplicate Originals.* This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

48. *Definitions.* Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in singular or plural form and the word "Mortgagor" shall mean "each Mortgagor and any subsequent owner or owners of the Mortgaged Property or any part thereof or any interest therein including, but not limited to the leasehold estate created by the Ground Lease," the word "Mortgagee" shall mean "Mortgagee and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Mortgage," the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, and any other entity, and the words "Mortgaged Property" shall include any portion of the Mortgaged Property and any interest therein. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

49. *The Ground Lease.* Mortgagor shall (i) pay all rents, additional rents and other sums required to be paid by Mortgagor, as tenant under and pursuant to the provisions of the Ground Lease within _____ days after such rent or other charge is payable, (ii) diligently perform and observe all of the terms, covenants and conditions of the Ground Lease on the part of Mortgagor, as tenant thereunder, to be performed and observed at least _____ days prior to the expiration of any applicable grace period therein provided, and (iii) promptly notify Mortgagee of the giving of any notice by the landlord under the Ground Lease to Mortgagor of any default by Mortgagor, as tenant

thereunder, to be performed or observed and deliver to Mortgagee a true copy of each such notice. Mortgagor shall not, without the prior consent of Mortgagee, surrender the leasehold estate created by the Ground Lease or terminate or cancel the Ground Lease or modify, change, supplement, alter or amend the Ground Lease, in any respect, either orally or in writing, and Mortgagor hereby assigns to Mortgagee, as further security for the payment of the Debt and for the performance and observance of the terms, covenants and conditions of this Mortgage, all of the rights, privileges and prerogatives of Mortgagor, as tenant under the Ground Lease, to surrender the leasehold estate created by the Ground Lease or to terminate, cancel, modify, change, supplement, alter or amend the Ground Lease, and any such surrender of the leasehold estate created by the Ground Lease or termination, cancellation, modification, change, supplement, alteration or amendment of the Ground Lease without the prior consent of Mortgagee shall be void and of no force and effect. If Mortgagor shall default in the performance or observance of any term, covenant or condition of the Ground Lease on the part of Mortgagor, as tenant thereunder, to be performed or observed, then, without limiting the generality of the other provisions of this Mortgage, and without waiving or releasing Mortgagor from any of its obligations hereunder, Mortgagee shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all of the terms, covenants and conditions of the Ground Lease on the part of Mortgagor, as tenant thereunder, to be performed or observed or to be promptly performed or observed on behalf of Mortgagor, to the end that the rights of Mortgagor in, to and under the Ground Lease shall be kept unimpaired and free from default. If Mortgagee shall make any payment or perform any act or take action in accordance with the preceding sentence, Mortgagee will notify Mortgagor of the making of any such payment, the performance of any such act, or the taking of any such action. In any such event, subject to the rights of lessees, sublessees and other occupants under the Leases, Mortgagee and any person designated by Mortgagee shall have, and are hereby granted, the right to enter upon the Mortgaged Property at any time and from time to time for the purpose of taking any such action. If the landlord under the Ground Lease shall deliver to Mortgagee a copy of any notice of default sent by said landlord to Mortgagor, as tenant under the Ground Lease, such notice shall constitute full protection to Mortgagee for any action taken or omitted to be taken by Mortgagee, in good faith, in reliance thereon. Mortgagor shall exercise each individual option, if any, to extend or renew the term of the Ground Lease upon demand by Mortgagee made at any time within one (1) year of the last day upon which any such option may be exercised, and Mortgagor hereby expressly authorizes and appoints Mortgagee its attorney-in-fact to exercise any such option in the name of and upon behalf of Mortgagor, which power of attorney shall be irrevocable and shall be deemed to be coupled with an interest.

50. *Subleases.* Each Lease hereafter made and each renewal of any existing Lease shall provide that, (a) in the event of the termination of the Ground Lease, the lease shall not terminate or be terminable by the lessee; (b) in the event of any action for the foreclosure of this Mortgage, the lease shall not terminate or be terminable by the subtenant by reason of the termination of the Ground Lease unless the lessee is specifically named and joined in any such action and unless a judgment is obtained therein against the lessee; and (c) in the event that the Ground Lease is terminated as aforesaid, the lessee shall attorn to the lessor under the Ground Lease or to the purchaser at the sale of the Mortgaged Property on such foreclosure, as the case may be.

51. *No Merger of Fee and Leasehold Estates; Releases.* So long as any portion of the Debt shall remain unpaid, unless Mortgagee shall otherwise consent, the fee title to the Premises and the leasehold estate therein created pursuant to the provisions of the

Ground Lease shall not merge but shall always be kept separate and distinct, notwithstanding the union of such estates in Mortgagor, Owner, or in any other person by purchase, operation of law or otherwise. Mortgagee reserves the right, at any time, to release portions of the Mortgaged Property, including, but not limited to, the leasehold estate created by the Ground Lease, with or without consideration, at Mortgagee's election, without waiving or affecting any of its rights hereunder or under the Note or the Other Security Documents and any such release shall not affect Mortgagee's rights in connection with the portion of the Mortgaged Property not so released.

52. *Mortgagor's Acquisition of Fee Estate.* In the event that Mortgagor, so long as any portion of the Debt remains unpaid, shall be the owner and holder of the fee title to the Premises the lien of this Mortgage shall be spread to cover Mortgagor's fee title to the Premises and said fee title shall be deemed to be included in the Mortgaged Property. Mortgagor agrees, at its sole cost and expense, including without limitation, Mortgagee's reasonable attorney's fees, to (i) execute any and all documents or instruments necessary to subject its fee title to the Premises to the lien of this Mortgage; and (ii) provide a title insurance policy which shall insure that the lien of this Mortgage is a first lien on Mortgagor's fee title to the Premises.

IN WITNESS WHEREOF, this Mortgage has been executed by Mortgagor the day and year first above written.

(Mortgagor)

ACKNOWLEDGMENTS

(to be attached)

EXHIBIT A. (Description of Premises)

ALL of that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate, lying and being.

Action Items from Minutes of a Large Apartment Condominium in Chicago

ACTION ITEMS

Selection of Contractor for A/C Hallway Project

Motion: Resolved to accept the base bid and optional price #1 for installation of the make up air units and chillers as submitted by ABC Engineering, Inc. in the amount of \$800,000 and to accept the proposal for automation of the controls in the amount of \$60,000 as submitted by DEF Controls, Inc.

Moved: Smith

Seconded: White

The motion passed with a unanimous voice vote.

Discussion on Interior Elevator Cab Finishes

Management was directed to schedule another meeting with Jim Jones from Surfaces R Us to allow all Board members the opportunity to view the elevator interior cab finish samples.

Request for Waiver of Late Fee

Motion: Resolved to grant a waiver of late fee in connection with the late payment of April assessments under the reported circumstances.

Moved: Smith

Seconded: Brown

The motion passed with a unanimous voice vote.

Rule Violation

Motion: Resolved to approve the assessment of a fine in the amount of \$100 per occurrence against an owner for bringing the dog through the lobby. With nine (9) incidents reported, the total fine amounts to \$900. Also resolved to fine said owner for future incidents of this nature in an amount of between \$100 and \$500 per occurrence subsequent to the owner's notification of this decision.

Moved: Gordon

Seconded: Brown

The motion passed by a unanimous voice vote.

ACTION ITEMS

Adoption of the 2001 Operating Budget

Mr. Herriford called for a motion to adopt the 2001 budget. Following that statement the Board took the following action:

Motion: Resolved to adopt the proposed Operating Budget for the fiscal year ending December 31, 2001 which calls for an overall increase in assessments of 10.58%.

Moved: Vincent

Seconded: Brown

The motion passed by a unanimous voice vote.

Approval of Annual Meeting Documents

Mr. Henry asked for Board approval of the documents for the upcoming annual meeting. He stated that these were the same documents used in previous years. Following a brief discussion on the election procedures, the Board took the following action:

Motion: Brown

Seconded: Smith

The motion passed by a unanimous voice vote.

Selection of Date for Annual Holiday Party

The Board by consensus chose Monday, December 16, 2001 as the date for the annual holiday party for the association.

Selection of Proxy Committee for Annual Meeting

It was suggested that a chairperson be selected and that the chair would then select two non-board members to serve on the committee with him/her.

Motion: Moved to select John Smith as the chair of the proxy committee for the annual election.

Moved: Dill

Seconded: Valentine.

The motion passed by a unanimous voice vote.

Approval of Proposal for Energy Consulting Services

Mr. Brown stated that we had been searching for an engineering firm to provide an energy audit of the building. A company was found that specializes in high rise residential buildings. He further stated that a proposal had been received from Easy Engineering for a complete energy audit, which will investigate all of the association's energy usage (heat, cooling, lighting, water heating, etc.). Discussion ensued. Following discussion, the Board took the following action:

Motion: Resolved to approve the proposal for energy consulting services as submitted by Easy Engineering for an amount not to exceed \$11,700 to be expensed from reserves.

Moved: Brown

Seconded: Valentine

The motion passed by unanimous voice vote.

Mr. Binder entered the meeting at this time.

Reimbursement of Parking Security Deposit

Mr. Henry called the Board's attention to the letters from the resident and the response from Management concerning a hand towel and bath mat that was allegedly damaged while being cleaned in the Clemson House Laundry Room. Discussion ensued. During discussion, it was noted that according to the Laundry Room section of the Rules and Regulations, "Neither Management nor the Association is responsible for loss or damage to your belongings". Following discussion, the Board took the following action:

Motion: Resolved to deny the request as submitted by an owner for reimbursement of a hand towel and bath mat allegedly damaged during cleaning in the Clemson House Laundry Room.

Moved: Smith

Seconded: Henry

The motion passed by a unanimous voice vote.

Notice that much of the activity of this board involves imposing penalties, considering requests from unit owners for “waivers” of penalties and the like.

Declaration of Condominium Ownership and of Easements, Restrictions and Covenants for

THIS DECLARATION made and entered into by an Illinois State Bank, as Trustee under Trust Agreement dated November 4, 20__ and known as Trust No. _____, and not individually, for convenience hereinafter referred to as "Trustee":

W I T N E S S E T H:

WHEREAS, the Trustee is the legal title holder of the following described real estate located in the City of Chicago, County of Cook and State of Illinois:

and

WHEREAS, it is the desire and intention of the Trustee to enable said real estate, together with the building, structure, improvements and other permanent fixtures of _____ kind thereon, and all rights and privileges belonging or in otherwise pertaining thereto, (hereinafter called the "property") to be owned by Trustee and by each successor in interest of Trustee and ___ that certain type of method of ownership commonly known as "CONDOMINIUM", and to submit the property to the provisions of the "Condominium Property Act" of the State of Illinois, as amended from time to time; and

WHEREAS, the Trustee is further desirous of establishing for its own benefit and for the mutual benefit of all future owners or occupants of the property, or any part thereof, which shall be known as _____, certain easements and rights _____, over and upon said premises and certain mutually beneficial restriction and obligations with respect to the proper use, conduct and maintenance thereof; and

WHEREAS, the Trustee desires and intends that the several owners, mortgagees, occupants, and other persons hereafter desiring any interest in said building shall at all times enjoy the benefits of, and shall hold their interest subject to the rights, easements, privileges and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the co-operative aspect of ownership and to facilitate the proper administration of such building and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the property.

NOW THEREFORE, UNITED OF AMERICA BANK, as the legal title holder of the real estate hereinbefore described, and for the purposes above set forth, **DECLARES AS FOLLOWS:**

ARTICLE I

DEFINITIONS

For the purpose of brevity and clarity, certain words and terms used in this Declaration are defined as follows:

<u>Development Parcel:</u>	The tract of real estate above described.
<u>Property:</u>	All the land, property and space comprising the building, the improvements and structure constructed or contained therein or thereon.
<u>Unit:</u>	A part of the property within the building including one or more rooms, occupying one or more floors or a part or parts thereof, designed and intended for a one-family dwelling, and having lawful access to public way, and more specifically described hereafter in Article II.
<u>Common Elements:</u>	All portions of the property except units.
<u>Unit Ownership:</u>	A part of the property consisting of one unit and the undivided interest in the common elements appurtenant thereto.
<u>Parking Area:</u>	Area provided for parking automobiles as shown on Exhibit "A" attached hereto.
<u>Person:</u>	A natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.
<u>Owner:</u>	The person or persons whose estates or interests, individually or collectively, aggregate fee simple absolute ownership of a unit.
<u>Occupant:</u>	Person or persons, other than owner in possession.

ARTICLE II

UNITS

1. Description and Ownership: All units in the building are delineated on the survey attached hereto as Exhibit "A" and made a part of this Declaration, and are legally

described on said Exhibit "A". It is understood that each unit consists of the space enclosed or bounded by the horizontal and vertical planes set forth in the delineation thereof in Exhibit "A".

Every deed, lease, mortgage or other instrument may legally describe a unit by its identifying number or symbol as shown on Exhibit "A" and every such description shall be deemed good and sufficient for all purposes.

Except as otherwise provided in the Condominium Property Act, no unit owner shall, by deed, plat or otherwise, subdivide or in any other manner cause his unit to be separated into any tracts or parcels different from the whole unit as shown on Exhibit "A".

2. Certain Structures Not Constituting Part of a Unit: No owner shall own any pipes, wires, conduits, public utility lines or structural components running through his unit and serving more than his unit except as a tenant in common with all other owners.

3. Carpeting: Agent of Trustee shall install carpeting in all bedrooms, closets, stairways and hallway and, thereafter, each owner shall be required to maintain the same and, when required, replace said carpeting. Carpeting in the common elements shall be maintained by the Association.

ARTICLE III

COMMON ELEMENTS

1. Description: Except as otherwise in this Declaration provided, the common elements shall consist of all portions of the property except the units. Without limiting the generality of the foregoing, the common elements shall include the land, all stairways, elevators, halls, courtyards, lobbies, corridors, pipes, ducts, flues, chutes, conduits, wires and other utility installations to the outlets, and such component parts of walls, floors and ceilings as are not located within the units.

2. Ownership of Common Elements: Each owner shall own an undivided interest in the common elements as a tenant in common with all the other owners of the property, and, except as otherwise limited in this Declaration, shall have the right to use the common elements for all purposes incident to the use and occupancy of his unit as a place of residence, and such other incidental uses permitted by this Declaration, which right shall be appurtenant to and run with his unit. The extent or amount of such ownership shall be expressed by a percentage amount and, once determined, shall remain constant, and may not be changed without unanimous approval of all owners and their mortgagee. For the purposes of this Declaration, the Trustee has so determined that each unit represents the percentage of ownership in the common elements as set forth in Exhibit "B" attached hereto.

3. No Partition of Common Elements: There shall be no partition of the common elements through judicial proceedings or otherwise until this agreement is terminated and the property is withdrawn from its terms or from the terms of any statute applicable to condominium ownership; provided, however, that if any unit ownership shall be owned by two

or more co-owners as tenants in common or as joint tenants, nothing herein contained shall be deemed to prohibit a voluntary or judicial partition of said unit ownership as between such co-owners.

ARTICLE IV

GENERAL PROVISIONS AS TO UNITS AND COMMON ELEMENTS

1. Submission of Property to "Condominium Property Act": The property is hereby submitted to the provision of the "Condominium Property Act" of the State of Illinois.

2. No Severance of Ownership: No owner shall execute any deed, mortgage, lease or other instrument affecting title to his unit ownership without including therein both his interest in the unit and his corresponding percentage of ownership in the common elements, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, lease or other instrument purporting to affect the one without including also the other shall be deemed and taken to include the interest so omitted even though the latter is not expressly mentioned or described therein.

3. Easements: (a) Encroachments: In the event that, by reason of the construction, settlement or shifting of the building, or the design or construction of any unit, any part of the common elements encroaches or shall hereafter encroach upon any part of any unit, or any part of any unit encroaches, or shall hereafter encroach upon any part of the common elements or any other unit or if by reason of the design or construction of utility systems, any main pipes, ducts or conduits serving more than one unit encroach or shall hereafter encroach upon any part of any unit, valid easements for the maintenance of such encroachment are hereby established and shall exist for the benefit of such unit and the common elements, as the case may be, so long as all or any part of the building containing such unit shall remain standing, provided, however, that in no event shall a valid easement for any encroachment be created in favor of the owner of any unit or in favor of the owners of the common elements if such encroachment occurred due to the willful conduct of said owner or owners.

(b) Patios: A valid exclusive easement is hereby declared and established for the benefit of each unit and its owner, consisting of the right to use and occupy the patio adjoining the unit; provided, however, that no owner shall decorate, landscape or adorn such patio in any manner contrary to such rules and regulations as may be established by the Board of Managers, or Association, as hereinafter provided, unless he shall first obtain written consent of said Board of Managers, or Association, so to do. A unit owner is granted the right to fence in or otherwise shield the open end of the unit's patio subject to approval of the Board of Managers as to its aesthetic value and the proposed plans.

(c) Utility Easements: The Illinois Bell Telephone Company, Commonwealth Edison Company and all other public utilities serving the property are hereby granted the right to lay, construct, renew, operate and maintain conduits, cables, pipes and wires, and other equipment, into and through the common elements for the purpose of providing the property with utility services.

(d) Easements to Run with Land: All easements and rights described herein are easements appurtenant, running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on the undersigned, its successors and assigns, and any owner, purchaser, mortgagee and other person having an interest in said land, or any part or portion thereof. Reference in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Article or described in any other part of this Declaration, shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees and trustees of such parcels as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents.

ARTICLE V

ADMINISTRATION

1. Administration of Property: The direction and administration of the property which shall include GENERAL POWERS OF THE BOARD as provided in No. 6 hereafter shall be vested in the Trustee or its agent until the first annual meeting as provided in Paragraph 3 (b) hereafter. And after the election, the direction and administration of the property shall be vested in a Board of Managers, (hereinafter referred to as the “Board”) consisting of four persons who shall be elected in the manner hereinafter provided: Each member of the Board shall be one of the unit owners; provided, however, that in the event a unit owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any director of such corporation, partner of such partnership, individual trustee or beneficiary of such trust, or manager of such other legal entity, shall be eligible to serve as a member of the Board.

2. Voting Rights: There shall be one person with respect to each unit ownership who shall be entitled to vote at any meeting of the unit owners. Such person shall be known (and hereinafter referred to) as a “voting member”. Such voting member may be the owner or one of the group composed of all the owners of a unit ownership, or may be some person designated by such owner or owners to act as proxy on his or their behalf and who need not be an owner. Such designation shall be made in writing to the Board and shall be revocable at any time by actual notice to the Board of the death or judicially declared incompetence of any designator, or by written notice to the Board by the owner or owners. Any or all of such owners may be present at any meeting of the voting members and (those constituting a group acting unanimously) may vote or take any other action as a voting member either in person or by proxy. The number of votes of all voting members when totaled shall equal 100% and each owner or group of owners shall be entitled to vote their respective percentage of ownership as set forth in Exhibit “B” attached hereto. A Trustee shall be the voting member with respect to any unit ownership owned by a Trustee.

3. Meetings: (a) The presence at any meeting of the voting members having a majority of the total votes shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the voting members at which a

quorum is present upon the affirmative vote of the voting members having a majority of the total votes present at such meeting.

(b) Annual Meeting: The first annual meeting of the voting members shall be held on November 15, 20__ or upon ten (10) days' written notice given by Trustee or its agent when at least 75% of the units sold are occupied by purchasers. Thereafter, there shall be an annual meeting of the voting members on the second Tuesday of January of each succeeding year at 7:30 P.M. on the property, or at such other reasonable place or time (not more than thirty (30) days before or after such date) as may be designated by written notice of the Board delivered to the voting members not less than ten (10) days prior to the date fixed for said meeting.

