

TO BE FILED IN THE UCC RECORDS OF THE SECRETARY OF STATE OF TEXAS

FINANCING STATEMENT

This is a financing statement to be filed with the Secretary of State, State of Texas, in order to perfect a security interest in the collateral hereinafter described which has been granted to the Secured Party as hereinafter named by the Debtor as hereinafter named:

NAME AND ADDRESS OF DEBTOR:

Organization Name: *

Mailing Address: *

Type of Organization: *

Jurisdiction: *

Organization ID: *

NAME AND ADDRESS OF SECURED PARTY:

**TEXAS DEPARTMENT OF HOUSING AND
COMMUNITY AFFAIRS**

507 Sabine St.

P.O. Box 13941

Austin, Texas 78711-3941

DESCRIPTION OF COLLATERAL:

1. All furniture, equipment and other personal property now or hereafter owned by Debtor and used in connection with, located on or related in any way to the real property ("Property") described in Exhibit "A" hereto attached and made a part hereof, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached in any manner to the buildings and other improvements now or hereafter erected, constructed or developed on the Property ("Project");

2. All building materials and equipment now or hereafter delivered to the Property and all building and construction materials, equipment and parts intended to be installed in or on the Property or Project;

3. All plans and specifications for the Project;

4. All contracts and subcontracts relating to the Project;

5. All deposits (including tenants' security deposits, if any), funds, accounts, contract rights, instruments, documents, general intangibles (including trademarks, trade names

and symbols used in connection therewith), and notes or chattel paper arising from or by virtue of any transactions related to the Property;

6. All permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Property;

7. All bank accounts in which rental income, if any, from the Property is deposited;

8. All proceeds arising from or by virtue of the sale, lease or other disposition of any of the real or personal property described herein;

9. All proceeds (including premium refunds) payable or to be payable under each policy of insurance relating to the Project;

10. All proceeds arising from the taking of all or a part of the Property or any rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, for any public or quasi-public use under any law or by rights of eminent domain, or by private or other purchase in lieu thereof; and

11. All other interest of every kind and character which Debtor now has or at any time hereafter acquires in and to the above-described personal property and all property which is used or useful in connection therewith.

SIGNATURE OF DEBTOR:

*

By: _____

Name: _____

Title: _____

CONSTRUCTION LOAN AGREEMENT

This Construction Loan Agreement (this "Agreement") is entered into as of this _____ day of, ■ 2002, by and between **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official department of the State of Texas ("Lender"), and ■ ("Borrower").

ARTICLE 1 **DEFINITIONS**

1.1 Definitions. As used in this Agreement, the following terms shall have the meanings indicated:

Architect. ■

Completion. When all of the following have been delivered to Lender: (i) Certificate of Occupancy (or its equivalent) from the appropriate Governmental Authority having jurisdiction over the Mortgaged Property, (ii) Certificate of Substantial Completion from the Architect, and (iii) an Affidavit and Full Release of Liens in recordable form from the General Contractor and, upon request of Lender, any other contractors or subcontractors who have performed work on, or furnished materials for, the Improvements, or other documentation specified by Lender.

Completion Date: The date that the Improvements are constructed to Completion, but in no event later than ■.

Completion Deposit: An amount (if any) calculated by Lender to equal the difference between (i) the amount which Lender from time to time determines to be necessary to pay all costs to be incurred in connection with the completion of the development of the Mortgaged Property and the construction, marketing, ownership, management, maintenance, operation, sale or leasing of the Improvements in accordance with this Agreement; to pay all sums which may accrue under the Security Documents prior to repayment of the Indebtedness, including, without limitation, the generality of the foregoing, interest on the Indebtedness; and to enable Borrower to perform and satisfy all of the covenants of Borrower contained in the Security Documents, and (ii) the funds then unadvanced by Lender to Borrower on the Note.

Construction Contracts: Any and all contracts and agreements, written or oral, between Borrower and the General Contractor, between Borrower and any other original contractor, between any of the foregoing and any subcontractor and between any of the foregoing and any other person or entity relating in any way to the construction of the Improvements, including, without limitation, the performing of labor or the furnishing of standard or specially fabricated materials in connection therewith.