(c) Special Meetings: Special meetings of the voting members may be called at any time for the purpose of considering matters which, by the terms of this Declaration, require the approval of all or some of the voting members, or for any other reasonable purpose. Said meetings shall be called by written notice, authorized by a majority of the Board, or by the voting members having three-fourths (3/4) of the total votes and delivered not less than ten (10) days prior to the date fixed for said meeting. The notices shall specify the date, time and place of the meeting and the matters to be considered.

4. Notices of Meetings: Notices of meetings required to be given herein may be delivered either personally or by mail to the persons entitled to vote thereat, addressed to each such person at the address given by him to the Board for the purpose of service of such notice, or to the unit of the owner with respect to which such voting right appertains, if no address has been given to the Board.

5. Board of Managers: (a) At each annual meeting, the voting members shall, by a majority of the total votes present at such meeting, elect a Board of Managers for the forthcoming year, consisting of four (4) owners, all of whom must reside on the property. Three (3) members shall constitute a quorum. Members of the Board shall serve, without compensation, for a term of one (1) year or until their successors are elected. Vacancies on the Board may be filled by unanimous vote of the remaining members thereof. Except as otherwise provided in this Declaration, the property shall be managed by the Board and the Board shall act by majority vote of those present at its meetings when a quorum exists. Meetings of the Board may be called, held and conducted in accordance with such regulations the Board may adopt.

(b) The Board shall elect from among its members a President who shall preside over both its meetings and those of the voting members, a Secretary who shall keep the minutes of all meetings of the Board and of the voting members and who shall, in general, perform all the duties incident to the office of Secretary, and a Treasurer to keep the financial records and books of account.

(c) Any Board member may be removed from office by affirmative vote of the voting members having at least three-fourths (3/4) of the total votes, at any special meeting called for the purpose. A successor to fill the unexpired term of a Board member removed may

be elected by majority vote of the voting members at the same meeting or any subsequent meeting called for that purpose.

6. General Powers of the Board: The Board for the benefit of all the owners, shall acquire, and shall pay for out of the maintenance fund hereinafter provided for, the following:

(a) Water, waste removal, electricity and telephone and other necessary utility service for the common elements and (if not separately metered or charged) for the units.

(b) A policy or policies of fire insurance, with extended coverage, vandalism and malicious mischief endorsements, for the full insurable replacement value of the common elements and the units; or such fire and casualty insurance as the Board shall determine gives substantially equal or greater protection written in the name of, and the proceeds thereof shall be payable to, the members of the Board as trustees for each of the unit owners in the percentages established in Exhibit "B". All such policies of insurance (i) shall contain standard mortgage clause endorsements in favor of the mortgagee or mortgagees of each unit, if any, as their respective interests may appear, (ii) shall provide that the insurance, as to the interest of the Board, shall not be invalidated by any act or neglect of any Owner, (iii) shall provide that notwithstanding any provisions thereof which gives the insurer an election to restore damage in lieu of making a cash settlement therefor, such option shall not be exercisable in the event the Owners elect to sell the property or remove the property from the provisions of the Condominium Property Act, (iv) shall contain an endorsement to the effect that such policy shall not be terminated for non-payment of premiums without notice to the mortgagee of each Unit, (v) shall contain waivers of subrogation with respect to the Board, its employees and agents, owners and members of their households and mortgagees; or all of those parties shall be named as additional insureds and (vi) shall contain a replacement cost endorsement.

(c) A policy or policies insuring the members of the Board, their agents and employees and the owners against any liability to the public or to the owners (of units and of the common elements; and their invitees, or tenants), incident to the ownership and for use of the common elements and units, the liability under which insurance shall be not less than ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) or any one person injured, THREE HUNDRED THOUSAND DOLLARS (\$300,000.00) for any one accident, and TEN THOUSAND DOLLARS (\$10,000.00) for property damage (such limits to be reviewed at least annually by the Board and increased in its discretion).

(d) Workmen's Compensation insurance to the extent necessary to comply with any applicable laws.

(e) The services of any person or firm employed by the Board.

(f) Landscaping, gardening, snow removal, painting, cleaning, tuckpointing, maintenance, decorating, repair and replacement of the common elements (but not including the interior surfaces of the units and of the doors and windows appurtenant thereto, which the owner shall paint, clean, decorate, maintain and repair) and such furnishings and equipment for the

common elements as the Board shall determine are necessary and proper, and the Board shall have the exclusive right and duty to acquire the same for the common elements.

(g) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance or assessments which the Board is required to secure or pay for pursuant to the terms of these restrictions or by law of which in its opinion shall be necessary or proper for the maintenance and operation of the property as a first class condominium development or for the enforcement of these restrictions.

(h) Any amount necessary to discharge any merchant's lien or other encumbrance levied against the entire property or any part thereof which may, in the opinion of the Board, constitute a lien against the property or against the common elements, rather than merely against the interest therein of particular owners. Where one or more owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it, and any costs incurred by the Board by reason of said lien or liens shall be specially assessed to said owners.

(i) Maintenance and repair of any unit if such maintenance or repair is necessary, in the discretion of the Board, to protect the common elements or any other portion of the building, and the owner or owners of said unit have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Board to said-owner or owners, provided that the Board shall levy a special assessment against such unit owner for the cost of said maintenance or repair.

(j) The Board or its agents may enter any unit when necessary in connection with any maintenance or construction for which the Board is responsible. It may likewise enter any balcony or patio for maintenance, repair or painting. Such entry shall be made with as little inconvenience to the owners as practicable, and any damage caused thereby shall be repaired by the Board at the expense of the maintenance fund.

(k) The Board's powers hereinabove enumerated shall be limited in that the Board shall have no authority to acquire and pay for out of the maintenance fund any capital addition or improvement (other than for purposes of replacing or restoring portions of the common elements, subject to all the provisions of this Declaration) nor shall the Board authorize any structural alterations, capital additions to, or capital improvements of the common elements without in each case, the prior approval of the voting members holding three-fourths (3/4) of the total votes.

(l) All vouchers for payment of expenditures by the Board shall be signed by such officer or officers, agent or agents of the Board and in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such vouchers shall be signed by the Treasurer and countersigned by the President of the Board.

(m) The Board may adopt such reasonable rules and regulations as it may deem advisable for the maintenance, conservation and beautification of the building, and for the health,

comfort, safety and general welfare of the owners and occupants of said building. Written notice of such rules and regulations shall be given to all owners and occupants, and the entire building shall, at all times, be maintained subject to such rules and regulations.

(n) The Board may engage the services of an agent to manage the property to the extent deemed advisable by the Board.

(o) Nothing hereinabove contained shall be construed to give the Board authority to conduct an active business for profit on behalf of all the owners or any of them.

(p) All owners do hereby agree to hold the Board harmless from any and all actions taken by said Board in good faith, and the owners shall not file suit against said Board or any member thereof for any such action taken by the Board in good faith.

ARTICLE VI

ASSESSMENTS – MAINTENANCE FUND

(a) Each year on or before December 1st, the Board shall estimate the total amount necessary to pay the cost of wages, materials, insurance, services and supplies which will be required during the ensuing calendar year for the rendering of all services, together with a reasonable amount considered by the Board to be necessary for a reserve for contingencies and replacements, and shall on or before December 15th notify each owner in writing as to the amount of such estimate, with reasonable itemization thereof. Said “estimated cash requirement” shall be assessed to the owners according to each owner’s percentage of ownership in the common elements as set forth in Exhibit “B” attached hereto. On or before January 1st of the ensuing year, and the 1st of each and every month of said year, each owner shall be obligated to pay to the Board or as it may direct, one-twelfth (1/12) of the assessment made pursuant to this paragraph. On or before the date of the annual meeting of each calendar year, the Board shall supply to all owners an itemized accounting of the maintenance expenses for the preceding calendar year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the estimates provided, and showing the net amount over or short of the actual expenditures, plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited according to each owner’s percentage of ownership in the common elements to the next monthly installments due from owners under the current year’s estimate, until exhausted, and any net shortage shall be added according to each owner’s percentage of ownership in the common elements to the installments due in the succeeding six months after rendering of the accounting.

(b) The Board shall build up and maintain a reasonable reserve for contingencies and replacements. Extraordinary expenditures not originally included in the annual estimate which may become necessary during the year, shall be charged first against such reserve. If said “estimated cash requirement” proves inadequate for any reason, including non-payment of any owner’s assessment, the Board may at any time, levy a further assessment, which shall be assessed to the owners according to each owner’s percentage ownership in the common elements. The Board shall serve notice of such further assessment on all owners by a statement

in writing giving the amount and reasons therefore, and such further assessment shall become effective with the next monthly maintenance payment which is due not more than ten (10) days after the delivery or mailing of such notice of further assessment. All owners shall be obligated to pay the adjusted monthly amount.

(c) When the first Board elected hereunder takes office, it shall determine the “estimated cash requirement”, as hereinabove defined, for the period commencing thirty (30) days after said election and ending on December 31st of the calendar year in which said election occurs. Assessments shall be levied against the owners during said period as provided in paragraph (a) of this Article.

(d) The failure or delay of the Board to prepare or serve the annual or adjusted estimate on the owner shall not constitute a waiver or release in any manner of such owner’s obligation to pay the maintenance costs and necessary reserves, as herein provided, whenever the same shall be determined, and in the absence of any annual monthly maintenance charge at the then existing monthly rate established for the previous period until the next monthly maintenance payment which is due more than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered.

(e) The Board shall keep full and correct books of account in chronological order of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. Such records and the voucher authorizing the payments shall be available for inspection by any owner or any representative of an owner duly authorized in writing, at such reasonable time or times during normal business hours as may be requested by the owner. Upon ten (10) days notice to the Board and payment of a reasonable fee, any owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such owner.

(f) All funds collected hereunder shall be held and expended for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all the unit owners and for such adjustments as may be required to reflect delinquent or unpaid assessments) shall be deemed to be held for the benefit, use and account of all the unit owners in the percentages set forth in Exhibit “B”.

(g) If an owner is in default in the monthly payment of the aforesaid charges or assessments for thirty (30) days, the members of the Board of Managers may bring suit for and on behalf of themselves and as representatives of all owners, to enforce collection thereof or to foreclose the lien therefore as hereinafter provided; and there shall be added to the amount due the costs of said suit, together with legal interest and reasonable attorneys’ fees to be fixed by the Court. To the extent permitted by any decision or any statute or law now or hereafter effective, the amount of any delinquent and unpaid charges or assessments, and interest, costs and fees as above provided shall be and become a lien or charge against the unit ownership of the owner involved when payable and may be foreclosed by an action brought in the names of the Board of Managers as in the case of foreclosure of liens against real estate. Said lien shall take effect and be in force when and as provided in the “Condominium Property Act” of Illinois; provided,

however, that encumbrances owned or held by any bank, insurance company or savings and loan association shall be subject as to priority after written notice to said encumbrancer of unpaid common expenses only to the lien of all common expenses on the encumbered unit which become due and payable subsequent to the date said encumbrancer either takes possession of the unit, accepts a conveyance of any interest therein, or has a receiver appointed in a suit to foreclose his lien. Any encumbrancer may from time to time request in writing a written statement from the Board setting forth the unpaid common expenses with respect to the unit covered by his encumbrance.

(h) Until all of the units are sold, the beneficiaries of the Trustee shall be obligated to pay the assessments on unsold units and to assume any deficiency that might result to the Association for said units unsold until the last unit is sold.

(i) Amendments to this Article VI shall only be effective upon unanimous written consent of the owners, and their mortgagees. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the common elements or abandonment of his or her unit.

ARTICLE VII

COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY

The units and Common Elements shall be occupied and used as follows:

(a) No part of the property shall be used for other than housing and the related common purposes for which the property was designed. Each unit shall be used as a residence for a single family and for no other purpose.

(b) There shall be no obstruction of the common elements nor shall anything be stored in the common elements without the prior consent of the Board except as hereinafter expressly provided. Each owner shall be obligated to maintain and keep in good order and repair his own unit.

(c) Nothing shall be done or kept in any unit or in the common elements which will increase the rate of insurance on the building, or contents thereof, applicable for residential use, without the prior written consent of the Board. No owner shall permit anything to be done or kept in this unit or in the common elements which will result in the cancellation of insurance on the building, or contents thereof, or which would be in violation of any law. No waste shall be committed in the common elements.

(d) Owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside of walls of the building and no sign, awnings, canopy, shutter, radio or television antenna shall be affixed to or placed upon the exterior walls or roof or any part thereof, without the prior consent of the Board.

(e) No animals, rabbits, livestock, fowl or poultry of any kind shall be raised, bred, or kept in any unit or in the common elements, except that dogs, cats, or other household pets may be kept in units, subject to rules and regulations adopted by the Board, provided that they are not kept, bred, or maintained for any commercial purpose; and provided further that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the property subject to these restrictions upon three (3) days' written notice from the Board.

(f) No noxious or offensive activity shall be carried on in any unit or in the common elements, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other owners or occupants.

(g) Nothing shall be done in any unit or in, on or to the common elements which will impair the structural integrity of the building or which would structurally change the building except as is otherwise provided herein.

(h) No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the common elements. The common elements shall be kept free and clear of rubbish, debris and other unsightly materials.

(i) There shall be no playing, lounging, parking of baby carriages or playpens, bicycles, wagons, toys, vehicles, benches or chairs on any part of the common elements except that baby carriages, bicycles and other personal property may be stored in a common storage area designated for the purpose, and patio areas may be used for their intended purposes.

(j) No industry, business, trade, occupation or profession of any kind, commercial, religious, education or otherwise, designed for profit, altruism, exploration, or otherwise, shall be conducted, maintained, or permitted on any part of the property, nor shall any "For Sale" or "For Rent" signs or other window displays or advertising be maintained or permitted on any part of the property except at such location and in such form as the Board may determine. The right is reserved by the Trustee, or its agent, to place "For Sale" or "For Rent" signs on any unsold or unoccupied units, and the right is hereby given to any mortgagee, who may become the owner of any unit, to place such signs on any unit owned by such mortgagee. The right is reserved by the Trustee, or its agent to use any unsold unit or units for sales or display purposes.

(k) Nothing shall be altered or constructed in or removed from the common elements, except upon the written consent of the Board.

(l) That part of the common elements identified in Exhibit "A" as "Parking Area" shall be used by the owners for parking purposes as follows: Unit A Parking Space P-4, Unit B Parking Space P-3, Unit 8A Parking Space P-1 and Unit 8B Parking Space P-2.

ARTICLE VIII

DAMAGE OR DESTRUCTION AND RESTORATION OF BUILDING

1. Sufficient Insurance: In the event the improvements forming a part of the property, or any portion thereof, including any unit, shall suffer damage or destruction from any cause and the proceeds of any policy or policies insuring against such loss, or damage, and payable by reason thereof, shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken and the insurance proceeds shall be applied by the Board or the payee of such insurance proceeds in payment therefor; provided, however, that in the event, within thirty (30) days after said damage or destruction, the unit owners elect either to sell the property from the provisions of this Declaration, and from the provisions of the "Condominium Property Act" as therein provided, then such repair, restoration or reconstructions shall not be undertaken.

2. Insufficient Insurance: In the event the property or the improvements thereon so damaged are not insured against the risk causing the loss or damage, or the insurance proceeds are not sufficient to pay the cost of repair, restoration or reconstruction, and the unit owners and all other parties in interest do not voluntarily make provisions for reconstruction of the improvements within one hundred and eighty (180) days after said damage or destruction, then the provisions of the Condominium Property Act in such event shall apply.

3. Repair: Restoration or reconstruction of the improvements as used in this Article, means restoring the improvements to substantially the same condition in which they existed prior to the fire or other disaster, with each unit and the common elements having the same vertical and horizontal boundaries as before.

ARTICLE IX

SALE OF PROPERTY

1. The owners by affirmative vote of at least 75% of the total vote, at a meeting duly called for such purpose, may elect to sell the property as a whole. Such action shall be binding upon all unit owners, and it shall thereupon become the duty of every unit owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect such sale, provided, however, that any unit owner who did not vote in favor of such action and who has filed written objection thereto with the Board within twenty days (20) after the date of the meeting at which such sale was approved shall be entitled to receive from the proceeds of such sale an amount equivalent to the value of his interest, as determined by a fair appraisal, less the amount of any unpaid assessments or charges due and owing from such unit owner. In the absence of agreement on an appraiser, such unit owner and the Board may each select an appraiser, and two so selected shall select a third, and the fair market value, as determined by a majority of the three so selected, shall control. If either party shall fail to select an appraiser, then the one designated by the other party shall make the appraisal.

ARTICLE X

REMEDIES FOR BREACH OF COVENANTS RESTRICTIONS AND REGULATIONS

1. Abatement and Enjoyment: The violation of any restriction or condition or regulation adopted by the Board, or the breach of any covenant or provision herein contained, shall give the Board the right, in addition to the rights set forth in the next succeeding section: (a) to enter upon the property upon which or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and the Trustee, or its successors or assigns, or the Board, or its agents, shall not thereby be deemed guilty in any manner of trespass; or (b) to enjoin, abate or remedy be appropriate legal proceedings, either at law or in equity, the continuance of any breach.

2. Involuntary Sale: If any owner (either by his own conduct or by the conduct of any other occupant of his unit) shall violate any of the covenants or restrictions or provisions of this Declaration or the regulations adopted by the Board, and such violation shall continue for thirty (30) days after notice in writing from the Board, or shall reoccur more than once thereafter, then the Board shall have the power to issue to the defaulting owner a ten (10) day notice in writing to terminate the rights of the said defaulting owner to continue as an owner and to continue to occupy, use or control his unit, and thereupon an action in equity may be filed by the members of the Board against the defaulting owner for a decree of mandatory injunction against the owner or occupant or, in the alternative, a decree declaring the termination of the defaulting owner's right to occupy, use or control the unit owned by him on account of the breach of covenant, and ordering that all the right, title and interest of the owner in the property shall be sold (subject to the lien of any existing mortgage) at a judicial sale upon such notice and terms as the court shall establish, except that the court shall enjoin and restrain the defaulting owner from reacquiring his interest at such judicial sale. The proceeds of any such judicial sale shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees and all other expenses of the proceedings and sale, and all such items shall be taxes against the defaulting owner in said decree. Any balance of proceeds after satisfaction of such charges and any unpaid assessments hereunder or any liens, shall be paid to the owner. Upon the confirmation of such sale, the purchaser thereat shall thereupon be entitled to a deed to the unit and to immediate possession of the unit sold, may apply to the court for a writ of assistance for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the decree shall so provide, that the purchaser shall take the interest in the property sold subject to this declaration.

ARTICLE XI

ASSOCIATION

Formation of Association: The Trustee, upon the sale of one or more units, and prior to the election of the first Board of Managers, and the Board of Managers at any time thereafter, may cause to be incorporated a not for profit corporation under the laws of the State of Illinois to be called _____ HOMEOWNERS ASSOCIATION or a name similar thereto, to facilitate administration and operation of the property. Upon the formation of such Association, every owner shall be a member therein, which membership shall terminate upon the sale or other disposition by such member of his unit ownership, at which time the new owner shall automatically become a member therein.

ARTICLE XII

GENERAL PROVISIONS

1. Until such time as the Board of Mangers provided for in this Declaration is formed, the Trustee or its agent shall exercise the powers, rights, duties, protections and functions of the Board.

2. Upon written request to the Board, the holder of any duly recorded mortgage or trust deed against any unit ownership shall be given a copy of any and all notices permitted or required by this Declaration to be given to the owner or owners whose unit ownership is subject to such mortgage or trust deed.

3. Notices required to be given to said Board of the Association may be delivered to any member of the Board or officer of the Association either personally or by mail addressed to such member or officer at his unit.