Deed of Trust: The Deed of Trust and Security Agreement of even date herewith executed by Borrower conveying the Mortgaged Property to a trustee for Lender to secure the repayment of the Indebtedness and performance of the Obligations and all amendments thereto.

Environmental Law: Any federal, state, or local law, statute, ordinance, or regulation pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the "Property" (as hereinafter defined) including, without limitation, (i) the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, as now or hereafter amended (RCRA) (42 U.S.C. §6901 et seq.); (ii) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.) ("CERCLA" or "SuperFund"), as amended from time to time, (iii) the Clean Water Act, as now or hereafter amended (CWA) (33 U.S.C. § 1251 et seq.); (iv) the Toxic Substances Control Act, as now or hereafter amended (TSCA) (15 U.S.C. § 2601 et seq.); (v) the Clean Air Act, as now or hereafter amended (CAA) (42 U.S.C. § 7401 et seq.); (vi) Texas Solid Waste Disposal Act (V.T.C.A. Health and Safety Code § 361.001 et seq.); and the Texas Water Code (V.T.C.A. Water Code §§ 26.001-25.407); (vii) all regulations promulgated under any of the foregoing; (viii) any local, state or federal law, statute, regulation or ordinance analogous to any of the foregoing; and (ix) any other federal, state, or local law (including any common law), statute, regulation, or ordinance regulating, prohibiting, or otherwise restricting the placement, discharge, release, threatened release, generation, treatment, or disposal upon or into any environmental media of any substance, pollutant, or waste which is now or hereafter classified or considered to be hazardous or toxic to human health or the environment.

Environmental Report: A report prepared by a reputable engineer or other party satisfactory to Lender in such detail as Lender may require, indicating that no part of the Mortgaged Property is contaminated with Hazardous Materials or is subject to undue risk of contamination by Hazardous Materials.

Event of Default: Any happening or occurrence described in Article 7 hereof.

General Contractor: ■, or any other general contractor engaged by Borrower and approved in writing by Lender to construct the Improvements or any part thereof.

Governmental Authority: Any and all courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

Guarantor (individually and/or collectively, as the context may require): ■

Guaranty (individually and/or collectively, as the context may require): That or those instruments of guaranty, if any, now or hereafter in effect, from Guarantor in favor of Lender guaranteeing the repayment of all or any part of the Indebtedness and/or satisfaction of, or continued compliance with, the Obligations.

Hazardous Materials: Any flammables, explosives, radioactive materials, asbestos, petroleum products, or other hazardous waste, including, without limitation, substances defined as "hazardous substances", "hazardous materials", or "toxic substances" in any Environment Law.

■ Improvements: The improvements described in the Plans, being generally described as

Indebtedness: The principal of, interest on and all other amounts, payments and premiums due under or secured by the Note, the Deed of Trust, the Guaranty and any and all other documents now or hereafter executed by Borrower, Guarantor or any other person or party in connection with the loan evidenced by the Note.

Independent Supervising Architect: The architect, engineer, agent, consultant or other inspector selected and retained by Lender, at Borrower's expense, to supervise construction of and inspect the Improvement on behalf of Lender.

Land: The real estate or interest therein described on Exhibit A attached hereto and made a part hereof for all purposes, all fixtures and improvements situated thereon and all rights, titles and interests appurtenant thereto.

Leases: Any and all leases, subleases, licenses, concessions or other agreements (written or oral, now or hereafter in effect) which grant a possessory interest in and to, or the right to use, all or any part of the Mortgaged Property, together with all security and other deposits made in connection therewith, and all other agreements, such as engineer's contracts, utility contracts, maintenance agreements and service contracts, which in any way relate to the design, use, occupancy, operation, maintenance, enjoyment or ownership of the Mortgaged Property, save and except any and all leases, subleases or other agreements pursuant to which Borrower is granted a possessory interest in the Land.