4. Notices required to be given any devisee or personal representative of a deceased owner may be delivered either personally or by mail to such party at its address appearing in the records of the court wherein the estate of such deceased owner is being administered.

5. Each grantee of the Trustee, by the acceptance of a deed of conveyance, or each purchaser under Articles of Agreement for Trustee's Deed, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration and all benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed, shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such owner in like manner as though the provisions of the Declaration were recited and stipulated at length in each and every deed of conveyance.

6. Every owner shall retain carpeting in their respective unit where carpeting was initially specified which area shall include but not be limited to stairways, second floor bedrooms, halls and closets.

7. No covenants, restrictions, conditions, obligations, or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

8. The provisions of Article III, Article VI and this paragraph 8 of Article XII of this Declaration, may be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission, signed and acknowledged by the Board, all of the owners and all mortgagees having bona fide liens of record against unit ownerships. Other provisions of this Declaration may be changed, modified or rescinded by an instrument in

writing setting forth such change, modification, or rescission, signed and acknowledged by the Board, the owners having at least 3/4th of the total vote, and containing an affidavit by an officer of the Board certifying that a copy of the change, modification or rescission has been mailed by certified mail to all mortgagees having bona fide liens of record against any suit ownership, not less than ten (10) days prior to the date of such affidavit. The change, modification or rescission shall be effective upon recordation of such instrument in the Office of the Recorder of Deeds of Cook County, Illinois; provided, however, that no provisions in this Declaration may be changed, modified or rescinded so as to conflict with the provisions of the "Condominium Property Act".

9. The invalidity of any covenant, restriction, condition, limitation or any other provision of this Declaration, or any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration.

10. If any of the options, privileges, covenants or rights created by this declaration would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one years thereafter.

11. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a first class condominium apartment development.

12. In the event title to any Unit Ownership is conveyed to a land title-holding trust under the terms of which all powers of management, operation and control of the trust property remain vested in the trust beneficiary or beneficiaries, then the trust estate under such trust and the beneficiaries thereunder from time to time, shall be responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such Unit Ownership. No liability shall be asserted against any such title-holding trustee personally for payment of any claim, lien or obligation or for the performance of any agreement, covenant, or undertaking hereby created, and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part thereon, but the amount thereof shall continue to be a charge of lien upon the Unit Ownership notwithstanding any changes in the beneficial interest of any such trust or transfers of title to such Unit Ownership.

13. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally, but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred

upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against _____, an Illinois State Bank, or any of the beneficiaries under said Trust Agreement, on account of this instrument or on account of any representation, covenant, undertaking or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being waived and released.

IN WITNESS WHEREOF, the said UNITED OF AMERICA BANK, an _____, as _____, has caused its corporate seal to be affixed hereunto and has caused its name to be signed to these presents by its President and attested to by its _____ Secretary, this _____ day of _____ August 20__.

By: _____
President

ATTEST:

By: _____
Secretary

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, _____, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that

_____ of UNITED OF AMERICAN BANK, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such _____ respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said bank, for the uses and purposes therein set forth; and the said _____ did also then and there acknowledge that _____ as custodian of the corporate seal of said bank, did affix the said corporate seal of said bank to said instrument as _____ own free and voluntary act, and as the free and voluntary act of said bank for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this _____ day of _____, A.D., _____.

Notary Public

EXHIBIT "B" ATTACHED TO AND MADE A PART OF DECLARATION OF CON-
DOMINIUM OWNERSHIP AND OF EASEMENTS, RESTRICTIONS AND COVENANTS

FOR _____ CONDOMINIUM

<u>UNIT NO.</u>	<u>PERCENTAGE OF OWNERSHIP</u>
A	26%
B	24%
8A	26%
8B	24%

By-Laws of Condominium Association

ARTICLE I

NAME: The name of this association shall be _____
CONDOMINIUM ASSOCIATION (hereinafter referred to as Association) and these By-Laws shall confirm the operation in accordance with a certain Declaration of Condominium Ownership and of Easements, Restrictions and Covenants for _____
dated the _____ day of _____, 20____, and made by the United of America Bank, and Illinois State Bank, as Trustee under Trust Agreement dated the _____ day of _____, 20____ and known as Trust No. _____, hereinafter referred to as “Declaration”.

ARTICLE II

PURPOSE: The purpose of this Association is to act on behalf of its members collectively as their governing body with respect to the administration, maintenance, repair and replacement of certain property located at _____, Chicago, Illinois, and as such to own and acquire any real estate or interest or rights therein or appurtenant thereto and any and all personal property in connection therewith as may be incidental or necessary to such purpose, all on a non-profit basis consistent with the provisions of its Articles of Incorporation heretofore filed in the Office of the Secretary of State of the State of Illinois and subsequently recorded in the Cook County Recorder’s Office, all in accordance with the Condominium Property Act of Illinois.

ARTICLE III

MEMBERSHIP: The members shall consist of all of the unit owners of the said property as described in the said Declaration in accordance with the respective percentages of ownership of said unit owners in the common elements of the said property. Such respective percentages of ownership shall be determined in accordance with the provisions of the said Declaration. For the purpose of these By-Laws, the definition of all words, terms and phrases which are defined by the said Declaration shall be controlled by the definitions set forth therein. No purchaser of a Unit shall be deemed a Unit Owner until the sale and purchase of such Unit has been consummated by the payment of the purchase price and delivery of the Deed therefore.

Except as provided herein or in the Declaration, membership shall not be transferable. The membership of each Unit Owner shall terminate upon a sale, transfer or other disposition of his ownership interest in the property, accomplished in accordance with the provisions of the Declaration and, thereupon, the membership shall automatically transfer to and be vested in the new owner succeeding to such ownership interest. The Association may, but shall not be required to, issue certificates or other evidence of membership therein.

ARTICLE IV

MEETINGS OF MEMBERS:

Section 1. Meetings of the membership shall be held at the property at _____, Chicago, Illinois, or at such other place in Cook County, Illinois as may be specified in the Notice of Meetings.

Section 2. The annual meeting of the voting members shall be held at 7:30 p.m. on the second Tuesday of the month of January pursuant to written notice mailed not less than ten (10) days prior to the date of said meeting, which notice shall also specify the place of said meeting, or at such other time (not more than thirty (30) days before or after such date) as may be designated by written notice of the Board mailed to the voting members not less than ten (10) days before the meeting. The Members successors to the members of the Board of Directors whose terms have expired.

Section 3. A special meeting of the voting members may be called at any time for any reasonable purpose. Said meeting shall be called by written notice, authorized by a majority of the Board, or by the voting members having three-fourths (3/4) of the total votes and mailed not less than ten (10) days prior to the date fixed for said meeting. The notices shall specify the date, time, place and purpose of the meeting.

Section 4. It shall be the duty of the Secretary or upon the Secretary's failure or neglect then of any officer or member, to cause a notice of each annual or special meeting stating the purpose, the time and the place thereof to be mailed to each member of record. In the event a Unit Owner is a corporation, partnership, trust or other legal entity, other than a natural person or persons, then any director of such corporation, partner of such partnership, individual trustee or beneficiary of such trust, or manager of such other legal entity, shall receive notice as Unit Owner, have the rights of a voting member as herein provided and be eligible to serve as director or officer of the Association.

Section 5. The presence, either in person or by proxy, of the owners of at least seventy-five (75%) per cent of the ownership interest in the Common Elements shall be requisite for and shall constitute a quorum for the transaction of business at all meetings of members. Unless otherwise expressly provided herein, any action may be taken at any meeting of the voting members at which a quorum is present in person or by proxy upon the affirmative vote of the voting members having a majority of the total votes present at such meeting.

Section 6. If at any meeting of members a quorum shall not be in attendance, those members who are present may postpone the meeting to a time not less than forty-eight (48) hours from the time at which the original meeting was called.

Section 7. There shall be one person with respect to each Unit ownership who shall be entitled to vote at any meeting of the Unit Owners. Such person shall be known (and hereinafter referred to) as a "voting member." Such voting member may be the owner or one of the group composed of all the owners of a unit ownership, or may be some person designated by such owner or owners to act as proxy on such owner's or owners' behalf and who need not be an owner. Such

designation shall be made in writing to the Board and shall be recoverable at any time by actual notice to the Board of the death or judicially declared incompetence of any designator, or by written notice to the Board by the owner or owners. Any or all of such owners may be present at any meeting of the voting members and (those constituting a group acting unanimously) may vote or take any other action as a voting member either in person or by proxy. The total number of votes of all voting members shall be 4 and each owner or group of owners shall be entitled to one vote for each unit as set forth in Exhibit B of the Declaration.

Section 8. The vote of any corporate, partnership or trust member may be cast on its behalf by any officer, partner or beneficiary or such member duly appointed by proxy. Each proxy must be filed with the Secretary prior to the commencement of a meeting, or at the time that proxies are called for.

ARTICLE V

BOARD OF MANAGERS:

Section 1. At each annual meeting, a majority of the voting members shall elect a Board of Managers consisting of three (3) owners. The members of the Board of Managers shall be title-holders who reside on the property subject, however, to the provisions of Section 7 of Article IV hereof. Three (3) members shall constitute a quorum. Members of the Board shall serve, without compensation, for a term of one (1) year or until their successors are elected. Vacancies on the Board may be filled by unanimous vote of the remaining members thereof. Except as otherwise provided in this Declaration, the property shall be managed by the Board and the Board shall act by majority vote of those present at its meetings when a quorum exists. Meetings of the Board may be called, held and conducted in accordance with such regulations the Board may adopt.

Section 2. The Board shall elect from among its members the officers provided for in Article VI hereof.

Section 3. Any Board member may be removed from office by affirmative vote of the voting members having at least three-fourths (3/4) of the total votes, at any special meeting called for that purpose. A successor to fill the unexpired term of a Board member removed may be elected by majority vote of the voting members at the same meeting or any subsequent meeting called for that purpose.

Section 4. The Board of Managers shall have the powers and duties necessary for the administration of the affairs of the corporation and shall have all powers and duties referred to in the Declaration and in the General Corporation Not For Profit Act of the State of Illinois, and may do all such acts and things provided by the Condominium Property Act, a copy of which is attached, of the State of Illinois to be done by a Board of Managers or by the Unit Owners collectively, except such acts of things as are by these By-Laws or by the Declaration directed to be exercised and done by the members individually. The powers of the Board of Managers shall include but not be limited to the following:

- (a) To elect the officers of the Association;
- (b) To administer the affairs of the Association and the Property;
- (c) To engage the services of the manager or managing agent for the Property and to fix the terms of such engagement and the compensation and authority of such manager or managing agent;
- (d) To promulgate such rules and regulations concerning the operation and use of the Property or of the Common Elements, including but not limited to the parking spaces on the common areas and assignment of the right to use the same among the members of the Association as may be consistent with the Declaration and these By-Laws and to amend the same from time to time;
- (e) To provide for the maintenance, repair and replacement of the Common Elements;
- (f) To estimate and adopt an annual operating budget and to provide for the assessment and collection from the Unit Owners their respective shares of the estimated expenses and hereinafter provided; and
- (g) To do any and all other acts as provided in the Declaration.

Section 5. Annual meetings of the Board of Managers shall be held immediately following the Annual Meeting of the members and at the same place. Special meetings of the Board may be called by the President or a majority of the Board upon notice mailed at least three (3) days prior to the date of such meeting to each Manager by mail or telegraph. Managers may waive notice of a meeting or consent to or take any action without formal meeting.

Section 6. At all meetings of the Board of Managers, a majority of the Managers shall constitute a quorum for the transaction of business and any action may be taken by the majority of those present.

Section 7. It shall be the duty of the Board of Manager, pursuant to Article VI of the Declaration and the Illinois Condominium Act to prepare the annual operating budget of the Association as hereinafter provided.

Section 8. Except with respect to such expenditures as are immediately necessary for the preservation and safety of the Unit Owners, their property, or the common areas, the Board shall have no authority to approve or authorize any capital expenditures in excess of \$1,000.00 not covered in the operating budget under which the Association is operating, nor to authorize the corporation to enter into any contract for a term of more than three (3) years except with the approval of a majority of the Unit Owners nor to approve of any capital expenditures which aggregate more than \$25,000.00 during any fiscal year without the approval of Unit Owners

owning in the aggregate not less than seventy-five percent (75%) of the total ownership in the Common Elements.

Section 9. The members of the Board of Managers shall not be liable to the owners or members of this Association for any mistake of judgment or for any acts or omissions made in good faith as such Board members. The Owners or members of this Association shall indemnify and hold harmless each Board member against all contractual liability to others arising out of contracts made by the Board on behalf of this corporation unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration applicable to the Owners property or contrary to the By-Laws of this corporation. The liability of any Owner or member arising out of the aforesaid indemnify shall be limited to such proportion of the total liability as the Owners percentage of interest in the Common Elements relates to the total percentage of interest of all Owners in the Common Elements.

ARTICLE VI

OFFICERS:

Section 1. The officers of the Association shall be a President, a Secretary, a Treasurer, and such assistants to such officers as the Board may deem appropriate, which officers shall be elected at each Annual Meeting of the Board of Managers and shall hold office at the pleasure of the Board.

Section 2. Any officer may be removed at any meeting by the affirmative vote of the majority of the members of the Board of Managers, either with or without cause, and any vacancy in any office may be filled by the Board at any meeting thereof.

Section 3. Each respective officer of the Association shall have such powers and duties as are usually vested in such office of a Not For Profit Corporation, including but not limited as follows:

- (a) The President shall be a Director and shall be the Chief Executive Officer of the Association and shall preside at all meetings of the members and of the Board of Managers;
- (b) The Secretary shall keep minutes of all meetings of the members and of the Board of Managers and shall have custody of the Association seal and have charge of the membership transfer books and such other books, papers and documents as the Board of Managers may prescribe;
- (c) The Treasurer shall be responsible for Association funds and securities and for keeping full and accurate accounts of all receipts and disbursements in Association books of account kept for such purpose.

Section 4. The officers shall receive no compensation for their services except as expressly provided by a resolution duly adopted by the members.

ARTICLE VIII

FISCAL MANAGEMENT:

Section 1. The fiscal year of the Association shall begin on the first day of January each year.

Section 2. Books and accounts of the Association shall be kept under the direction of the Treasurer and in accordance with customary accounting principles and practices. Within a reasonable time after the close of each fiscal year, the Association shall furnish the members with a statement of the income and disbursements of the corporation for such prior fiscal year.

Section 3. With respect to each fiscal year, the Board shall estimate the amount required by the Association to meet its expenses for such year, including but not limited to the following items:

- (a) Management and administration expenses;
- (c) The estimated cost of repairs, maintenance and replacements of Common Elements;
- (c) The cost of such utilities as may be furnished by the Association;
- (d) The amount of such reserves as may be reasonably established by the Board, including general operating reserves, reserves for contingencies, and reserves for replacements;
- (e) Such other expenses of the Association as may be approved by the Board of Managers, including operating deficiencies, if any, for prior periods.

The Board shall also estimate the amount of income to be received by the Association from the use, operation or rental of any of the Common Elements, which amount shall be referred to as nonmembership income. The difference between the estimated annual expenses of the Association and the nonmembership income shall be an amount referred to as membership assessments.

On or before the first day of each month of the fiscal year covered by the estimated annual budget, prepared by the Board of Managers pursuant to Article VI of the Declaration, each member shall pay as the member's respective monthly assessment one-twelfth (1/12th) of the member's proportionate share of the amount designated in the estimated annual budget as membership assessments. Each member's proportionate share of membership assessments shall be the same as the member's respective percentage ownership in the Common Elements.

Until the annual budget for a fiscal year is sent to each member by the Board, the member shall continue to pay that amount which had been established on the basis of the previous estimated annual budget.

If any member shall fail or refuse to make payment of the member's proportionate share of the common expenses when due, the amount thereof shall constitute a lien on the interest of such member in the Property. The Association and the Board shall have the authority to exercise and enforce any and all rights and remedies provided in the Condominium Property Act, the Declaration of these By-Laws, or are otherwise available at law or in equity for the collection of all unpaid assessments.

Upon ten (10) days notice to the Board or to the managing agent and the payment of such reasonable fee, established by the Board, any unit owner shall be furnished a statement of the member's account setting forth the amount of any unpaid assessments or other charges due and owing from such owner.

Section 4. If at any time during the course of any fiscal year the Board shall deem the amount of the membership assessments to be inadequate by reason of a revision in its estimate of either expenses or other income, the Board shall prepare and cause to be delivered to the members a revised estimated annual budget for the balance of such fiscal year and thereafter monthly assessments shall be determined and paid on the basis of such revision.

Section 5. Upon the purchase of each Unit, or at any time thereafter, at the request of the Board of Directors, each Unit Owner, shall deposit with the managing agent of the property, or as may be otherwise directed by the Board, an amount equal to three (3) times the monthly assessment relating to such Owner's Unit. Such amount shall be held, together with the amounts similarly deposited by the other Unit Owners, as an operating reserve for common expenses, and shall be used and applied from time to time as may be needed toward meeting deficits and for such other common purposes as the Board may deem necessary. To the extent that the said operating reserve may be depleted or in the judgment of the Board may be inadequate, the Board may increase the same by an assessment to the members in the proportion of their ownership interest in the Common Elements. The said operating reserve on hand from time to time shall be deemed part of the Common Elements and in the event of a transfer by a Unit Owner, such Unit Owner shall not be entitled to any refund of his operating reserve deposit or any portion thereof, but all of the interest in the unexpended portion of such deposit, if any, shall transfer and inure to such Unit Owner's transferee.

ARTICLE VIII

USE AND OCCUPANY RESTRICTIONS:

Section 1. No Unit shall be used for any other purpose than as a private dwelling for the member and the member's immediate family or by a person and such person's immediate family to whom the member shall have the Unit subject to all the provisions of these By-Laws and Declaration. No member nor a lessee of any member shall permit or suffer anything to be done or kept upon the Property which will increase the rate of insurance on the Property or on the contents thereof or which will obstruct or interfere with the rights of other occupants or annoy them by unreasonable noises or otherwise, nor will the occupant commit or permit any nuisance or commit or suffer any immoral or illegal act to be committed anywhere in or upon the Property.

Section 2. Each member shall maintain the member's own Unit in good condition, order and repair at the member's expense. No Unit Owner shall display, hang, store or use any signs or articles whatsoever on the balcony or outside the Unit other than such draperies, curtains or shades as may be permitted in accordance with the rules and regulations established by the Board from time to time. No member may paint, decorate or otherwise alter or modify in any way the outside of the Unit, or install outside the Unit any canopy, awning, covering, radio or television antenna, or structure or addition of any kind whatsoever without the proper written consent of the Board.

Section 3. Trash, garbage and other waste shall be kept only in sanitary containers and shall be disposed of in the incinerator provided for such purpose in such manner as may be prescribed from time to time in rules and regulations established by the Board. No articles of personal property belonging to any person shall be allowed on any portion of the Common Elements except in the storage area specifically designated for the respective Unit Owner by the Board or the managing agent.

Section 4. No member shall overload the electrical wiring in the building or operate any machinery, appliances, accessories or equipment in such a manner as to cause, in the judgment of the Board any unreasonable disturbance or make any alterations to or connections with the heating or air conditioning or plumbing systems without the prior written consent of the Board.

ARTICLE IX

MAINTENANCE FUND: The Board, for the benefit of all of the Unit Owners, shall acquire and pay for out of the Maintenance Fund, all of the items listed in Paragraph VI and all subparagraphs of the Declaration.

ARTICLE X

AMENDMENTS: These By-laws may be amended or modified at any time, or from time to time, by action or approval of three-fourths (3/4ths) or more of the Unit Owners.