Legal Requirements: (i) Any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates or ordinances of any Governmental Authority in any way applicable to Borrower, any Guarantor or the Mortgaged Property, including, without limitation, the ownership, use, construction, occupancy, possession, operation, maintenance, alteration, repair or reconstruction thereof, (ii) any and all covenants, conditions, and restrictions contained in any deed or other form of conveyance or in any other instrument of any nature that relate in any way or are applicable to the Mortgaged Property or the ownership, use, construction, occupancy, possession, operation, maintenance, alteration, repair or reconstruction thereof, (iii) Borrower's or Guarantor's presently or subsequently effective bylaws and articles of incorporation or partnership, limited partnership, joint venture, trust or other form of business association agreement, (iv) any and all Leases, (v) any and all terms, provisions and conditions of any commitment which are to be performed or observed by Borrower, (vi) any and all leases, other than those described in (iv) above, and (vii) other contracts (written or oral) of any nature that relate in any way to the Mortgaged Property and to which Borrower or any Guarantor may be bound, including, without limitation, any lease or other contract pursuant to which Borrower is granted a possessory interest in the Land.

Mortgaged Property: The Land, Improvements and Leases, all other property (real, personal or mixed) which is conveyed by the Deed of Trust or in which a security interest is therein created and all other property (real, personal or mixed) on which a lien or security

interest is placed or granted to secure the repayment of the Indebtedness or the performance and discharge of the Obligations.

Note: The Promissory Note of even date herewith, executed by Borrower, payable to the order of Lender, in the amount of \$■ and any and all modifications, renewals, rearrangements, reinstatements, enlargements or extensions thereof or of any promissory note or notes given therefor.

Obligations: Any and all of the covenants, conditions, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Borrower, Guarantor or any other person or party to Lender or others as set forth in the Note, the Deed of Trust, the Guaranty, the Leases and all other documents now or hereafter executed by Borrower, Guarantor or any other person or party in connection with the loan evidenced by the Note and in any deed, lease, sublease or other form of conveyance or any other agreement pursuant to which Borrower is granted a possessory interest in the Land.

Plans: Any and all contracts and agreements, written or oral, between Architect and Borrower, together with the final plans, specifications, shop drawings and other technical descriptions prepared for the construction of the Improvements, and all amendments and modifications thereof.

Security Documents: This Agreement, the Note, Deed of Trust, the Guaranty and any and all other documents now or hereafter executed by Borrower, the Guarantor or any other person or party to evidence or secure the payment of the Indebtedness or the performance and discharge of the Obligations.

Title Company: The issuer of the Title Insurance.

Title Insurance: A mortgagee policy of title insurance, in form and substance satisfactory to Lender and containing no exceptions (printed or otherwise) which are unacceptable to Lender, issued by a title company (or, if Lender so requires, by several title companies on a co-insured or reinsured basis) acceptable to Lender in the face amount of the Note and insuring that Lender has a first and prior lien on the Land and Improvements, subject only to the permitted encumbrances described in the Deed of Trust.

ARTICLE 2

BORROWER'S WARRANTIES AND REPRESENTATIONS

Borrower hereby unconditionally warrants and represents unto Lender as follows:

2.1 Information. Any and all information, reports, papers and other data (including, without limitation, any and all balance sheets, statements of income or loss, reconciliation of surplus and financial data of any other kind) heretofore furnished, or to be furnished, Lender by or on behalf of Borrower are, or when delivered will be, true and correct in all material respects; all financial data has been, or when delivered will have been, prepared in accordance with generally accepted accounting principles consistently applied and fully and accurately present, or will present, the

financial condition of the subjects thereof as of the dates thereof; and, with respect to the financial data heretofore furnished, no materially adverse change has occurred in the financial condition reflected therein since the dates thereof.

2.2 Litigation. Except as may be otherwise set forth on any exhibit attached hereto, there are no actions, suits or proceedings of a material nature pending or, to the knowledge of Borrower, threatened against or affecting Borrower, any Guarantor or the Mortgaged Property, or involving the validity or enforceability of the Deed of Trust or the priority of the liens and security interests created therein; and no event has occurred (including specifically Borrower's and Guarantor's execution of the respective Security Documents and Borrower's consummation of the loan represented thereby) which will violate, be in conflict with, result in the breach of or constitute (with due notice or lapse of time, or both) a default under any Legal Requirement or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever on the Mortgage Property other than the liens and security interests created by or expressly permitted under the Security Documents.

2.3 Compliance with Legal Requirements. Borrower has (or prior to commencement of the Improvements will have) (i) received all requisite building permits and approvals of the Plans, (ii) filed and/or recorded all requisite plats and other instruments and (iii) complied with all Legal Requirements required to be met prior to commencement of construction of the Improvements.

2.4 Streets, Easements, Utilities and Other Services. All streets, easements, utilities and related services necessary for the construction of the Improvements and the operation thereof for their intended purpose are (or within thirty (30) days after commencement of construction of the Improvements, will be) available to the boundaries of the Land, including, without limitation, potable water, storm and sanitary sewer, gas, electric and telephone facilities and garbage removal.

2.5 Contract and Commencement of Construction. Neither Borrower, any Guarantor nor anyone else on Borrower's behalf has (i) commenced construction of the Improvements, (ii) purchased, contracted for or otherwise brought upon the Land any materials, specially fabricated or otherwise, to be incorporated into the Improvements, (iii) entered into any Construction Contracts or (iv) made any oral or written contract or arrangement of any kind the performance of which by the other party thereto would or could give rise to a lien or claim on the Mortgaged Property, or any portion thereof.

2.6 Validity of Security Documents. All action on Borrower's part requisite for the due authorization, creation, issuance, execution and delivery of the Security Documents has been duly and effectively taken, and each such document constitutes a legal and binding obligation of, and is valid and enforceable against, Borrower and the Mortgaged Property (as the case may be) in accordance with the terms thereof.

2.7 Environmental Matters; Hazardous Substances. The Mortgaged Property has not been the site of any activity that would violate any past or present Legal Requirements, including, without limitation, any Environmental Law. Specifically, without limitation, (i) no solid waste,

as that term is defined in the Texas Solid Waste Disposal Act, and no petroleum or petroleum products have been handled on the Mortgaged Property such that they may have leaked or spilled on to the Mortgaged Property or contaminated the Mortgaged Property, (ii) there is no on-site contamination resulting from activities on the Mortgage Property or adjacent tracts, (iii) there is no off-site contamination resulting from activities on the Mortgaged Property, (iv) the Mortgaged Property contains no Hazardous Materials, and (v) there are no underground storage tanks located in, on or under the Mortgaged Property.

ARTICLE 3

BORROWER'S COVENANTS

Borrower hereby unconditionally covenants with Lender as follows:

3.1 Construction of Improvements. The construction of the Improvements will be commenced by Borrower forthwith, will be prosecuted by Borrower with diligence and continuity to Completion and will be completed by Borrower in a good and workmanlike manner in substantial accordance with the Plans and the other provisions of this Agreement, on or before the Completion Date and free and clear from all liens, or claims for liens, other than the liens and security interests created by the Security Documents. Borrower agrees that (i) construction of the Improvements shall not be commenced unless and until Borrower has furnished the Plans to Lender and afforded Lender the opportunity to accept them (which acceptance shall be evidenced, if at all, by the initials of an authorized representative of Lender thereon), (ii) when the Plans have been furnished to Lender, no changes of a material nature will be made to them by, or be permitted to be made to them by Borrower, Guarantor, Architect or any other person or entity without the prior written approval therefor of all requisite Governmental Authorities, prior compliance with all requisite Legal Requirements and prior acceptance by the Lender, (iii) in instances where Lender does accept the Plans (or any change therein), such acceptance shall be deemed to be strictly limited to an acknowledgement of Lender's consent to the Improvements being constructed in accordance therewith and shall not, in any way, be deemed to imply any warranty, representation or approval by Lender that such Improvements, if so constructed, will be structurally sound, will comply with all Legal Requirements, will be fit for any particular purpose or will have a market value of any particular magnitude, and (iv) within twenty (20) days after construction of the Improvements has commenced Borrower and General Contractor shall executed and file an Affidavit of Commencement in accordance with Section 53.124(c) of the Texas Property Code and provide a copy thereof to Lender.