ARTICLE XI

CONFLICT: In the event there shall be a conflict between these By-Laws and the Declaration relating to the Board, its power and authorities and the rights and duties of the members, these By-Laws as from time to time in effect shall control.

Interstate Land Sales Full Disclosure Act Compliant Property Report

Originally published in The ACREL Paper Fall 2003 as “Knowing a Little More About a ‘Lot’ – The Interstate Land Sales Full Disclosure Act” W. Foster Gaillard and William P. Skiar, published by the American College of Real Estate Lawyers and ALI—ABA. Reprinted with permission.

READ THIS PROPERTY REPORT BEFORE SIGNING ANYTHING

This Report is prepared and issued by the developer of this subdivision. It is *not* prepared or issued by the Federal Government.

Federal law requires that you receive this Report prior to your signing a contract or agreement to buy or lease a unit in this subdivision. However, **NO FEDERAL AGENCY HAS JUDGED THE MERITS OR VALUE, IF ANY, OF THIS PROPERTY.**

You have fifteen (15) days after the date you sign a contract or agreement and receive all items required under state law (Section 7 18.503, Florida Statutes) to cancel the contract or agreement.

If you did not receive this Report before you signed a contract or agreement, you may cancel the contract or agreement any time within two years from the date of signing.

Name of Subdivision (Condominium):

Name of Developer:

Date of this Report:

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In this Property Report, the words “you” and “your” refer to the buyer. The words “we”, us” and “our” refer to the Developer.

Further, simultaneously with the delivery of this Property Report, we will deliver to you a Prospectus, which is the disclosure document required under Florida law. The Prospectus contains a copy of the proposed Declaration of _____— a Condominium, which is the document that will establish the Condominium. (See Exhibit A of the Prospectus.) The definitions which appear in the Declaration of Condominium will also apply to this Property Report. Refer to

RISKS OF BUYING LAND

The future value of any land is uncertain and dependent upon many factors. DO NOT expect all land to increase in value.

Any value which your unit may have will be affected if the roads, utilities and all proposed improvements are not completed.

Resale of your Unit may be difficult or impossible, since you may face the competition of our own sales program and local real estate brokers may not be interested in listing your unit.

Any subdivision will have an impact on the surrounding environment. Whether or not the impact is adverse and the degree of impact, will depend upon the location, size, planning, and extent of development. Subdivisions which adversely affect the environment may cause governmental agencies to impose restrictions on the use of the land. Changes in plant and animal life, air and water quality and noise levels may affect your use and enjoyment of your unit and your ability to sell it.

In the purchase of real estate, many technical requirements must be met to assure that you receive proper title. Since this purchase involves a major expenditure of money, it is recommended that you seek professional advice before you obligate yourself.

WARNINGS

THROUGHOUT THE PROPERTY REPORT THERE ARE SPECIFIC WARNINGS CONCERNING THE DEVELOPER, THE CONDOMINIUM OR INDIVIDUAL UNITS. BE SURE TO READ ALL WARNINGS CAREFULLY BEFORE SIGNING ANY CONTRACT OR AGREEMENT.

GENERAL INFORMATION

This Report covers residential condominium units (“Units”) in a proposed condominium to be known as _____, a Condominium (the “Condominium”), which Condominium is located in The City of _____ County, _____. See Page 33 for a listing of the Units in the Condominium.

The maximum number of Units that will use the facilities located on Condominium Property in common with other Unit owners of the Condominium (the “Unit Owners”) is ____

subject to increase or decrease at any time and from time to time, depending on a variety of factors including, but not limited to, revised development plans, market conditions and governmental controls. _____ Condominium Association, Inc. (the “Condominium Association”) is responsible for the operation and maintenance of these facilities.

The Developer of the Condominium is:

Answers to questions and information about the Condominium and/or the Development may be obtained by telephoning the Developer at the number listed above.

TITLE TO THE PROPERTY AND LAND USE

A person with legal title to property generally has the right to own, use and enjoy the property. A contract to buy a Unit may give you possession, but doesn't give you legal title. You won't have legal title until you receive a valid deed. A restriction or an encumbrance on your Unit, or on the Condominium, could adversely affect your title.

Here we will discuss the Agreement For Sale (the "Purchase Agreement") you will sign and the Deed you will receive. We will also provide you with information about any condominium restrictions and encumbrances, mortgages, or liens affecting your Unit and some important facts about payments, recording, and title insurance.

METHOD OF SALE

Purchase Agreement and Delivery of Deed

Sales of Units will be on an all cash basis (i.e., cashier's check drawn on a local financial institution or immediately available wired federal funds in U.S. Dollars). If you wish to finance a portion of the purchase price, you must make your own arrangements. You will sign a Purchase Agreement at the time of sale. In general, a total deposit of 10% of the purchase price will be required at the time of signing. An additional deposit will be required prior to Closing in accordance with the terms of the Purchase Agreement. You will be notified by mail when to make the additional deposit. A deed will be delivered after construction of the Condominium and your Unit is completed, at the closing of the transaction.

Title to your Unit shall be good, marketable and insurable and shall be conveyed by Special Warranty Deed, free and clear of all encumbrances and matters except:

1. Taxes for the year in which the transaction is closed and subsequent years.
2. Applicable zoning ordinances and regulations, and liens for public improvements.
3. Standard exceptions for water-front property and artificially filled-in property which once was in navigable waters, as well as other standard exceptions for similar property.
4. The right, title, or interest, if any, of the public to use any part of the land seaward and/or lakeward of the most inland of any of the following: a) the natural line of vegetation; b) the most extreme highwater line; c) the bulkhead line; and d) any other line which has been legally established as relating to such public use.
5. Any dispute as to the boundaries caused by a change in the location of any water body within or adjacent to the land prior to Date of Policy, and any adverse claim to all or part of the land that is, at Date of Policy, or was previously, under water.
6. The standard printed exceptions contained in the ALTA Form "B" owner's policy.

7. Conditions, restrictions, reservations, limitations and easements of record.
8. Terms and conditions of the Declaration of Condominium of _____, a Condominium (the "Declaration"), together with all exhibits thereto.
9. Taxes or special assessments not shown as liens in the public records or in the records of the local tax collecting authority.
10. Any minerals or mineral rights leased, granted or retained by current or prior owners.
11. Taxes and assessments for the current year and subsequent years, which are not yet due and payable.
12. Sovereignty Submerged Lands Lease recorded _____ in Official Records Book ____, Page ____ .Renewal of Lease recorded _____ in Official Records Book ____, Page ____ .
13. Ordinance No. ____ re: _____ Improvement and Maintenance Special Taxing District recorded _____ in Official Records Book ____, Page ____ .
14. Ordinance No. ____ recorded _____ in Official Records Book ____, Page ____.
15. Resolution re: _____ by _____ Preservation Board recorded _____ in Official Records Book ____, Page ____ .
16. Riparian and/or littoral rights are not insured.
17. Covenant Running With the Land in Lieu of Unity of Title executed by _____ a _____ corporation, to be recorded in the Public Records of _____ County, _____ .
18. Declaration of Easements between _____, a _____ corporation, and _____, a _____ limited liability company, to be recorded in the Public Records of _____ County, _____.
19. Permit Agreement dated _____, as approved and modified by Resolution Nos. _____ and _____ of the City of _____.
20. Possible beach access easement along either the southern or northern boundary of the Condominium, and 10-foot wide landscape easement along the _____ boundary of the Condominium to enable the implementation of the Streetscape Master Plan of The City of _____, _____.
21. Any mortgage executed by the Buyer which encumbers the Unit.

22. Liens for work done or material furnished at the Buyer's request other than by the Developer.
23. Any matters not listed above as long as title insurance or coverage by endorsement is given for these matters.

Type of Deed

The transfer of legal title will be accomplished by a Special Warranty Deed.

ENCUMBRANCES, MORTGAGES AND LIENS

The Property on which the Condominium is situated is presently encumbered by a first Mortgage, from _____ a Florida corporation, and _____ INC., a Florida corporation, to _____ INC., a _____ corporation, dated _____ and recorded _____ in Official Records Book _____ in the amount of \$ _____; as modified by Mortgage Modification Agreement filed _____, in Official Records Book _____ modified by Second Mortgage Modification Agreement filed _____, in Official Records Book _____ modified by Third Mortgage Modification Agreement filed _____, in Official Records Book _____, as assigned to _____, a _____ corporation by instrument filed _____ in Official Records Book _____, together with Collateral Assignment of Leases and Rents recorded _____ in Official Records Book _____.

Release Provisions

It is anticipated that the above mortgage will be replaced by a construction loan, which will be secured by a new mortgage on the Property. The new mortgage shall provide for the partial release of individual Units upon the payment of certain amounts, and as a matter of course, the Units will be released from the lien of the mortgage at the time such Units are conveyed to individual buyers.

THE RELEASE PROVISIONS FOR THE UNIT HAVE NOT BEEN RECORDED. THEREFORE, THEY MAY NOT BE HONORED BY SUBSEQUENT HOLDERS OF THE MORTGAGE. IF THEY ARE NOT HONORED, YOU MAY NOT BE ABLE TO OBTAIN CLEAR TITLE TO A UNIT COVERED BY THIS MORTGAGE UNTIL WE HAVE PAID THE MORTGAGE IN FULL, EVEN IF YOU HAVE PAID THE FULL PURCHASE PRICE OF THE UNIT. IF WE SHOULD DEFAULT ON THE MORTGAGE PRIOR TO OBTAINING A RELEASE ON YOUR UNIT, YOU MAY LOSE YOUR UNIT AND ALL MONIES PAID.

All real estate taxes and assessments become liens as of January 1 of each year; however, tax statements are mailed on or about November 1 of each year, but are not delinquent

until April 1 of the following year.

RECORDING THE CONTRACT AND DEED

Method and Purpose of Recording

Under Florida law, the recording of the Purchase Agreement could protect you from future creditors of the Developer and subsequent buyers. However, as stated in the Purchase Agreement, neither the Purchase Agreement nor any short-form summary thereof shall be recorded in the Public Records of _____ County, _____ unless we mutually agree, in writing, to the contrary, and any recording of same by you shall be considered a breach of the Purchase Agreement.

Subsequent to the closing, however, we will record the Special Warranty Deed conveying title to you, and this will protect you against claims of subsequent creditors and buyers.

**UNLESS THE PURCHASE AGREEMENT IS RECORDED,
YOUR CONTRACT RIGHTS MAY BE LOST TO THE
CLAIMS OF SUBSEQUENT PURCHASERS OR
CREDITORS OF THE DEVELOPER.**

Title Insurance

Upon your request, we shall cause delivery of an ALTA Form “B” owner’s title insurance commitment (“Commitment”) issued by a title insurer licensed to do business in Florida in an amount equal to the Purchase Price (exclusive of closing costs) to you at the time of closing. Our tender to you of the Commitment, subject only to the exceptions set forth in the Purchase Agreement, shall be proof that the title to the Unit is good, marketable and insurable. An owner’s title insurance policy (“Policy”) will be issued by the title insurer and delivered to you subsequent to the closing and the recording of all the documents in accordance with the terms of the Commitment.

An appropriate professional should interpret the Commitment and Policy.

PAYMENTS

Escrow

All deposits shall be held and disbursed by _____ (“Escrow Agent”), of _____ Telephone Number _____ in accordance with the applicable terms and conditions of the Escrow Agreement (See Exhibit D of the Prospectus) and Chapter 718, Florida Statutes (the “Act”). The Escrow Agent shall give you a receipt for any and all such deposits upon request. You shall be entitled to a return of the deposit should we fail to convey title or in the event we default on any obligation which would otherwise result in your loss of the deposit.

Any of your deposits in excess of ten percent (10%) of the purchase price of the Unit may be used by us for construction purposes as permitted by law. In addition to the foregoing, if we have obtained or obtain the approval of the Director of the Division of Florida Land Sales, Condominiums and Mobile Homes to provide "Alternative Assurances", as permitted by law, in lieu of holding deposits up to ten percent (10%) of the Purchase Price in escrow, we may cause the escrow agent to disburse such deposits to us for all uses permitted by law. If we have obtained such approval as of the date of this Agreement, a copy of the Escrow Agreement providing the mechanism for such disbursement has been delivered to you. Likewise, if such approval is obtained after the date of your Purchase Agreement, you will be provided with a copy of the Escrow Agreement, but agree that it shall not be deemed a material or adverse change in the offering of the Condominium by reason of the fact that you have already agreed to our use of your deposits up to ten percent (10%) of the purchase price in the manner stated above.

We may select the type of account in which to invest your deposit in our sole and absolute discretion. We shall not be required to place your deposit in an interest bearing account. Any interest earned on your deposits shall belong to us, and shall not be credited to you at the Closing. In the event the transaction does not close due to your default, such interest shall also be payable to us.

Prepayments

The total purchase price for each Unit is due at the time of Closing and delivery of the Special Warranty Deed (subject to credits, adjustments and prorations, including mortgage proceeds, if any) and may be prepaid without penalty.

Default

If and to the extent required under Section 1715.4 of the Interstate Land Sales Registration Act, Seller's remedies may be limited to the following:

Before we may exercise our right to cancel the Purchase Agreement, we must give you written notice of default or breach of contract and give you the opportunity to correct the default or breach within twenty (20) days from the receipt of such notice.

If you fail to perform any of your obligations or any of the terms of the Purchase Agreement or fail to execute and deliver any instrument required or otherwise fail to comply with any of your requirements, and if you fail to correct such default as provided above, we may declare the Purchase Agreement terminated and retain all monies paid thereunder, including interest, as liquidated and agreed upon damages (subject to the limitation set forth below) since the amount of actual damages may be incapable of ascertainment.

Notwithstanding the above, if you paid fifteen (15%) percent of the Purchase Price or more at the time of default and you lose the right to purchase the Unit, you may be entitled to a refund if and to the extent required under Section 1715.4. We must refund to you the remaining amount of the total deposits after subtracting fifteen (15%) percent of the Purchase Price (excluding interest owed) at the time of default, or after subtracting the amount of damages incurred by us due to the default, whichever is greater. For purposes hereof, "damages" means

actual damages resulting from the default, as determined under Florida law.

If you become entitled to any or all of the deposits hereunder, you must tender to us an instrument conveying any of your rights and interests under the Purchase Agreement to us.

RESTRICTIONS ON THE USE OF YOUR UNIT

Restrictive Covenants

Your use of the Unit, the Common Elements and the Common Properties will be restricted and controlled in various ways. A complete listing of these restrictions may be found in the Declaration of Condominium (Sections 9, 17 and 18). A complete copy of these restrictions is available upon request. We urge you to read the restrictions in their entirety.

The following is a summary of such restrictions:

1. Occupancy. Except as otherwise herein expressly provided, the Units shall be used for residential purposes only. No business, profession or trade of any type shall be conducted on any portion of the Units. Further, this prohibition shall not be applicable to the Developer with respect to its development of the Condominium Property, its construction, repair, decorating, administration, sale, rental or lease of Units, or its use of Units as models, V.I.P. or guest suites, or for sales offices or management services. Nothing herein shall be construed to prohibit ownership of a Unit by a corporation, domestic or foreign, provided that the residential nature of the Units is not disturbed.

Occupancy in Units, except for temporary occupancy by visiting guests, shall not exceed two (2) persons per bedroom and one (1) person per den (as defined by the Association for the purpose of excluding from such definition living rooms, dining rooms, family rooms, country kitchens and the like). The provisions of Section 17.1 of the Declaration of Condominium (the "Declaration") shall not be applicable to Units used by the Developer for model units, V.I.P. suites, sales offices or management or other services.

Unless otherwise determined by the Board of Directors, and except as otherwise provided in Section 17 of the Declaration, a person(s) occupying a Unit for more than one (1) month without the Unit Owner or a member of his family being present shall not be deemed a guest but, rather, shall be deemed a lessee for purposes of this Section (regardless of whether a lease exists or rent is paid) and shall be subject to the provisions of this Declaration which apply to lessees. The purpose of this paragraph is to prohibit the circumvention of the provisions and intent of this Declaration and the Board of Directors shall enforce, and the Unit Owners comply with, same with due regard for such purpose.

2. Leases. Leasing of Units shall be subject to the prior written approval of the Association, other than for short-term leases for not more than one month to tenants who have registered with the Association. Every lease of a Unit shall specifically require a deposit from the prospective tenant in an amount not to exceed one (1) month's rent ("Deposit"), to be held in an escrow account maintained by the Association, provided, however, that the Deposit shall not be required for any Unit which is rented or leased directly by or to the Developer, or which is leased for a term of one month or less. No Unit Owner may lease its Unit more than twelve (12) times

in any calendar year, regardless of the lease term. The foregoing requirement shall not apply to a Unit rented or leased directly by or to the Developer. Every lease shall provide (or, if it does not, shall be automatically deemed to provide) that: (i) a material condition of the lease shall be the tenant's full compliance with the covenants, terms, conditions and restrictions of this Declaration (and all Exhibits hereto), and with any and all rules and regulations adopted by the Association from time to time (before or after the execution of the lease); (ii) and that a tenant may not, under any circumstances, sublet the Unit (or any portion thereof) to any other person or permit occupancy by any other person. Additionally, copies of all written leases shall be submitted to the Association and tenants must register with the Association prior to moving in. The Unit Owner will be jointly and severally liable with the tenant to the Association for any amount which is required by the Association to repair any damage to the Common Elements from the acts or omissions of tenants (as determined in the sole discretion of the Association) and to pay any claim for injury or damage to property caused by the negligence of the tenant and a special charge may be levied against the Unit therefore. All leases are hereby made subordinate to any lien filed by the Condominium Association, whether prior or subsequent to such lease.

3. Children. Children shall be permitted to reside in the Units, subject to the provisions of Section 17.1 of the Declaration, and applicable rules and regulations which may be adopted by the Association from time to time.

4. Pets. Except as hereafter provided, no animals, wildlife, livestock, reptiles, or poultry of any kind, shall be raised, bred, or kept on any portion of the Condominium Property. There may not be more than two (2) household pets maintained within any Unit and the Limited Common Elements appurtenant thereto, to be limited to dogs or cats (or other household pets as defined and specifically permitted by the Association), which shall not be kept, bred or maintained for any commercial purpose and shall not become a nuisance or annoyance to neighbors. Those pets which, in the sole discretion of the Association endanger health, have the propensity for dangerous or vicious behavior (such as pit bulldogs or other breeds or mixed breeds which have the propensity for dangerous or vicious behavior), make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Units or to the owner of any other portion of the Condominium Property shall be removed upon request of the Board. Unit Owners must pick up all solid wastes of their pets and dispose of such wastes appropriately. All pets (including cats) must be kept on a leash of a length that affords reasonable control over the pet at all times, or must be carried, when outside the Unit. No pet may be kept on a balcony or terrace when its owner is not in the Unit. Without limiting the generality of Section 19 of the Declaration, any violation of the provisions of Section 16.4 of the Declaration shall entitle the Association to all of its rights and remedies, including, but not limited to, the right to fine Unit Owners (as provided in any applicable rules and regulations) and/or to require any pet to be permanently removed from the Condominium Property. Section 17.4 of the Declaration shall not prohibit the keeping of fish or a caged household-type bird(s) in a Unit, provided that it does not become a nuisance or annoyance to neighbors.

5. Use of Common Elements and Association Property. The Common Elements and other Association Property shall be used only for furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of the Units. The Common Elements shall not be obstructed, littered, defaced, or misused in any manner. In

no event shall any Unit Owner or occupant place, or permit the placement of, any item which obstructs, or otherwise impedes access to, any portion of the Condominium Property which are either designated or used as delivery and receiving areas.