3.2 Affirmative Covenants. At all times during construction of the Improvements, Borrower will (i) permit Lender, the Independent Supervising Architect and their representatives, to enter upon the Land and into the Improvements, to inspect the same and all materials to be used in the construction of the Improvements and to examine the Plans, (ii) comply strictly with all Legal Requirements, (iii) deliver to Lender, or its representatives, immediately upon demand, counterparts and/or conditional assignments of any and all Construction Contracts, bills of sale, statements, conveyances, receipted vouchers or agreements of any nature under which Borrower claims title to any materials or supplies used or to be used in the construction of the Improvements, (iv) either cause each Construction Contract to contain a provision specifically subordinating any lien right against the Mortgaged Property to the liens and security interests

created by the Security Documents or cause the other party thereto to execute any and all instruments, acceptable in form and substance to Lender, to accomplish the same, (v) if requested by Lender, furnish to Lender, immediately after the pouring of each concrete slab, street and curbstone within the Land, the completion of each foundation of a structure forming part of the Improvements and the completion of the Improvements, a survey certified to by a licensed engineer acceptable to Lender showing all of same and that the location thereof is entirely within the property lines of the Land and does not encroach upon, breach or violate any building line, easement or similar restriction, (vi) use all advances made to it by Lender for, and only for payment of the costs itemized in Section 6.2 hereof and under no circumstances use, directly or indirectly, any portion of such advances for any other purpose, (vii) obtain and maintain, in full force and effect, an owner's and contractor's liability insurance policy or policies (including worker's compensation insurance) and a hazard insurance policy or policies in builder's risk form with loss payable endorsements acceptable to Lender insuring the Improvements and all materials and supplies purchased with advances hereunder against all risks and losses, all such insurance policies to be issued by companies, in amounts and on terms approved by Lender, (viii) upon demand of Lender or the Independent Supervising Architect, furnish Lender with a current list of original contractors, subcontractors, materialmen, vendors, artisans and laborers performing work on the Improvements, and (ix) upon demand of Lender or the Independent Supervising Architect, correct any structural defect in the Improvements or any material departure from the Plans not accepted by Lender, it being understood and agreed that the advance of any loan proceeds shall not constitute a waiver of Lender's right to require compliance with this Section 3.2 with respect to any such defects or departures. Within five (5) days after Completion, Borrower and General Contractor shall execute and file an Affidavit of Completion in accordance with Section 53.106 of the Texas Property Code and provide a copy thereof to Lender.

3.3 Negative Covenants. At no time shall Borrower (i) use, maintain, operate or occupy, or allow the use, maintenance, operative or occupancy of, any part of the Mortgaged Property for any purpose which violates any Legal Requirement or in any manner which may be dangerous unless safeguarded as required by law or which may constitute a public or private nuisance or which may make void, voidable or cancelable or increase the premium of any insurance then in force with respect thereto, or (ii) create or place, permit to be created or placed or, through any act or failure to act, acquiesce in the creation or placing of, or allow to remain, any mortgage, lien (statutory, constitutional or contractual), pledge, security interest, encumbrance of charge or conditional sale or other title retention agreement on the Mortgaged Property (or any part thereof) other than those created by or expressly permitted under the Security Documents, regardless of whether same is expressly subordinate to the liens and security interests created in the Security Document. If any such mortgage, lien, pledge, security interest, encumbrance or charge is asserted against the Mortgaged Property (or any part thereof), Borrower shall promptly, at its own cost and expense, (a) pay the underlying claim in full or take any other action necessary to cause same to be released or, if permitted by Lender in Lender's sole discretion, bonded to the satisfaction of Lender and the Title Company and (b) within five (5) days from the date such mortgage, lien, pledge, security interest, encumbrance or charge is asserted, give Lender notice thereof. The notice shall specify who is asserting such mortgage, lien, pledge, security interest, encumbrance or charge and shall detail the origin and nature of the underlying claim giving rise to the asserted mortgage, lien, pledge, security interest, encumbrance or charge.

3.4 Completion Deposit. If, in the judgment of Lender, it appears at any time or from time to time that the unadvanced loan proceeds will be insufficient to (i) pay all costs to be incurred in connection with the completion of the development of the Mortgaged Property and the construction, marketing, ownership, management, maintenance, operation, sale or leasing of the Improvements in accordance with this Agreement, (ii) pay all sums which may accrue under the Security Documents prior to repayment of the Indebtedness, including, without limitation, interest on the Indebtedness, and (iii) enable Borrower to perform and satisfy all of the covenants of Borrower contained in the Security Documents, Borrower shall immediately deposit, or shall make arrangements satisfactory to Lender to deposit with Lender, the Completion Deposit. The Completion Deposit may be retained by Lender in a non-interest bearing account, need not be segregated from any of Lender's other funds and may be disbursed in accordance with the provisions of the Security Documents by Lender before making any further advances on the Note.

ARTICLE 4 **INSPECTION**

4.1 Inspection. Lender, through its officers, agents or employees, shall have the right at all reasonable times at Borrower's expense:

(a) To enter upon the Mortgaged Property and inspect the construction to determine that it is in conformity with the Plans and all the requirements hereof; and

(b) To examine, copy and make extracts of, the books, records, accounting data and other documents of Borrower that relate in any way to the Mortgaged Property, including without limiting the generality of the foregoing all permits, licenses, consents and approvals of all Governmental Authorities having jurisdiction over Borrower or the Mortgaged Property and all the relevant books and records of contractors and subcontractors supplying goods and/or services in connection with the construction of the Improvements. All such books, records and documents shall be made available to Lender promptly upon written demand therefor; and, at the request of Lender, Borrower shall furnish Lender with convenient facilities for the foregoing purpose. All contracts made or amended by Borrower or its contractors and subcontractors after the date hereof 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.

4.2 No Duty to Inspect. It is expressly understood and agreed that Lender shall have no duty to supervise or to inspect the construction of the Improvements or any books and records, and that any such inspection shall be for the sole purpose of determining whether or not the Obligations of Borrower are being properly discharged and or preserving Lender's rights hereunder. If Lender, or the Independent Supervising Architect acting on behalf of Lender, should inspect the construction of the Improvements or any books and records, Lender and the Independent Supervising Architect shall have no liability or obligation to Borrower or any third party arising out of such inspection. Inspection not followed by notice of default shall not constitute a waiver of any default then existing; nor shall it constitute an acknowledgement or representation by Lender and the Independent Supervising Architect that there has been or will

be compliance with the Plans and all Legal Requirements or that the construction is free from defective materials or workmanship or a waiver of Lender's right thereafter to insist that the Improvements be constructed in accordance with the Plans and Legal Requirements. Lender's failure to inspect the construction of the Improvements or any part thereof or any books and records shall not constitute a waiver of any of Lender's rights hereunder. Neither Borrower nor any third party shall be entitled to rely upon any such inspection or review. Lender and the Independent Supervising Architect owe no duty of care to Borrower or any third party person to protect against, or inform Borrower or any third person of the existence of negligent, faulty, inadequate or defective design or construction of the Improvements.

4.3 Borrower's Responsibilities. Borrower shall be solely responsible for all aspects of Borrower's business and conduct in connection with the Mortgaged Property, including without limitation:

- (a) the quality and suitability of the Plans;
- (b) supervision of construction of the Improvements;
- (c) the qualifications, financial condition and performance of all architects, engineers, contractors, subcontractors and material suppliers, consultants, and property managers;
- (d) conformance of construction of the Improvements to the Plans, to all Legal Requirements and to the requirements of this Agreement;
- (e) the quality and suitability of all materials and workmanship; and
- (f) the accuracy of all requests for the disbursement of loan proceeds and the proper application of disbursed loan proceeds.

4.4 Inspection Fee. In furtherance of Lender's rights hereunder, Lender may, at its option, require an inspection of the Mortgaged Property by the Independent Supervising Architect (i) prior to each advance, (ii) at least once each month during the course of construction even though no advance is to be made for that month, (iii) upon Completion of construction of the Improvements, and (iv) at least annually thereafter. Borrower shall pay all fees for all inspections of the Mortgaged Property. Furthermore, if Lender determines in connection with any such inspection that extra services will be required of the Independent Supervising Architect as a result of noncompliance with the Plans or any Legal Requirement, as a result of deviations from acceptable construction practices, or as a result of Borrower's failure to satisfy the requirements of any commitment or any other agreement, then Borrower shall pay, in addition to the fees for such inspections, the cost of all such extra services.

ARTICLE 5

ADDITIONAL SECURITY

5.1 Construction Contracts. As additional security for the payment of the Indebtedness, Borrower hereby transfers and assigns to Lender all of Borrower's rights, title and interests, but not its obligations, in, under and to the Construction Contracts upon the following terms and conditions:

(a) Borrower represents and warrants that each copy of any Construction Contract furnished to Lender is a true and complete copy thereof and that Borrower's interest therein is not subject to any claim, setoff or encumbrance.