6. Nuisances. No portion of the Units, Limited Common Elements or Common Elements shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious or unsightly to the eye; nor shall any substance, thing, or material be kept on any portion of the Units or the Limited Common Elements appurtenant thereto that will emit foul or obnoxious odors or cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding properties. No obnoxious or offensive activity shall be carried on in any Units, Limited Common Elements, Common Elements or other portions of the Condominium Property, nor shall anything be done therein which may be or become an unreasonable annoyance or nuisance to any Owner. The Board of Directors shall have the right to determine if any equipment, fixture, improvement, materials or activity producing such noise or odor constitutes a nuisance. In particular, during the hours from 11:00 p. m. through 8:00 a.m., no Unit Owner shall play (or permit to be played in its Unit, or in the Limited Common Elements or Common Elements) any musical instrument, phonograph, television, radio or the like in a way that unreasonably disturbs or annoys other Unit Owners or occupants. Additionally, there shall not be maintained therein any plants, animals, devices or things of any sort whose activities or existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature that may diminish or destroy the enjoyment of the Units, or any other portions of the Condominium Property. No outside burning of wood, leaves, trash, garbage, or household refuse shall be permitted within the Condominium Property. No activity specifically permitted by this Declaration shall be deemed a nuisance.

7. Outside Items. No rubbish, garbage, refuse or trash shall be kept, stored or allowed to accumulate on any portion of the Condominium Property, except within designated trash receptacles. No linens, clothing, household fabrics, curtains, rugs, or laundry of any kind shall be hung, shaken, dried or aired from any windows, doors, balconies, terraces or other portions of the Condominium Property. No articles shall be placed on balconies, patios or similar areas. The foregoing shall not prevent placing and using patio-type furniture, planters and other items in such areas if the same are normally and customarily used for a residential balcony, patio or terrace area. In the event of any doubt or dispute as to whether a particular item is permitted hereunder, the decision of the Board of Directors shall be final and dispositive.

8. Firearms. The discharge of firearms and fireworks within the Condominium is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

9. Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any portion of the Condominium Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium Property, as elsewhere herein set forth. Notwithstanding the foregoing and any

provisions of the Declaration, the Articles of Incorporation or the By-Laws, the Association shall not be liable to any person(s) for its failure to enforce the provisions of Section 17.9 of the Declaration. No activity specifically permitted by the Declaration shall be deemed to be a violation of that Section.

10. Alterations. Without limiting the generality of Section 9.1 of the Declaration but subject to the provisions of Section 11 of the Declaration, no Unit Owner shall cause or allow improvements or changes to his Unit, or to any Limited Common Elements, Common Elements, or Association Property, which alters the exterior appearance thereof or which could in any way affect the structural, electrical, plumbing or mechanical systems of the Building, without obtaining the prior written consent of the Association (in the manner specified in Section 9.5 of the Declaration). No spas, hot tubs, whirlpools or similar improvements shall be permitted on any patio or balcony.

11. Sound, Weight and Flooring Restrictions. The installation of hard and/or heavy surface floor coverings such as tile, marble, wood, and the like, must be approved in writing by the Board of Directors. The foregoing approval and Impact Isolation Class rating requirements shall not apply to the installation of any such hard and/or heavy surface floor coverings in bathrooms, kitchens and foyers of Units. Additionally, the installation of any improvement or heavy object must be approved by the Board of Directors and must be compatible with the overall structural design of the Building. In no event shall any heavy object, which would exceed a life load limit of 50 pounds per square foot, be placed in any Unit. The Board of Directors may require a structural engineer to review certain of the proposed improvements, with such review to be at the Owner's sole expense. Additionally, the Board may require Unit Owners to furnish it with certifications of the floor assembly impact Isolation Class rating from the installers of such surfaces. The color and exact materials to be used on balcony floor coverings must also be approved in writing by the Board of Directors. Any use guidelines set forth by the Association shall be consistent with good design practices for the waterproofing and overall structural design of the Building. Owners will be held strictly liable for violations of these restrictions and for all damages resulting therefrom and the Association has the right to require immediate removal of violations. Applicable warranties of the Developer, if any, shall be voided by violations of these restrictions and requirements. Each Owner agrees that sound transmission in a high-rise building such as the Condominium is very difficult to control, and that noises from adjoining or nearby Units and/or mechanical equipment can often be heard in another Unit. **The Developer does not make any representation or warranty as to the level of sound transmission between and among Units and the other portions of the Condominium Property, and each Owner shall be deemed to waive and expressly release any such warranty and claim for loss or damages resulting from sound transmission.**

12. Exterior Improvements. Without limiting the generality of Sections 9.1 or 17.10 of the Declaration, but subject to the provisions of the Declaration specifically permitting same, no Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies or windows of the Units or the Limited Common Elements appurtenant thereto (including, but not limited to, awnings, canopies, shutters, window coverings, signs, screens, window tinting, fixtures and equipment), without the prior written consent of the Association, provided, however, that nothing herein shall prohibit a Unit Owner

from respectfully displaying the American flag. No painting or changes in the exterior colors of any Units or the Limited Common Elements appurtenant thereto shall be permitted, other than by the Association.

13. Signs. No sign, poster, display, billboard or other advertising device of any kind including, without limitation, "FOR SALE", "FOR RENT", security service or construction signs shall be displayed to the public view on any portion of the Units, Limited Common Elements or Common Elements, without the prior written consent of the Association, except (a) signs, regardless of size, used by the Developer, its successors or assigns or a party developing or marketing any portion of the properties subject to this Declaration, including signs used for construction or repairs, advertising, marketing, promotion, sales or leasing activities, (b) signs installed as part of the initial construction of the Units or other Improvements and replacements of such signs (similar or otherwise) and (c) bulletin boards, entrance, directional, informational and similar signs used by the Association.

14. Lighting. All exterior lights and exterior electrical outlets must be approved in accordance with Section 9 of the Declaration.

15. Exterior Sculpture and Similar Items. Exterior sculpture, flags, and similar items must be approved in accordance with Section 9 of the Declaration; provided, however, that nothing herein shall prohibit a Unit Owner from respectfully displaying the American flag.

16. Air Conditioning Units. No window or wall mounted air conditioning units may be installed in any Unit.

17. Outside Installations. No radio station or short-wave operations of any kind shall operate from any Unit, Limited Common Elements or Common Elements. Except to the extent permitted under applicable laws, no exterior satellite dish, or other transmitting or receiving apparatus, radio antenna, television antenna or other antenna of any type shall be erected or maintained on the Common Elements, Limited Common Elements, or Units, without the prior written consent of the Association. Notwithstanding the foregoing, upon obtaining the prior written consent of the Association, satellite dishes, and other devices permitted under Section 207 of the Telecommunications Act of 1996, may be installed within the Units or within any Limited Common Elements appurtenant thereto, provided, however, that in no event shall any such device be installed in or on any other portion of the Condominium Property. To the extent permissible under applicable law, the Association may enact Rules and Regulations, requiring that any such devices which may be permitted under applicable law are comparable in size, weight and appearance, are installed and maintained in a manner designed to protect the safety of the Building and its occupants and satisfy any standards established by the Association for architectural appearance purposes.

18. Window and Door Treatments. No reflective film, tinting or window coverings shall be installed on any windows or glass doors, except as necessary to replace or restore tinting of glass surfaces as originally installed, unless approved by the Association in accordance with Section 9.1 of the Declaration. Curtains, drapes and other window coverings (including their linings) which face on exterior windows or glass doors of Units, or are visible from the exterior of the Building, shall be white or off-white in color, unless otherwise specifically approved by

the Board of Directors. No aluminum foil may be placed in any window or glass door of a Unit, and no reflective substance may be placed on any glass in a Unit, except for any substance previously approved by the Board of Directors for energy conservation or hurricane protection purposes. No unsightly materials may be placed on any window or glass door or shall be visible through such window or glass door. Any screen door must be of a uniform type approved by the Association.

19. Hurricane Protection. No type of hurricane protection may be installed in or around the Units and the Limited Common Elements appurtenant thereto, other than hurricane shutters or other hurricane protection approved by the Association, which shall be installed or affixed in a manner approved by the Association. Upon issuance of an official hurricane warning, each Unit Owner shall take all actions necessary to prepare his/her Unit for any such hurricane, which shall include (i) removing all objects from balconies and terraces which will not be secured or otherwise protected, and (ii) complying with all rules and regulations which may have been adopted by the Association from time to time. No hurricane or storm shutters or other hurricane protection shall be permanently installed on any structure in a Unit or in the Limited Common Elements or Common Elements, unless first approved in accordance with Section 17.19 of the Declaration.

20. Unit Maintenance. Each Unit Owner must undertake or must designate a responsible firm or individual to undertake his general maintenance responsibilities, which responsibilities shall include, at a minimum, maintaining the exterior appearance of the Unit and the Limited Common Elements, safeguarding the Unit and the Limited Common Elements to prepare for hurricane or tropical storm watches and warnings by, among other things, removing any unfixed items on balconies and terraces, and repairing the Unit and the Limited Common Elements in the event of any damage therefrom. An Owner may designate a firm or individual to perform such functions for the Owner, but such designation shall not relieve the Owner of any responsibility hereunder. The name(s) and addresses of such firm or individual must be furnished to the Association. The designation of such firm or individual shall be subject to the approval of the Association.

21. Hazardous Substances. No flammable, combustible or explosive fluids, chemicals or other substances may be kept in any Unit, Limited Common Elements or Common Elements, except such as are generally used for normal household purposes. No electric, gas, charcoal barbecue or other cooking devices, or outside cooking, is permitted on any patio or balcony.

22. Play Equipment, Strollers, Etc. Bicycles, tricycles, scooters, skateboards, and other play equipment, baby strollers and similar items shall not at any time be left in the hallways or other Common Elements or in the Limited Common Elements (including balconies, terraces and patios).

23. Parking and Prohibited Vehicles. All parking in the Condominium shall be by valet only, unless expressly permitted in writing by the Developer. No vehicle shall be parked so as to obstruct or otherwise impede ingress or egress to any parking spaces, including, without limitation, to a parking space assigned to any other Unit. Parking in the Condominium shall be restricted to private automobiles and passenger-type vans, jeeps and pick-up trucks and sport utility vehicles not exceeding one-half ton, motorcycles, motor scooters, small trailer and jet ski trailers (all of which are collectively referred to herein as "vehicles"). No person shall park, store

or keep on any portion of the Condominium Property any large type commercial type vehicle (for example, dump truck, motor home, trailer, cement mixer truck, oil or gas truck, delivery truck), nor may any person keep any other vehicle on the Condominium Property which is deemed to be a nuisance by the Board. No trailer, camper, motor home or recreational vehicle shall be used as a residence, either temporarily or permanently, or parked on the Condominium Property. The Board shall have the authority to prohibit any vehicle, including any motorcycle or motor scooter, which it determines constitutes a nuisance due to its noise level, particularly where such vehicle is operated in the early morning or late evening hours. No vehicle is permitted on the Condominium Property which leaks oil, brake fluid, transmission fluid or other fluids. No Unit Owner, occupant or other person shall conduct repairs or restorations on any motor vehicle, or other vehicle, or race the engine of any vehicle, upon any portion of the Condominium Property. No more than one (1) motorcycle or motor scooter may be parked in a single space, and in no event may a motorcycle or a motor scooter be parked in the same parking space as another vehicle or between any parking spaces. For so long as the Developer conducts any sales or leasing activities on the Condominium Property, its use of parking spaces shall not be impeded or restricted.

The prohibitions on parking contained in this section shall not apply to temporary parking of: (a) commercial vehicles, such as for construction use or providing pick-up and delivery and other commercial services; (b) any vehicles of the Declarant, or its affiliates or designees, used for construction, maintenance, repair, decorating, sales or marketing purposes; or (c) service vehicles operated in connection with the Association, or its management companies.

Subject to applicable laws and ordinances, any vehicle, boat, motorcycle or trailer parked in violation of these or other restrictions contained herein or in the rules and regulations may be towed by the Association at the sole expense of the owner of such vehicle. The Association shall not be liable to the owner of such vehicle for trespass, conversion or otherwise, nor shall it be guilty of any criminal act, by reason of such towing.

24. Insurance Rates. Nothing shall be done or kept in the Common Elements or within the Units or the Limited Common Elements which will increase the rate of insurance on any property insured by the Association without the approval of the Board, nor shall anything be done or kept in the Units, or on the Limited Common Elements or Common Elements, which would result in the cancellation of insurance on any property insured by the Association or which would be in violation of any law.

25. Association Access to Units. In order to facilitate access to the Units by the Association for the purposes enumerated in Section 11.1 of the Declaration, it shall be the responsibility of all Unit Owners to deliver a set of keys to their Unit to the Association to use in the performance of its functions. No Owner shall change the locks to its Unit without so notifying the Association and delivering to the Association a new set of keys to such Unit.

26. Documents. Each Owner shall be obligated to deliver the documents received from the Developer, or from any prior Owner, containing this Declaration and any other declarations and documents, and any modifications thereto, to any purchaser or grantee of their Unit. Notwithstanding the foregoing, in the event of loss or damage to the documents they may be obtained from the Association upon payment of the actual cost for preparing and furnishing

the documents to any Owner requesting them.

27. Rules and Regulations. As provided in the By-Laws, the Board of Directors may adopt rules and regulations applicable to all portions of the Condominium Property other than the property owned by the Declarant. In the event that such rules or regulations are adopted, they may be enforced in the same manner as the restrictions set forth in this Section and may be modified, added to or revoked, in whole or in part, by the Board of Directors, and as provided in the By-Laws.

28. Effect on Developer. The restrictions and limitations set forth in Section 17.4 of the Declaration shall not apply to the Developer or to Units owned by the Developer, except that the Developer shall be subject to the requirement that prior written approval of the Condominium Association be obtained for leases of Units set forth in Section 17.2 of the Declaration and to the pet restrictions set forth in Section 17.4 of the Declaration. The Developer shall also be subject to any restrictions in Section 17.23 on the type of vehicles allowed to park on the Condominium or on any Association Property; however the Developer and its designees shall be exempt from any such restrictions if the vehicle is engaged in any activity relating to construction, decorating, maintenance, sale, rental or marketing of Units.

29. Selling and Mortgaging of Units. No Unit Owner other than the Developer may sell their Unit, except by complying with the following provisions: Any Unit Owner who receives a bona fide offer to purchase a Unit (such offer to purchase a Unit is called an "Outside Offer", the party making any such Outside Offer is called an "Outside Offeror", and the Unit Owner to whom the Outside Offer is made is called an "Offeree Unit Owners"), which he intends to accept shall give notice by certified and/or registered mail to the Board of Directors of the receipt of such Outside Offer. Said notice shall also state the name and address of the Outside Offeror, the terms of the proposed transaction and such other information as the Board of Directors may reasonably require and shall be accompanied by a check in the amount of \$100.00 (or such greater amount as may be required by the Association and permitted by the Act) representing a screening fee. The giving of such notice to the Board of Directors shall constitute an offer by such Unit Owner to sell his Unit to the Association or to its designee upon the same terms and conditions as contained in such Outside Offer and shall also constitute a warranty and representation to the Association by the Unit Owner who has received such Outside Offer that such Unit Owner believes the Outside Offer to be bona fide in all respects. The Offeree Unit Owner shall submit in writing such further information with respect thereto as the Board of Directors may reasonably request. Not later than twenty (20) days after receipt of such notice, together with such further information as may have been requested, the Association or its designee may elect, by sending written notice to such Offeree Unit Owner before the expiration of said twenty (20) day period, by certified and/or registered mail, to purchase such Unit upon the same terms and conditions as contained in the Outside Offer and as stated in the notice from the Offeree Unit Owner. See Section 18 of the Declaration for additional details.

The Condominium Association is empowered to adopt rules and regulations governing the operation, use and maintenance of the Condominium Property.

EASEMENTS

Title to each Unit will be subject to the easements described below, as well as additional easements provided for in the Declaration of Condominium. Any easement in favor of a public

or private utility or similar company or authority may be granted by the Developer or by the Association on a “blanket” basis or by use of a specific legal description.

A. Support. Each Unit, the Building and the Improvements shall have an easement of support and necessity in favor of all other Units, the Common Elements, and any other structure or Improvement which abuts any Unit, Building or Improvements.

B. Utility and Other Services: Drainage. Non-exclusive easements are reserved under, through and over the Condominium Property as may be required from time to time for utility and other services and drainage in order to serve the Condominium. A Unit Owner shall do nothing within or outside his Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility or other service or drainage facilities or the use of these easements. The Association or its agents shall have an irrevocable right of access to each Unit and to the Limited Common Elements to maintain, repair or replace the pipes, wires, ducts, vents, cables, conduits and other utility, cable television, communications and similar systems, hot water heaters, service and drainage facilities, and to Common Elements contained in the Unit or elsewhere in the Condominium Property, and to remove any improvements interfering with or impairing such facilities or easements herein reserved; such right of access, except in the event of an emergency, shall not unreasonably interfere with the Unit Owner’s permitted use of the Unit and Limited Common Elements.

C. Beach Access. The beach areas within and adjacent to the project are subject to the rights of the public to use public beaches provided under applicable law. Additionally, the City of Sunny Isles Beach may require the granting of a beach access easement along either the southern or northern boundary of the property.

D. Landscape Easement. A 10-foot wide area along the _____ Avenue (western) boundary of the Condominium will be subject to an easement in favor of the City to enable the implementation of its Streetscape Master Plan.

The Condominium will also be subject to certain easements and rights granted by the Developer under that certain Easement Declaration (the “Easement Declaration”). These easements include (but are not limited to):

E. Service Entry. Easements allowing the use of an area along the northern boundary of the Condominium, as a service entry and a driveway for use in connection with the adjacent

F. Pier Access. Easements allowing the use of an area along the southern boundary of the Condominium for public pedestrian ingress and egress between the _____ and the adjacent _____

In addition, the Easement Declaration grants various easements in favor of the Condominium, including easements for subjacent and overhead support, and air rights, for any portions of the Condominium which may extend above those portions of the _____ described therein.

Additional easements provided for in the Declaration of Condominium and the Florida Condominium Act are not fully summarized here.

PLATS, ZONING, SURVEYING, PERMITS AND ENVIRONMENT

Plats

The Condominium is legally described as:

Zoning

Both the City of _____, _____ Zoning Ordinances and the restrictions on use to be recorded by the Developer in the Declaration restrict the use of the Units to single family residential use.

Surveying

All of the Units will be depicted on a survey, which will be attached to the Declaration and recorded in the Public Records of _____ County, _____ See Exhibit 1 to the Declaration as set forth in the Prospectus.

Permits

We will obtain the necessary building permits for the construction of the Condominium from the proper governmental authorities prior to the commencement of construction. The building permit must be obtained from the Building Department of The City of _____, _____, whose address is _____, _____, _____. Additionally, prior to construction, a coastal construction control line permit must be obtained from the State of Florida Department of Environmental Protection, whose address is _____, _____, _____.

Environment

The Condominium will be located in The City of _____, _____. A Phase I Environmental Site Assessment performed on _____, _____, by _____ revealed no evidence of any recognized environmental conditions. No determination has been made as to the possible adverse effects, if any, which the Condominium may have upon the environment and surrounding area.

ROADS

ACCESS TO THE CONDOMINIUM (THE SUBDIVISION)

Access to the Condominium is via _____ Boulevard, which is currently a two-lane road, and which connects to _____ Avenue (State Road _____), which is currently a six-lane divided public street. The width of the wearing surface of _____

Avenue is approximately 100 feet, and is asphalt covered.

_____ Boulevard, which is not a dedicated street, is located within a portion of _____, which is adjacent to the Condominium, and will be maintained by the Condominium Association pursuant to that certain Permit Agreement dated _____, and Resolution Nos. _____, and _____ of the City of _____, Florida. The width of the wearing surface of _____ Boulevard is approximately 50 feet, and is asphalt covered.

_____ Avenue is a dedicated street, primarily maintained by _____ County. You will not be assessed for the maintenance costs incurred for this road.

The City of _____ is responsible for maintenance of _____ Avenue. All roads will be maintained so as to provide access on a year round basis.

Your cost with respect to road maintenance is included within the budgets of The Condominium Association, which are set forth in Exhibit F to the Prospectus.

The Condominium is located in the City of _____ Florida, _____ miles north of downtown _____, the county seat of _____ County, and _____ miles south of _____ County, _____. _____ County, _____ has a population of approximately _____ persons (1997 Mid-Year Estimate, Florida Department of Planning, Development, and Regulations Research).

UTILITIES

In this section, we will discuss the availability and cost of basic utilities. The areas covered will be water, sewer, electricity, telephone, and fuel or other energy sources.

WATER

The Condominium will be served by a central water system. The domestic water supply will be provided by the City of _____ Public Services Department “_____”. The main business office of _____ is located at _____.

The water mains will be extended in front of the Condominium Property. The infrastructure associated with the central water system will be constructed by us at the time of the construction of the Condominium. Construction of the water facilities will be completed and service will be available for your Unit when you receive title to your Unit. We estimate that construction will be completed and service for the Condominium will be available in _____.

NO FUNDS HAVE BEEN SET ASIDE IN AN ESCROW OR TRUST ACCOUNT, NOR HAVE ANY OTHER FINANCIAL ARRANGEMENTS BEEN MADE TO ASSURE THE COMPLETION OF THE WATER SYSTEM.

We will obtain all of the necessary permits for the construction of the infrastructure associated with the central water system in the Condominium. _____ and the Developer have not yet entered into the necessary contracts with respect to the water system.

The chemical and bacteriological content of the water system is periodically tested by _____; the tests show that the water at _____'s existing water plant meets all standards for a public water supply.

_____ has determined that its existing central water plant has the capacity to serve the anticipated population of The Condominium.

We will pay all of the construction costs to complete the infrastructure associated with the central water system. You will not have to pay any connection or tap-in fees.

You will not be permitted to install an individual water system and water will not be available until the central system is extended to the Condominium.

SEWER

The Condominium will be served by a central sewage system provided by the _____ (“_____”) with offices at _____.

Sewer mains will be installed in front of the Condominium Property. The infrastructure associated with the central sewage system of the Condominium will be constructed by us at the time of the construction of the Condominium. Construction of the sewer system will be completed when you receive title to your Unit. We estimate that construction will be completed and service for the Condominium will be available in _____.

We will pay all of the construction costs to complete the infrastructure associated with the central sewer system. You may have to pay connection or tap-in fees.

You will not be permitted to install an individual sewer system and sewer service will not be available until the central system is in place.

NO FUNDS HAVE BEEN SET ASIDE IN AN ESCROW OR TRUST ACCOUNT NOR HAVE ANY OTHER FINANCIAL ARRANGEMENTS BEEN MADE TO ASSURE THE COMPLETION OF THE SEWER SYSTEM.

ELECTRICITY

Electricity will be provided, subject to governmental rate regulations, on an individual basis by _____ (“_____”), whose address is _____. Primary electrical service lines will be extended in front of the Condominium Property. The construction of the lines and service to the ultimate consumer (the buyer) will be completed by _____ and by the Developer as the Condominium is constructed.

We will pay all of the construction costs to complete the infrastructure associated with the electrical system. You may be charged an installation or connection fee by _____ once your Unit is complete and ready to receive electrical power.

TELEPHONE SERVICE

It is presently contemplated that telephone service will be provided, subject to governmental rate regulations, on an individual basis by _____, whose address is _____. Service lines will be extended in front of the Condominium Property. It is presently contemplated that the construction of telephone lines and service to the ultimate consumer (the Buyer) will be completed by _____ and by the Developer as the Condominium is constructed.

We will pay all of the construction costs to complete the infrastructure associated with telephone service. You may be charged an installation or connection fee by _____ once your Unit is complete and ready to receive telephone service.

FUEL OR OTHER ENERGY SOURCE

There will be no other source of energy available to the Unit Owners, except electricity. Natural gas will be provided to the Condominium by _____ for maintenance purposes.

FINANCIAL INFORMATION

The discussion in this section will focus on our financial position.

_____, a _____ limited liability company, is a subsidiary of _____, a _____ limited liability company, which is wholly owned. _____ was organized for the development of this condominium project. It has a limited operating history and did not experience an operating loss during the fiscal year ending _____. The Financial Statements for _____ have not been audited.

Copies of the un-audited Financial Statements for _____ (a newly formed entity), as of _____, are available upon request.

LOCAL SERVICES

In this section, we will discuss the availability of fire and police protection, the location of schools, the location of medical care and shopping facilities, and other services.

FIRE PROTECTION

Fire protection is provided by the _____ County Fire Department on a year round basis.

POLICE PROTECTION

Police protection is provided by the City of _____ Police Department on a year round basis. There may also be a private electronic surveillance system, consisting of monitoring devices. The presence, scope or adequacy of controlled access and surveillance is not guaranteed or insured.

SCHOOLS

The _____ County Public School system is available to all residents of the condominium. Elementary, junior and senior high schools are located in northern _____ County, _____. Free school bus transportation will be available.

Numerous public and private universities and colleges are located in the County and _____ County areas.

The nearest hospital available to residents of the Condominium is _____, a _____-bed acute care facility, which is located at _____, within approximately _____ (____) miles of the Condominium. Ambulance service is provided.

PHYSICIANS AND DENTISTS

There are numerous physicians' and dentists' offices located in the area.

SHOPPING FACILITIES

_____ Shopping Center, which is located at _____ and _____ Plaza, which is located at _____, and numerous other shopping centers and facilities are located within close proximity to the Condominium.

MAIL SERVICE

There will be mail service to the Condominium.

PUBLIC TRANSPORTATION

There is no public transportation system within the Condominium. Public transportation is available along _____ Avenue, which is the street on which the condominium is located.

RECREATIONAL FACILITIES

RECREATIONAL FACILITIES TO BE COVERED

The recreational facilities described below will be constructed on the Condominium Property, and will therefore constitute Common Elements of the Condominium. Such recreational facilities will be for the exclusive use of Unit Owners in the Condominium. Unit Owners in the Condominium will also be permitted to use the recreational facilities located within the Development that are contiguous to the Condominium.

RECREATIONAL FACILITY CHARTS:

Facility	Percentage of Construction Now Complete	Estimated Date of Start of Construction (Month/Year)	Estimated Date Start of Construction (Month/Year)	Financial Assurance of Completion	Buyer's Annual Cost or Assessment
Business Center	0%	November 2002	August 2005	None	Included within association assessment (See Budget)
Conference Room	0%	November 2002	August 2005	None	Included within association assessment (See Budget)
Mail Room	0%	November 2002	August 2005	None	Included within association assessment (See Budget)
Men's Restrooms (lobby and 2nd level)	0%	November 2002	August 2005	None	Included within association assessment (See Budget)
Women's Restrooms (lobby and 2nd level)	0%	November 2002	August 2005	None	Included within association assessment (See Budget)
Massage Room	0%	November 2002	August 2005	None	Included within association assessment (See Budget)
Gym	0%	November 2002	August 2005	None	Included within association assessment (See Budget)

Constructing the Facilities

We are responsible for the construction of all the recreational facilities. All costs incurred in this construction will be paid by us.

NO FUNDS HAVE BEEN SET ASIDE IN AN ESCROW OR TRUST ACCOUNT NOR HAVE ANY OTHER FINANCIAL ARRANGEMENTS BEEN MADE TO ASSURE THE COMPLETION OF SUCH FACILITIES.

Maintaining the Facilities

The Condominium Association is and will be responsible for the maintenance of the recreational facilities located within the Condominium after the facilities are completed.

Transfer of the Facilities

When title to your Unit is conveyed to you, an undivided interest in all of the Condominium's common areas is also conveyed to you, based upon your share of the Common Elements of the Condominium.

Permits

The building permits for the construction of all the recreational facilities have not been obtained. There is no assurance that the Unit Owners will be able to use the recreational facilities.

Who May Use the Facilities

Unit Owners in all of the condominiums located in the Development may use the recreational facilities located on Common Properties. The recreational facilities will not be open to the general public.

The Condominium will include parking and recreational facilities within the Condominium Property. Such facilities will become Common Elements of the Condominium, for the exclusive use of the Condominium's Unit Owners.

SUBDIVISION CHARACTERISTICS AND CLIMATE

In this section, we will discuss the basic terrain of the Condominium Property, its climate and any nuisances or hazards in this area.

GENERAL TOPOGRAPHY

The Condominium is located adjacent to the Atlantic Ocean and is beachfront property and contains approximately 1.58 acres of land. The amount of open space on a percentage basis will be approximately 40.5%.

WATER COVERAGE

None of the Units in the Condominium is or will be covered by water at any time during the year.

DRAINAGE AND FILL

Although no drainage or fill is necessary to render the Condominium Property useful for the purpose for which Units constructed thereon will be used, the building site will be prepared and compacted pursuant to all governmental building codes and requirements for the construction of the Condominium.

FLOOD PLAIN

The Condominium is in an area designated by the Federal Emergency Management Administration as flood prone. The Condominium Association will purchase a master flood insurance policy on behalf of all Unit Owners, the cost of which will be a Common Expense (See Condominium Budget set forth in Exhibit B of the Prospectus). However, it may be necessary for each individual Unit Owner to purchase additional flood insurance if required by financial institutions that may be selected to finance the purchase of a Unit.

FLOODING AND SOIL EROSION

The Development is bulkheaded to prevent soil erosion. In addition, the Condominium Property will have drainage facilities, coupled with landscaping and ground cover, to control soil erosion.

Storm drainage will be provided to alleviate surface water run-off, and will be discharged by exfiltration to re-charge the ground waters, to be located throughout the Condominium Property.

NUISANCES

Other than nuisances associated with the ongoing construction of neighboring condominiums, there are no nuisances which adversely affect the Condominium Property.

HAZARDS

Other than those safety hazards associated with ongoing construction of neighboring condominiums, we are unaware of any unusual safety factors or hazards which adversely affect the Condominium Property.

The area is generally subject to hurricanes, as is the entire Florida peninsula.

_____ County does not have a system for rating the land for fire hazards.

CLIMATE

The average temperatures for the warmest and coldest months of the year are contained in the table below. The area has an average annual rainfall of 57.55 inches.

<u>Month</u>	<u>High</u>	<u>Low</u>	<u>Mean</u>
January	75.0°	59.2°	67.1°
August	89.2°	76.5°	82.8°

OCCUPANCY

As of the effective date of this filing, there are no residences in the Condominium occupied on a full time or part-time basis.

ADDITIONAL INFORMATION

In this section, we will discuss the following:

1. _____
2. The Annual Real Estate Taxes
3. Resale or Exchange Program
4. Equal Opportunity in Unit Sales
5. Listing of Units

When you acquire title to a Unit, you automatically become a member of the Condominium Association. The Condominium Association has been formed.

THE DEVELOPER HAS THE RIGHT TO RETAIN CONTROL OF THE CONDOMINIUM ASSOCIATION AFTER A MAJORITY OF THE UNITS HAVE BEEN SOLD.

The Developer has reserved the right to elect all of the Directors of the Condominium Association until title to at least 15% of the Units ultimately to be operated by the Condominium Association are so transferred, at which time the Owners can elect one-third (1/3) of the Board of Directors. Unit Owners may elect a majority of the Board of Directors when the first of the following occurs: (a) 3 years after title to at least 50% of all Units ultimately to be operated by the Condominium Association are so transferred; (b) 3 months after title to at least 90% of all Units ultimately to be operated by the Condominium Association are so transferred; (c) when all Units ultimately to be operated by the Condominium Association have been completed, some have been conveyed to purchasers and none of the others are being offered for sale by the Developer in the ordinary course of business; (d) when some of the Units have been conveyed and none of the others are being constructed or offered for sale by the Developer in the ordinary

course of business; or (e) 7 years after recordation of the Declaration.

Membership in the Condominium Association is mandatory. Members shall be subject to the payment of condominium assessments. All Unit Owners will be obligated to contribute to the actual cost of operating and maintaining the Common Elements and Association Property. An estimate of common expenses for the Condominium and estimated operating budgets are set forth in Exhibit F of the Prospectus.

The Developer is not guaranteeing either the level of assessments for common expenses of the Condominium imposed on Unit Owners or the accuracy of the estimated operating budget.

The operation of the Condominium shall be vested in the Condominium Association. No Unit Owner, except an officer of the Condominium Association, shall have any authority to act for the Condominium Association. The powers and duties of the Condominium Association shall include those set forth in the Articles, the Bylaws, the Condominium Act, and the Declaration.

TAXES

We will be responsible for payment of all real estate taxes and assessments until such time as title to your Unit is conveyed to you. At the time of conveyance, real estate taxes and assessments will be prorated as of the closing date in a reasonable manner as determined by the Developer.

In subsequent tax years, statements from the _____ County Tax Collector will be sent directly to you. Tax assessments and millage rates are at the sole discretion of the _____ County Tax Assessor and the County Commissioners of _____ County, _____.

It is estimated that annual taxes on Units valued from \$200,000 (low) to \$350,000 (average) to \$1,000,000 (high) will range in the approximate of \$4,445.90 to \$7,780.33 to \$22,229.50, respectively, based on current millage tax rates.

The Condominium is located within The City of _____ Florida, which is a separate taxing authority. The City makes annual assessments, which are to be paid to the _____ Tax Collector.

The foregoing valuations are based on estimates by the Developer since the purchase price for each Unit has not been determined at this time. All rights are reserved by the Developer to revise prices without notice.

RESALE OR EXCHANGE PROGRAM

We have no program to assist you in the resale of your Unit.

We have no program or provision which allows you to exchange your Unit for another.

We have no restrictions or limitations on the resale of your Unit to third parties, except for the restriction found in Section 17.12 of the Declaration of Condominium prohibiting any signs upon any Unit or the Common Elements and Section 18 of the Declaration subjecting resales to the right of first refusal in favor of the Condominium Association.

EQUAL OPPORTUNITY IN UNIT SALES

We are in compliance with Title VIII of the Civil Rights Act of 1968. We have not, and will not, either directly or indirectly, discriminate against you or any other prospective purchaser on the basis of race, color, religion, sex or national origin. Furthermore, we will not indicate a preference for, or a rejection of any particular group in our marketing and advertising, rendering of unit services, requiring terms and conditions of unit sales, or in any other manner.

LISTING OF UNITS

The Unit Number designations and the corresponding shares, expressed as a percentage of the Common Elements, Common Expenses and Common Surplus appurtenant to each Unit in the Condominium are as follows:

Unit Type	Unit Designation	Number of Bedrooms And Bathrooms		Number of Units	Unit Percentage	Extension
		Bedrooms	Bathrooms			
A	1102,1202,1402,1502,1602,1702,1802,1902,2002,2102,2202,2302,2402,2502,2602,2702,2802,2902,3002,3101,3202,3302,3402,3502,3602,3702,3802,3902,4002,4102,4202	2	2-1/2	31	0.339%	10.511%
ARev	1103,1203,1403,1503,1603,1703,1803,1903,2003,2103,2203,2303,2403,2503,2603,2703,2803,2903,3003,3103,3203,3303,3403,3503,3603,3703,3803,3903,4003,4103,4203	1	1-1/2	31	0.339%	10.511%
B	1101,1201,1401,1501,1601,1701,1801,1901,2001,2101,2201,2301,2401,2501,2601,2701,2801,2901,3001,3101,3201,3301,3401,3501,3601,3701,3801,3901,4001,4101,4201	2	2-1/2	31	0.344%	10.649%
C	1110,1210,1410,1510,1610,1710,1810,1910,2010,2110,2210,2310,2410,2510,2610,2710,2810,2910,3010,3110,3210,3310,3410,3510,3610,3710,3810,3910,4010,4110,4210	1	1-1/2	31	0.212%	6.561%
CRev	1105,1205,1405,1505,1605,1705,1805,1905,2005,2105,2205,2305,2405,2505,2605,2705,2805,2905,3005,3105,3205,3305,3405,3505,3605,3705,3805,3905,4005,4105,4205	1	1-1/2	31	0.212%	6.561%
D	1209,1409,1509,1609,1709,1809,1909,2009,2109,2209,2309,2409,2509,2609,2709,2809,2909,3009,3109,3209,3309,3409,3509,3609,3709,3809,3909,4009,4109,4209	2	2	30	0.268%	8.038%
E	1209,1408,1508,1608,1708,1808,1908,2008,2108,2208,2308,2408,2508,2608,2708,2808,2908,3008,3108,3208,3308,3408,3508,3608,3708,3808,3908,4008,4108,4208	2	2	30	0.301%	9.035%
ERev	1207,1407,1507,1607,1707,1807,1907,2007,2107,2207,2307,2407,2507,2607,2707,2807,2907,3007,3107,3207,3307,3407,3507,3607,3707,3807,3907,4007,4107,4207	2	2	30	0.301%	9.35%
F	1206,1406,1506,1606,1706,1806,1906,2006,2106,2206,2306,2406,2506,2606,2706,2806,2906,3006,3106,3206,3306,3406,3506,3606,3706,3806,3906,4006,4106,4206	2	2-1/2	30	0.346%	10.394%
Unit Type	Unit Designation	Number of Bedrooms And Bathrooms		Number of Units	Unit Percentage	Extension
		Bedrooms	Bathrooms			

G	1104,1204,1404,1504,1604,1704,1804, 1904,2004,2104,2204,2304,2404,2504 2604,2704,2804,2904,3004,3104,3204, 3304,3404,3504,3604,3704,3804,3904, 4004,4104,4204	2	2-1/2	31	0.363%	11.252%
H	602,702,802,902,1002	2	2-1/2	5	0.359%	1.797%
J	603,703,803,903,1003	1	1	5	0.192%	0.959%
K	601,701,801,901,1001	2	2-1/2	5	0.361%	1.806%
L	P1-1-4302	3	3-1/2	1	0.638%	0.638%
M	PH-4310	3	3-1/2	1	0.556%	0.556%
	P11-4305	3	3-1/2	1	0.556%	0.556%
	PH-4308	3	4-1/2	1	0.571%	0.571%
	PH-4307	3	4-1/2	1	0.571%	0.571%
Totals				326		100.000%

COST SHEET, SIGNATURE OF SENIOR EXECUTIVE OFFICER

COST SHEET

In addition to the purchase price of your Unit, there are other expenditures which must be made. Listed below are the major costs. There may be other fees for use of the recreational facilities.

AU costs are subject to change.

Sales Price of Unit: \$ _____

Estimated One-Time Charges: \$ _____

You will pay a closing charge equal to one and three-quarters (1.75%) percent of the Total Purchase Price. This closing charge will be used, in part, to pay for documentary stamp taxes affixed to the deed of conveyance, recording costs in connection with the deed, and for the premium on the owner's title insurance policy.

If the purchase is being financed, you will bear all costs and expenses of such financing. \$(undetermined)___

At closing, you will pay an amount equal to two (2) months of the assessments payable to the Condominium Association, as contribution to the working capital of the Association. \$ _____

If you choose to be represented by an attorney or other closing agent, payment of your own attorney or closing fee shall be at your expense. \$(undetermined)___

\$ _____

Total of Sales Price and Estimated One Time Charges: \$ _____

Estimated annual charges, exclusive of utility use fees \$ _____

1. Taxes Unit Assessed at \$ _____

2. Condominium Association Assessment \$ _____

The information contained in this Property Report is an accurate description of our Condominium and development plans.

a Florida _____ company

By: _____

RECEIPT, AGENT CERTIFICATION AND CANCELLATION PAGE
PURCHASER RECEIPT
Important: Read carefully

Name of subdivision _____, a Condominium
ILS Number: _____ Date of Report _____

We must give you a copy of this Property Report and give you an opportunity to read it before you sign any contract or agreement. By signing this receipt, you acknowledge that you have received a copy of our Property Report.