(b) Neither this assignment nor any action by Lender shall constitute an assumption by Lender of any obligations under the Construction Contracts and Borrower shall continue to be liable for all obligations of Borrower thereunder, Borrower hereby agreeing to perform all of its obligations under the Construction Contracts. Borrower agrees to indemnify and hold Lender harmless against and from any loss, cost, liability or expense (including, without limiting the generality of the foregoing, reasonable attorneys' fees) incurred by Lender and resulting from any failure of Borrower to perform.

(c) Lender shall have the right at any time (but shall have no obligation) to take, in its name or in the name of Borrower, such action as Lender may at any time determine to be necessary or advisable to cure any default under the Construction Contracts or to protect the rights of Borrower or Lender thereunder. Lender shall incur no liability if any action so taken by it or in its behalf shall prove to be inadequate or invalid, and Borrower agrees to hold Lender free and harmless from any loss, cost, liability or expense (including, without limiting the generality of the foregoing, reasonable attorneys' fees) incurred in connection with any such action.

(d) Borrower hereby irrevocably constitutes and appoints Lender as Borrower's attorney-in-fact, in Borrower's name or in Lender's name, to enforce all rights of Borrower under the Construction Contracts; provided, however, that Lender shall have no obligation to enforce such rights.

(e) Prior to an Event of Default, Borrower shall have the right to exercise its rights as owner under the Construction Contracts; provided, however, that Borrower shall not cancel or amend the Construction Contracts or do, or suffer to be done, any act which would impair the security constituted by this assignment without the prior written consent of Lender.

(f) This assignment shall inure to the benefit of Lender, its successors and assigns, including, without limitation, any purchaser upon foreclosure of the Mortgaged Property or any grantee under a deed in lieu of foreclosure, any receiver in possession of the Mortgaged Property and any corporation formed by or on behalf of Lender which assumes Lender's rights and obligations under this Agreement.

5.2 Plans. As additional security for the payment of the Indebtedness, Borrower hereby transfers and assigns to Lender all of Borrower's rights, title and interest in and to the Plans, and hereby represents and warrants to and agrees with Lender as follows:

(a) The original counterparts of the Plans furnished to Lender are true and complete.

(b) The schedule of the Plans delivered to Lender is a complete and accurate description of the Plans.

(c) The Plans are complete and adequate for the construction of the Improvements, and there have been no modifications thereof except as described in such schedule. The Plans shall not be modified without the prior written consent of Lender, except for nonstructural changes which do not change the cost of construction by more than \$5,000.00.

(d) Lender may use the Plans for any purpose relating to the Improvements, including, without limitation, inspections of construction and the completion of the Improvements.

(e) Lender's acceptance of this assignment shall not constitute approval of the Plans by Lender. Lender has no liability or obligation whatsoever in connection with the Plans and no responsibility for the adequacy thereof or for the construction of the Improvements contemplated by the Plans.

(f) This assignment shall inure to the benefit of Lender, its successors and assigns, including, without limitation, any purchaser upon foreclosure of the Mortgaged Property or any grantee under a deed in lieu of foreclosure, any receiver in possession of the Mortgaged Property and any corporation formed by or on behalf of Lender which assumes Lender's rights and obligations under this Agreement.

ARTICLE 6

LENDER'S COMMITMENT

6.1 Loan. Subject to the terms, provisions and conditions of this Agreement, Lender will make and Borrower will accept, in installments, a loan in the aggregate amount of the principal sum of the Note, it being understood that interest as called for in the Note shall be calculated only on sums actually advanced and only from the dates of such advances.

6.2 Advances. Advances shall be made to Borrower on the principal amount of the Note at the times and otherwise in accordance with the procedures established by Lender. The advances on the Note shall be disbursed, at Lender's option, (i) by Lender's check drawn upon Lender's disbursement account and delivered to Borrower, (ii) by depositing the amount of the disbursement to Borrower's account in a bank approved by Lender, (iii) by direct or joint check payment to any or all persons entitled to payment for work performed on or materials delivered to or services performed in connection with the construction of the Improvements or the loan evidenced by the Note, or (iv) by any other method the Lender shall from time to time elect. The advance as to which the Borrower shall be entitled at any one time shall not exceed the cost of the materials, supplies and equipment purchased for the Improvements and stored on the Land in a manner acceptable to Lender, plus the cost of all materials, supplies, equipment and labor actually incorporated into the Improvement, plus any other costs and fees which have been approved for payment by Lender and which are then due or will become due within thirty (30) days thereafter minus the sum of all prior advances. Under no circumstances shall any portion of any advance be used for any purpose other than the payment of those costs and fees approved by Lender as legitimately relating to the purchase price for the Land, the cost of constructing the Improvements and the payment of the Indebtedness. For each advance made to Borrower hereunder Lender shall retain a sum equal to ten percent (10%) thereof (or a greater percentage,