Received by _____ Date _____

Street address _____
City _____ State _____ Zip _____

If any representations are made to you which are contrary to those in this Report, please notify the:

Office of Interstate Land Sales Registration
HUD Building, 451 Seventh Street, S.W.
Washington, D.C. 20410

AGENT CERTIFICATION

I certify that I have made no representations to the person(s) receiving this Property Report which are contrary to the information contained in this Property Report.

Unit: _____ Condominium: _____, a Condominium

Name of salesperson _____

Signature _____ Date _____

PURCHASER CANCELLATION

If you are entitled to cancel your purchase contract, and wish to do so, you may cancel by personal notice, or in writing. If you cancel in person or by telephone, it is recommended that you immediately confirm the cancellation by certified mail. You may use the form below.

Name of subdivision: _____, a Condominium

Date of contract _____

This will confirm that I/we wish to cancel my/our purchase contract.

Purchaser(s) signature _____ Date _____

Drafting Suggestions for Amendments to CIC CC&Rs

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SYMPOSIUM: COMMON INTEREST COMMUNITIES: EVOLUTION AND REINVENTION

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CC & R Language to permit changes in Use Restrictions and Rules

Rule Making Authority.

(a) Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may modify, cancel, limit, create exceptions to, or expand the Use Restrictions and Rules. The Board shall send notice by mail to all Owners concerning any such proposed action at least five business days prior to the Board meeting at which such action is to be considered. Voting Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Such action shall become effective, after compliance with subsection (c) below, unless disapproved at a meeting by Voting Members representing more than 50% of the total Class "A" votes in the Association and by the Class "B" Member, if any. The Board shall have no obligation to call a meeting of the Voting Members to consider disapproval except upon receipt of a petition of the Voting Members as required for special meetings in the By-Laws. Upon such petition of the Voting Members prior to the effective date of any Board action under this Section 3.2(a), the proposed action shall not become effective until after such meeting is held, and then subject to the outcome of such meeting.

(b) Alternatively, Voting Members, representing more than 50% of the total Class "A" votes in the Association at an Association meeting duly called for such purpose, may vote to adopt rules which modify, cancel, limit, create exceptions to, or expand the Use Restrictions and Rules then in effect. Such action shall require approval of the Class "B" Member, if any.

(c) Prior to any action taken under this Section becoming effective, the Board shall send a copy of the new rule or explanation of any changes to the Use Restrictions and Rules to each Owner. The effective date shall be not less than 30 days following distribution to Owners. The Association shall provide, without cost, a copy of the Use Restrictions and Rules then in effect to any requesting Member or Mortgagee.

(d) No action taken under this Article shall have the effect of modifying, repealing or expanding the Design Guidelines or any provision of this Declaration other than the Initial Use Restrictions and Rules set forth in Exhibit "C." In the event of a conflict between the Design Guidelines and the Use Restrictions and Rules, the Design Guidelines shall control.

(e) The procedures required under this Section 3.2 shall not apply to the enactment and enforcement of administrative rules and regulations governing use of the Common Area unless the Board chooses in its discretion to submit to such procedures. Examples of such administrative rules and regulations shall include, but not be limited to, hours of operation of a recreational facility, speed limits on private roads, and the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times. The Board shall exercise business judgment in the enactment, amendment, and enforcement of such administrative rules and regulations.

The following CC & R language sets out a "Bill of Rights" for the association members:

Protection of Owners and Others.

Except as may be set forth in this Declaration (either initially or by amendment) all Rules shall comply with the following provisions:

(i) Similar Treatment. Similarly situated Owners shall be treated similarly.

(ii) Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Lots of the kinds normally displayed in dwellings located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt time, place, and manner restrictions with respect to displays visible from outside the dwelling.

No rules shall regulate the content of political signs; however, rules may regulate the time, place and manner of posting such signs (including design criteria).

(iii) Household Composition. No Rule shall interfere with the freedom of Owners to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Lot on the basis of the size and facilities of the Lot and its fair use of the Common Area.

(iv) Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance.

(v) Allocation of Burdens and Benefits. No Rule shall alter the allocation of financial burdens

among the various Lots or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Area available or from denying use privileges to those who abuse the Common Area or violate the Restrictions. This provision does not affect the right to increase the amount of assessments as provided in article<uscore><uscore><uscore> (assessments).

(vi) Alienation. No rule shall prohibit leasing or transfer of any Lot, or require consent of the Association or Board for leasing or transfer of any Lot; provided, the Association or the Board may require a minimum lease term of up to 12 months. The Association may require that Owners use lease forms approved by the Association.

The following additional rights should be added:

(vii) Abridging Existing Rights. No rule shall require an Owner to dispose of personal property that was in or on a Lot prior to the adoption of such Rule if such personal property was in compliance with all rules previously in force. This exemption shall apply only during the period of such Owner's ownership of the Lot, and shall not apply to subsequent Owners who take title to the Lot after adoption of the Rule.

(viii) Reasonable Rights to Develop. No rule or action by the Association or Board shall unreasonably impede Declarant's right to develop the Property.

The limitations in subsections (i) through (viii) of this Section shall only limit rulemaking authority exercised under subsection (b); they shall not apply to the use restrictions set forth in Article <uscore><uscore><uscore> or to amendments to this Declaration adopted in accordance with Section <uscore><uscore><uscore><uscore>.

Used in conjunction with the rule making procedure discussed supra note 293, this Bill of Rights gives both flexibility and protection.

CC&R Language setting structured hearing procedures for a violation thereof:

Hearing. If a hearing is requested within the allotted 10-day period, the hearing shall be held before the Covenants Committee, or if none has been appointed, then before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or his or her representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

CC & R Language establishing a Covenants Committee:

Covenants Committee. In addition to any other committees which the Board may establish

pursuant to Section 5.1, the Board may appoint a Covenants Committee consisting of at least three and no more than seven Members. Acting in accordance with the provisions of the Declaration, these Bylaws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 3.24 of these Bylaws.

{ Another approach is to utilize a board committee with an appeal to the board en banc }

CC & R Language mandating board training:

Board Training Seminar. The Board shall make available to each director, at a time reasonably convenient for the subject directors, a board training seminar within each director's first six months of directorship. Such seminar shall educate the directors about their responsibilities and duties. The seminar may be in live, video tape, audio tape, or other format. Each director shall attend a board training seminar within the first six months he or she serves as a director. All expenses associated with any Board training seminar shall be a Common Expense of the Association.

CC & R Language authorizing services to members and obtaining reimbursement for expenses for such services:

Provision of Services, Facilities, and Programs.

The Association may provide services to, and programs and facilities for, Members and their guests, lessees, and invitees, as well as the community surrounding the Property. The Association may enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services, facilities, or programs. The Board may charge use and consumption fees for its activities this Section authorizes.

Specific Assessments.

The Association shall have the power to levy Specific Assessments against a particular Lot to cover the costs, including overhead and administrative costs, of providing services to Lots upon request of an Owner pursuant to any menu of special services which may be offered by the Association. Specific Assessments for special services may be levied in advance of the provision of the requested service.

CC & R Language to empower associations to provide social, educational, environmental, wellness, transportation and other services:

Provision of Services.

The Board may enter into and terminate contracts or agreements with other entities, including Declarant, to provide services to and facilities for the Members and their guests, lessees and invitees; the Board may charge use and consumption fees for such services and facilities. By way of example, some services and facilities which might be offered include landscape maintenance,

pest control service, cable television service, security, caretaker, transportation, fire protection, utilities, and similar services and facilities.

CC & R Language that promotes association's ability to enter into cooperative agreements with other entities:

Relations with Other Properties. The Association may enter into contractual agreements or covenants to share costs with any neighboring property to contribute funds for, among other things, shared or mutually beneficial property or services or a higher level of Association Property maintenance.

Relations with Other Entities. The Association may enter into agreements with other entities for the benefit of the Property and its residents, as well as the larger community surrounding the Property. The purposes for such agreements may include, without limitation:

- (a) preservation and maintenance of natural areas, wildlife preserves, or similar conservation areas and sponsorship of educational programs and activities which contribute to the overall understanding, appreciation, and preservation of the natural environment within the Property or the surrounding community;
- (b) programs and activities which serve to promote a sense of community, such as recreational leagues, cultural programs, educational programs, festivals, holiday celebrations and activities, a community computer network, and recycling programs; and
- (c) social services, community outreach programs, and other charitable causes.

CC & R Language that allows borrowing by the board:

Borrowing. To the fullest extent allowed by Georgia laws, the Board shall have the power to borrow money, contract debts, and issue evidences of indebtedness for any purpose. The Board shall have the power to secure such debts, which shall include, without limitation, the power to pledge collateral, including property and future assessment income.

CC & R Language that authorizes imposition and collection of transfer fees as method of funding association activities:

Transfer Fees.

- (a) Authority. The Board shall have the authority, on behalf of the Association, to establish and collect a transfer fee from the transferring Owner upon each transfer of title to a Unit in Seven Oaks which fee shall be payable to the Association by at the closing of the transfer and shall be secured by the Association's lien for assessments under Section 8.8.
- (b) Fee Limit. The Board shall have the sole discretion to determine the amount and method of determining any such transfer fee, which may, but is not required to, be determined based upon a sliding scale which varies in accordance with the "Gross Selling Price" of the property or another

factor as determined by the Board; provided, however, any such transfer fee shall be equal to an amount not greater than <uscore><uscore><uscore><uscore> % of the Gross Selling Price of the property. For the purpose of determining the amount of the transfer fee, the Gross Selling Price shall be the total cost to the purchaser of the property, excluding taxes and title transfer fees as shown by the amount of tax imposed by <uscore><uscore><uscore><uscore><uscore><uscore><uscore>&uscore;.

(c) Purpose. All transfer fees which the Association collects shall be deposited into a segregated account to use for such purposes as the Board deems beneficial to the general good and welfare of Seven Oaks which the Governing Documents do not otherwise require to be addressed by the Association's general operating budget. By way of example and not limitation, such transfer fees might be used to assist the Association or one or more tax-exempt entities in funding:

(i) preservation and maintenance of natural areas, wildlife preserves, or similar conservation areas, and sponsorship of educational programs and activities which contribute to the overall understanding, appreciation and preservation of the natural environment at Seven Oaks;

(ii) programs and activities which serve to promote a sense of community within Seven Oaks, such as recreational leagues, cultural programs, educational programs, festivals and holiday celebrations and activities, a community computer network, and recycling programs; and

(iii) social services, community outreach programs, and other charitable causes.

(d) Exempt Transfers. Notwithstanding the above, no transfer fee shall be levied upon transfer of title to a Unit:

(i) by or to Declarant or an Initial Owner;

(ii) by a Builder who held title solely for purposes of development and resale;

(iii) by a co-owner to any Person who was a co-owner immediately prior to such transfer;

(iv) to the Owner's estate, surviving spouse or child upon the death of the Owner;

(v) to an entity wholly owned by the grantor; provided, upon any subsequent transfer of an ownership interest in such entity, the transfer fee shall become due; or

(vi) to an institutional lender pursuant to a Mortgage or upon foreclosure of a Mortgage; except that no Unit shall be eligible for exemption from payment of the transfer fee if the immediately preceding transfer of title to the Unit was exempted pursuant to this Section.

CC & R Language authorizing creation of a neighborhood:

Neighborhoods. Any Neighborhood, acting either through a Neighborhood Committee elected as provided in Section (- -) of the By-Laws or through a Neighborhood Association, if any, may request that the Association provide a higher level of service that which the Association

generally provides to all Neighborhoods, or may request that the Association provide special services for the benefit of Units in such Neighborhood. Upon the affirmative vote, written consent, or a combination thereof, of Owners of a majority of the Units within the Neighborhood, the Association shall provide the requested services. The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge shall apply at a uniform rate per Unit to all Neighborhoods receiving the same service), shall be assessed against the Units within such Neighborhood as a Neighborhood Assessment.

Exhibit "A" to this Declaration, and each Supplemental Declaration submitting additional property to this Declaration shall initially assign the property submitted thereby to a specific Neighborhood (by name or other identifying designation), which Neighborhood may be then existing or newly created. So long as it has the right to subject additional property to this Declaration pursuant to Section 9.1, Declarant may unilaterally amend this Declaration or any Supplemental Declaration to redesignate Neighborhood boundaries; provided, two or more existing Neighborhoods shall not be combined without the consent of Owners of a majority of the Units in the affected Neighborhoods.

CC & R Language encouraging volunteerism:

Volunteer Clearinghouse. One of the important functions of the Association is to encourage and facilitate the organization of volunteer organizations within the community which will serve the interests of community residents as they may be identified from time to time. The Association may maintain a data bank of residents interested in volunteer organizations and may make such data available to volunteer organizations within the community. The Association, by Board resolution, may also establish or support the establishment of charter clubs within the community or other organizations as it deems appropriate to encourage or facilitate the gathering of Owners and residents of Celebration to pursue common interests or hobbies. Any resolution establishing a charter club shall designate the requirements, if any, for membership therein. The Board may provide for such organizations to be funded by the Association as a Common Expense subject to such rules regarding participation, area of interest or other matters as the Board, in its discretion, may establish. Any charter club shall operate in accordance with the resolution establishing it.

The Association, through its bulletin boards and publications, may assist community groups, religious groups, civic groups, youth organizations, support groups, and similar organizations in publicizing their meetings, events, and need for volunteer assistance.

The nature and extent of any such assistance shall be in the Board's sole discretion. It is not intended that the Association spend its funds for specific advertising or promotion of events of such volunteer groups unless the Board determines that they merit such support as benefiting the entire community. The Association's contribution will be supplemental to funds raised by the volunteer organization.

Chartered Clubs and Other Organizations. One of the important functions of the Association is to encourage and facilitate the organization of organizations which will serve the interests of residents and those in the community surrounding the Property. The Board, acting by resolution,

may establish or support the establishment of organizations as it deems appropriate to encourage or facilitate the gathering of owners, residents, occupants, or those from the surrounding community to pursue common interests or hobbies. Such organizations may, but need not, include "chartered clubs."

The Association may, from time to time, grant charters to groups of individuals who share a particular field of interest. Any such charter may confer privileges and impose responsibilities on the group. Privileges may include, without limitation, financial support; material support; facility use privileges, either with or without charge; priority for facility use; administrative and technical support; and liability insurance coverage.

Members who are interested in establishing a chartered club may petition for a charter from the Association. The Association may, in its sole discretion, grant or deny charter status to any such petitioners.

Any chartered club shall be established by Board resolution. The resolution establishing such club shall designate the requirements, if any, for membership therein and shall set forth (a) the purposes for which such chartered club is established; (b) the privileges granted by the Board to the chartered club; (c) the rules and regulations of such chartered club; and (d) the requirement that the chartered club establish written safety rules and establish a safety committee, both subject to the approval of the Board, if such chartered club is to engage in the use of power equipment or other equipment of a specialized nature. Each chartered club shall operate in accordance with the terms of the resolution establishing such chartered club.

The Board may provide for any organization described in this Section to be funded by the Association as a Common Expense subject to such rules regarding participation, area of interest or otherwise which the Association, in its discretion, may establish. It is not intended that the Association spend Association funds for specific advertising or promotion of events of organizations authorized under this Section unless the Board determines that they merit such support as benefiting the entire community. In the event the Association does contribute to the operation of such organizations, the Association's contribution will be supplemental to funds raised by the organization.

The Association may assist such organizations in publicizing their meetings, events, and activities. The nature and extent of any such assistance shall be in the Board's sole discretion.

CC & R Language limiting the Board's enforcement obligation to reduce unnecessary, unwarranted litigation:

The Association shall not be obligated to take any action if the Board reasonably determines that the Association's position is not strong enough to justify taking such action; that the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or that it is not in the Association's interests, based upon hardship, expense, or other reasonable criteria to pursue enforcement action. Such a decision shall not be construed as a waiver of the right of the Association to enforce such provision at a later time under other

circumstances or estop the Association from enforcing any other covenant, restriction, or rule.

Drafting Issue Checklist for Arbitration Clause

Arbitration Advocacy: From Clause To Hearing

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List Of Drafting Issues

1. Should the parties agree to allow or, by contrast, eliminate discovery?
2. Should the parties limit the time from filing of the demand until the hearing in order to obtain an expedited hearing?
3. What rules of confidentiality should apply?
4. Should written submissions be permitted? Written submissions are often very expensive.
5. Should the parties relax the rules of evidence for the arbitration?
6. Should the parties use one arbitrator or three or even more?
7. Should there be a written decision and, if so should there be findings of fact and conclusions of law and/or reasoning for the award (some foreign courts will not enforce an award without reasoning)?

8. Should the parties select the venue for the arbitration or defer to the arbitration panel or use a variation, such as one that requires the party commencing the arbitration to proceed in the opponent's venue?¹
9. Whether the parties should select an arbitrator in advance and identify that individual in the agreement?
10. Should the parties require the arbitrators to have specific technical expertise?
11. Should the parties adopt the rules of an arbitral institution, such as the AAA, the National Arbitration Forum, International Chamber of Commerce, JAMS and, if so, should any of those rules be modified?
12. What substantive and procedural rules should apply to experts and, if the arbitrator is an expert, should the parties be allowed to present experts at all?
13. Should the arbitrator be required to make an on-site visit to evaluate the property or material at issue?
14. Should the parties include a provision permitting the arbitrator to enter a default? Under the AAA rules, for example, default is sometimes difficult to obtain.
15. Should the arbitration clause be self-executing or do the parties have to seek court intervention to enforce its provisions?
16. Should a company use different procedures for different claims?
17. Do you want transcripts?
18. Should the parties instruct the arbitrator on who has the burden of proof?
19. Do the parties want to require a former judge and invoke the Federal Rules of Civil Procedure simulating federal court procedures?
20. Do the parties want to define a standard of review? Is such a clause permissible in your district?
21. Do you want to expressly limit the jurisdiction, carving out small claims cases or runaway awards?

¹ For example, if one party was in Los Angeles and the other in Alberta, the arbitration would proceed in Los Angeles if the Canadian party presented the arbitration petition.

22. Do you want to empower the arbitration to limit cumulative or duplicate evidence?²
23. Should there be a time limit in which the arbitrator is expected to make rulings and render awards?
24. Should the parties end the case with closing arguments, closing briefs, or both?
25. Do you wish to provide for mandatory settlement discussions and, if so, do you wish to do so before the proceeding begins, after the evidence is presented or at some other time? If settlement meetings are mandatory, should the clause require the attendance of specific party representatives?

² Arbitrators often err on the side of admissibility when making evidentiary decisions, which in turn, increases the length of the hearing. The FAA and the rules governing arbitrations encourage the admission of evidence; even if irrelevant. The FAA provides that awards may be set aside for failure to consider evidence. For example, rule 31(a) of the AAA Commercial Arbitration Rules, “The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. Conformity to legal rules of evidence shall not be necessary.” But this rule can be circumscribed and the hearings expedited through drafting or stipulation of the parties. Such is a suggested course of action should the parties desire a quicker, more streamlined arbitration proceeding.

Sample Arbitration Clauses

Arbitration Advocacy: From Clause To Hearing

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Consideration of these multiple factors in different situations leads to radically different clauses. A starting point for any drafting often is the express adoption of the FAA. Once the parties determine that they wish to proceed, either exclusively or within certain guidelines, to binding arbitration to resolve disputes, adoption of the FAA as the choice of law means a clearer outcome because there has been more attention by the courts to this regime. The phrase to use is:

“that notwithstanding anything to the contrary in the agreement, enforcement of this arbitration clause, matters of arbitration procedure, and enforcement of any resulting award shall be governed by the Federal Arbitration Act, applicable international treaties, and implementing national or domestic law.”

The parties often consider selecting an arbitration provider and providing for the use of it and its rules in their arbitration clause. The arbitration provided is a private company, despite

such official sounding names as the AAA. There are potential advantages to using such a clause: the clauses are brief and they have been construed by both arbitrators and courts. Such clauses incorporate by reference all the institutional rules of the provider which makes express drafting of provisions for discovery, selecting the arbitrators and the like unnecessary. These clauses, though, are merely a starting point and if used carelessly may have unpleasant surprises.

The National Arbitration Forum, www.arbitration-forum.com, recommends the following broad standard arbitration clause for business disputes:

The Parties agree that any claim or dispute between them or against any agent, employee, successor, or assign of the other, whether related to this agreement or otherwise, and any claim or dispute related to the validity of this arbitration clause, shall be resolved by binding arbitration by the National Arbitration Forum, under the Code of Procedure then in effect. Any award of the arbitrator(s) may be entered as a judgment in any court having jurisdiction. In the event a court having jurisdiction finds any portion of this agreement unenforceable, that portion shall not be effective and the remainder of the agreement shall remain effective. Information may be obtained and claims may be filed at any office of the National Arbitration Forum, www.arbitration-forum.com, or at P.O. Box 50191, Minneapolis, MN 55405. This agreement shall be governed by and interpreted under the Federal Arbitration Act, 9 U.S.C. Sections 1-16.

This broad clause does not, however, reveal a significant component of the Forum's procedure. Under the Forum rules "that legal decisions should be decided according to established legal principles." According to the Forum's website, "Forum's arbitrators take an oath promising to render legal decisions according to the law, rather than undefined 'fairness.'" Other organizations encourage their arbitrators to act as a court of equity. As such, if business people are looking for an equitable "merchants court", the National Arbitration Forum is not the right forum and the casual use of such a clause will not serve the parties well. Further, on the drafting issues identified above, the rules of institutional providers are often of no help. For example, the AAA does not set time limits or areas of required expertise for your dispute, and thus the use of a general clause does not change the need to look closely at your own needs.

Using these principles, the authors present four sample clauses. For each of the sample clauses below, we have identified the key concepts driving the outcome.

SAMPLE CLAUSE I

Distribution of Funds in Escrow Account: Addressing Rate Business Issues Through Arbitration

- Any dispute which may arise relating to the distribution of funds in the escrow account, including payment from that account as described above, shall be submitted to binding arbitration before the American Arbitration Association before a single arbitrator. The arbitration is to be conducted in [location] in accordance with the expedited commercial arbitration rules, as existing as of the time the arbitration is commenced, of the American Arbitration Association. Judgment upon the arbitration award may be entered by any court of competent jurisdiction. The arbitrator will be entitled to apportion the costs of the arbitration proceedings and to award any party its attorney fees on such grounds as he or she deems just. The arbitrator will not have authority to award punitive or exemplary damages, but shall have the authority to provide for injunctive relief and to direct the payment of funds held in escrow. The parties do not desire a written opinion. Notwithstanding anything to the contrary in this Agreement, enforcement of this dispute resolution clause, matters of arbitration procedure and enforcement of arbitration awards shall be governed by the Federal Arbitration Act.

Key Points:

1. Language directs and limits arbitrator to the simple matter before her; the language thus controls costs.
2. The parties have no reason to pay an arbitrator for a written opinion or the other trappings of litigation.
3. The clause limits the arbitrator's jurisdiction thereby ensuring court review is available if arbitrator disobeys instructions. By contrast, if the limitations were contractual between the parties, the arbitrator would be effectively free to disobey those instructions.

SAMPLE CLAUSE II

Professional Engagement

- Professional Firm and Client agree that all disputes arising out of or relating to this Agreement will be resolved by three arbitrators of the [**ARBITRAL INSTITUTION such as AAA or JAMS**] at a location convenient to the parties, the final decision on location to be decided by the [**ARBITRAL INSTITUTION**] following consultation with the parties. The parties agree to permit three depositions per side and such additional discovery as the arbitrator shall determine. However, absent exceptional good cause, the arbitrators will not permit third party

discovery depositions or interrogatories. All three arbitrators shall have substantial experience in [PROFESSIONAL FIELD SUCH AS ARCHITECTURE]. The parties desire a written opinion. Notwithstanding anything to the contrary in this Agreement, enforcement of this dispute resolution clause, matters of arbitration procedure, and enforcement of arbitration awards shall be governed by the Federal Arbitration Act. [The professional should consider if there are any ethical limitations on the right to establish an arbitration procedure].

•Key Point: With a complex dispute a real possibility, the parties ensure appropriate expertise and require the arbitrator to provide reasoning supporting what may be a complex decision.

SAMPLE CLAUSE III

By way of introduction, this clause was successfully used to resolve a significant development dispute in the Southwest. A developer had sold land and made a commitment to Mr. Mayer's client to meet a development timetable regarding the construction of infrastructure, such as the pipes for water and cables for electricity. Absent water, the purchaser (a developer/builder) could not obtain a building permit, much less begin construction. The seller thereafter breached its obligation to provide water and electricity. At the same time, the landowner continued to develop infrastructure on nearby land that it owned. The seller refused to compensate Mr. Mayer's client for these delays, raising various, weak defenses.

Shortly after Mr. Mayer's client filed a complaint regarding the breach of the development schedule, the parties reached a settlement in principle involving a cash payment compensating his client for the delay and setting a revised schedule for providing water and electricity. The open drafting question for the settlement document was: what happened if the seller failed to adhere to the new schedule? Mr. Mayer's client was not excited about a new complaint if and when the development schedule was breached again or, even worse, a series of lawsuits over the next several years. The answer was this "short fuse" clause and a per day liquidated damages provision. The seller proceeded to breach the new schedule. Given the clause, terms and timetable in the arbitration clause, the seller simply wrote millions of dollars in checks to Mr. Mayer's client, because the clause stopped the seller from stopping an examination of its failures.

Settlement Agreement With A "Short Fuse" Arbitration Provision

- The parties agree that all disputes arising out of or relating to this Settlement Agreement shall be resolved in binding arbitration before the American Arbitration Association ("AAA") by a single arbitrator under the expedited procedures of the AAA Commercial Arbitration Rules. The locale for the arbitration shall be [LOCATION]. The arbitrator may award costs and attorneys fees to the prevailing party in any arbitration and shall seek to implement the parties' intent expressed in the settlement agreement to bind [PARTY] to the revised development schedule. The arbitrator will accordingly hold an informal pre-hearing within thirty (30) days of the due date of the answer to the arbitration demand with the final hearing being held within sixty (60) days following the pre-hearing. The parties desire a written opinion within thirty (30) days following the hearing. The parties agree that no discovery depositions will be taken of the parties, but the parties will exchange documents, pursuant to

reasonable written requests. The arbitrator shall visit the site. The arbitrator’s failure to adhere to the time limits in this clause will not divest him or her of jurisdiction. Notwithstanding anything to the contrary in this Agreement, enforcement of this dispute resolution clause, matters of arbitration procedure, and enforcement of arbitration awards shall be governed by the Federal Arbitration Act. The provisions of this Section are intended to benefit and bind certain third party non-signatories and will continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

SAMPLE CLAUSE IV

Construction Disputes

This sample clause is used in construction contracts by a builder concentrating on building extreme luxury homes, three million dollars or more. In order to ensure that the customer is not discouraged by the complexity of the clause, the “Terms and Conditions” are included in a separate Appendix “A”.

Construction Disputes Arbitration.

A. The parties agree that any and all disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to JAMS, (a national organization employing retired judges and others), or its successor for final and binding arbitration.

B. Either party may initiate arbitration at any time by filing a written demand for arbitration with JAMS, with a copy to the other party.

C. A party withholding performance at the time of commencement of arbitration must provide a specific itemized statement of those reasons for withholding performance within ten days of the selection of the arbitrator. Any matter not listed as a reason for non-performance that was known or should have been known at the time of selection of the arbitrator is waived if not contained in the itemized statement. The arbitrator will not have the authority to extend the ten day deadline for submission of the itemized statement absent extraordinary good cause, such as illness or other pressing personal matter. The arbitration will be conducted under the then current JAMS Comprehensive Arbitration Rules and the Arbitration Terms and Conditions attached as Appendix A.

• • • • •

APPENDIX A

ARBITRATION TERMS AND CONDITIONS

(1) Any arbitration arising out of or relating to this Agreement will be conducted in accordance with the provisions of JAMS’ Comprehensive Arbitration Rules and Procedures in

effect at the time of filing of the demand for arbitration. The parties agree that Contractor's directors, officers, employees, shareholders, owners, members, advisors, and sister, parent, and subsidiary entities (the "Related Parties") are third party beneficiaries of the arbitration provisions of this Agreement and will be entitled to invoke this arbitration clause in any dispute arising out of or relating to this Agreement. All references to parties in Article ___ or this Appendix A shall also be considered a reference to the Related Parties. The parties will cooperate with JAMS and with one another in selecting an arbitrator from JAMS' panel of neutrals, and in scheduling the arbitration proceedings. The parties covenant that they will participate in the arbitration in good faith, and, subject to express fee-shifting provisions in this Agreement including this Appendix A, that they will share equally in JAMS' costs.

(2) The parties have a strong interest in the efficient and economical resolution of any dispute arising out of or relating to this Agreement. Accordingly, notwithstanding any provision to the contrary in this Agreement or in applicable JAMS' rules, the parties provide for the following procedures in connection with disputes submitted to arbitration:

- First, the arbitrator has the express authority to exclude cumulative or duplicative evidence.
- Second, the parties do not require a transcript but do request a written decision setting forth the reasons for the arbitrator's decision.
- Third, in the event that the dispute concerns matters that collectively will result in an award of \$50,000.00 or less (an "Expedited Matter") the parties agree to certain abbreviated procedures. In an Expedited Matter, the arbitrator will not permit any discovery and, further, will have the option of deciding the matter following a hearing or instead solely upon written submissions, argument of counsel, and a visit to the site as the arbitrator decides in his or her discretion. In order to conserve expenses, the arbitrator is authorized to conduct hearings in Expedited Matters by telephone. For any such Expedited Matter, the arbitrator will hold a hearing, if he or she concludes one is appropriate, within thirty days following his or her selection and issue a ruling within ninety days following his or her selection.
- Finally, for all disputes in which in excess of \$50,000 is at issue ("Substantial Disputes"), the arbitrator will accept such live relevant testimony as proffered by the parties but, absent extraordinary good cause, will not hold a hearing of more than four days. In Substantial Disputes, the arbitrator will permit reasonable party and third party discovery, including depositions, among other matters, inquiry into any itemized statement of reasons supporting a withholding of performance. In Substantial Disputes, the arbitrator will hold a hearing within ninety days of his or her selection and issue a ruling within 150 days of his or her selection.
- In the event that the parties are in dispute over whether a matter is properly considered an Expedited Matter or Substantial Matter, the arbitrator shall decide. The arbitrator will not lose jurisdiction over the matters submitted to arbitration if he or she fails to meet the deadlines specified in these Terms and Conditions.

(3) The exclusive venue for all arbitration proceedings shall be **in [APPLICABLE FORUM]** with the site of the arbitration chosen by the arbitrator in his or her discretion. The exclusive venue for all judicial proceedings relating to this Agreement shall be the state and federal courts serving **[INSERT FORUM]**. However, the arbitration provisions of this Agreement including this Appendix A, the enforcement of any third party subpoena issued by an arbitrator, or the confirmation, enforcement or collection of an arbitration award may proceed outside of the state and federal courts serving ____ County if the person or property at issue is outside the jurisdiction of such county.

(4) Time periods relevant to an arbitration proceeding shall be calculated as provided in the Federal Rules of Civil Procedure.

Key Points:

- Under this clause, the complaining party must “put up or shut up” by identifying defects or other breaches at the time they are refusing to perform.
- The clause differentiates between different size disputes so that minor disputes can be addressed in small claims court while major, multi-million dollars disputes, have the benefit of discovery and other legal procedures appropriate for a significant dispute.

Title Insurance Policy Arbitration Provisions

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American Land Title Association

**Loan Policy
Revised 2006**

POLICY OF TITLE INSURANCE

Issued by

BLANK TITLE INSURANCE COMPANY . . .

CONDITIONS AND STIPULATIONS . . .

13. **ARBITRATION.**

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association (“Rules”). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

American Land Title Association

**Owner's Policy
Revised 2006**

POLICY OF TITLE INSURANCE

Issued by

BLANK TITLE INSURANCE COMPANY . . .

CONDITIONS AND STIPULATIONS . . .

14. **ARBITRATION**

[Same as Loan Policy, see above]

AIA Architect Agreement Dispute Provisions

SAMPLE

AIA DOCUMENT B141-1997

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INSTRUCTIONS
The American Institute
of Architects
1735 New York Avenue, N.W.
Washington, D.C. 20006-5292
INSTRUCTIONS

Standard Form of Agreement Between Owner and Architect with Standard Form of Architect's Services

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GENERAL INFORMATION

BACKGROUND. AIA Document B141-1997 represents an entirely new format for an AIA Owner-Architect agreement.

It is the result of considerable input and exchange from a number of sources, including round table meetings conducted with owners and architects throughout the country, and contributions from the AIA Practice and Prosperity initiative. This new format is intended to clarify the assumptions, roles, responsibilities and obligations of the parties, to provide clear narrative descriptions of services, and to facilitate, strengthen and maintain the working and contractual relationships between the parties to the agreement. To that end, these new standard forms encourage greater interaction and communication between the Owner and Architect by requiring them, among other things, to engage in an active dialogue to complete requested information in the forms.

PURPOSE. B141-1997 is intended as a flexible contracting package that allows Architects to offer a broad range of services to Owners spanning the life of a project, from conception to completion and beyond. To that end, B141-1997 is structured in a multi-part format consisting of a Standard Form of Agreement Between Owner and Architect and a Standard Form of Architect's Services. Parties using the Standard Form of Agreement Between Owner and Architect may choose to use an AIA Standard Form of Architect's Services, such as the one accompanying these Instructions, as their scope of services for a particular project, or may choose to draft their own customized scope of services. An architect may also use a Standard Form of Architect's Services as part of a response to an owner's request for proposals. Note that, in the coming months and years, the AIA will develop and release additional Standard Forms of Architect's Services that offer other services packages reflecting different practice styles. The AIA also will be developing reference documents that expand the description of services selected in the Standard Forms of Architect's Services. An example of such a document is AIA Document B352, Duties, Responsibilities and Limitations of Authority of the Architect's Project Representative. . . .

RELATED DOCUMENTS. B141-1997 is intended to be used in conjunction with AIA Document A201, General Conditions of the Contract for Construction, which it incorporates by reference, when the Architect's services involve construction contract administration. B141-1997 also can be used with Architect-Consultant agreements such as AIA Documents C141-1997, C142-1997 or C727.

Other AIA Owner-Architect agreements available for use in connection with customary services or in special circumstances include:

- B141/CMA Owner-Architect Agreement, Construction Manager-Adviser Edition
- B151-1997 Abbreviated Owner-Architect Agreement for Projects of Limited Scope
- B163 Owner-Architect Agreement for Designated Services
- B171 Interior Design Services Agreement
- B177 Abbreviated Interior Design Services Agreement
- B181 Owner-Architect Agreement for Housing Services
- B188 Owner-Architect Agreement for Limited Architectural Services for
Housing Projects
- B727 Owner-Architect Agreement for Special Services
- B801/CMA Owner-Construction Manager-Adviser Agreement
- B901 Design/Builder-Architect Agreement

DISPUTE RESOLUTION—MEDIATION AND ARBITRATION. B141-1997 contains provisions for mediation and arbitration of claims and disputes. Mediation is a non-binding process, but is mandatory under the terms of this agreement. Arbitration is mandatory under the terms of this agreement and binding in most states and under the Federal Arbitration Act. In a minority of states, arbitration provisions relating to future disputes are not enforceable, but the parties may agree to arbitrate after the dispute arises. Even in those states, under certain conditions (for example, in a transaction involving interstate commerce), arbitration provisions may be enforceable under the Federal Arbitration Act.

The AIA does not administer dispute resolution processes. To submit disputes to mediation or arbitration or to obtain copies of the applicable mediation or arbitration rules, write to the American Arbitration Association or call (800) 778-7879. The American Arbitration Association also may be contacted at <http://www.adr.org>.

WHY USE AIA CONTRACT DOCUMENTS? AIA contract documents are the product of a consensus-building process aimed at balancing the interests of all parties on the construction project. The documents reflect actual industry practices, not theory. They are state-of-the-art legal documents, regularly revised to keep up with changes in law and the industry—yet they are written, as far as possible, in everyday language. Finally, AIA contract documents are flexible: they are intended to be modified to fit individual projects, but in such a way that modifications are easily distinguished from the original, printed language.

For further information on the AIA's approach to drafting contract documents, see AIA Document M120, Documents Drafting Principles. . .

STANDARD FORMS. Most AIA documents published since 1906 have contained in their titles the words "Standard Form." The term "standard" is not meant to imply that a uniform set of contractual requirements is mandatory for AIA members or others in the construction industry. Rather, the AIA standard documents are intended to be used as fair and balanced baselines from which the parties can negotiate their bargains. As such, the documents have won general acceptance within the construction industry and have been uniformly interpreted by the courts. Within an industry spanning 50 states—each of them free to adopt different, and perhaps contradictory, laws affecting that industry—they form the basis for a generally consistent body of construction law.

USE OF CURRENT DOCUMENTS. Prior to using any AIA document, the user should consult an AIA component chapter or a current AIA Documents Price List to determine the current edition of each document.

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USING THE B141-1997 FORMS

Users are encouraged to consult an attorney before completing an AIA document. Particularly with respect to professional licensing laws, duties imposed by building codes, interest charges, arbitration and indemnification, B141-1997 may require modification with the assistance of legal counsel to fully comply with state or local laws regulating these matters.

Generally, necessary modifications may be accomplished by writing or typing the appropriate terms in the blank spaces provided on the form, or by supplementary conditions, special conditions or amendments adopted by reference in this document. The form may also be modified by striking out language directly on the original form. Care must be taken in making these kinds of deletions, however. Under NO circumstances should printed language be struck out in such a way as to render it illegible (as, for example, with blocking tape, correction fluid or X's that completely obscure the text). This may raise suspicions of concealment, or suggest that the completed and signed document has been tampered with. Handwritten changes should be initialed by both parties to the contract.

It is definitely not recommended practice to retype the standard document. Besides being outside the limited license for reproduction granted under these Instructions, retyping can introduce typographical errors and cloud the legal interpretation given to a standard clause when blended with modifications, thereby eliminating one of the principal advantages of the standard form documents. By merely reviewing the modifications to be made to a standard form document, parties familiar with that document can quickly understand the essence of the proposed relationship. Commercial exchanges are greatly simplified and expedited, good-faith dealing is encouraged, and otherwise latent clauses are exposed for scrutiny. In this way, contracting parties can more confidently and fairly measure their risks. . . .

Standard Form of Agreement Between Owner and Architect with Standard Form of Architect's Services

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1.3.4 MEDIATION

1.3.4.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.

1.3.4.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

1.3.4.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

1.3.5 ARBITRATION

1.3.5.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with Paragraph 1.3.4.

1.3.5.2 Claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.

1.3.5.3 A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

1.3.5.4 No arbitration arising out of or relating to this Agreement shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement and signed by the Owner, Architect, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

1.3.5.5 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. . . .