if permitted or required by any Legal Requirement) so that, until a period of thirty (30) days after completion of the Improvements (or such longer period if permitted or required by any Legal Requirement or if, during such longer period, a lien or claim could lawfully be filed against the Mortgaged Property by anyone performing work or services, or furnishing materials or goods, during the construction of the Improvements) Lender shall have in its possession a fund equal to ten percent (10%) of the total cost of the Improvements. Notwithstanding anything to the contrary contained in or inferable from any other provisions hereof or in any other Security Documents, if the Title Insurance is initially a binder, Lender shall have the right, at any time, to cause the binder to be converted into a policy at Borrower's cost and to use any undisbursed proceeds on the Note, any portion of the Completion Deposit and, to the extent not prohibited by law, any other sum then in Lender's possession as payment for the cost thereof.

6.3 First Advance. Lender shall not be obligated to make the first advance to Borrower unless and until:

- (a) Lender has received true, legible and correct copies of the following:
 - (i) the Plans and the final draft of the Construction Contracts as approved by Lender;
 - (ii) a certificate from the Architect and, if Lender elects, the Independent Supervising Architect stating that the Plans have been approved by him or them and that the Construction Contracts are acceptable to him or them and satisfactorily proved for the construction of the Improvements;
 - (iii) all authorizations and permits which are then procurable and required by any Legal Requirement for the construction and proposed use of the Improvements;
 - (iv) an original current survey of the Land containing the certification of the surveyor in form and substance satisfactory to Lender and showing the perimeter of the Land by courses and distances, all easements and rights-of-way, the boundary lines of the streets abutting the Land and the width thereof, any encroachments and the extent thereof in feet and inches, the relation of the proposed Improvements by distances to the perimeter of the Land and the proposed building lines, all acceptable to the Title Company to modify the "area, boundaries and encroachments" exception of the Title Insurance to the maximum extent permitted by law;
 - (v) the policies of insurance required by the Security Documents accompanied by evidence of the payment of the premium thereof;
 - (vi) a payment and performance bond or bonds, if required by Lender, from such companies and in such amounts as are satisfactory to Lender, which bond or bonds shall name Lender as an additional obligee;
 - (vii) a soils investigation report from a soils engineer satisfactory to Lender;

(viii) evidence satisfactory to Lender that the Land is not located within the 100 year flood plain or identified as a special flood hazard area as defined by the Federal Flood Hazard Insurance Program.

(ix) a complete project budget in form and substance satisfactory to Lender;

(x) an ad valorem tax service contract covering the Mortgaged Property acceptable to Lender;

(xi) an opinion of counsel for Borrower satisfactory to Lender, if Lender elects;

(xii) a copy of the form of tenant lease satisfactory to Lender to be used by Borrower in connection with the Leases;

(xiii) the Environmental Report; and

(xiv) any other documents and information as Lender may reasonably require.

(b) The Security Documents have been duly authorized, executed and recorded or filed in accordance with applicable Legal Requirements and original counterparts thereof delivered to Lender, all prior to the commencement of construction of the Improvements, the placing of any materials or supplies on the Land, the execution or recording of any Construction Contracts (written or oral) for any of the same or the performance of any other act which could give rise to a lien claim equal or superior to the liens and security interests created by the Security Documents.

(c) The Title Company has issued the Title Insurance.

(d) Borrower, Architect and, if Lender requests, the Independent Supervising Architect have executed, or caused to be executed, and delivered to Lender the Disbursement Request Form, in such form as is acceptable to Lender, certifying in acceptable detail the expenditures made or expenses incurred by Borrower of the type described in Section 6.2 hereof, with such supporting data as Lender may require, and that the amount requested represents sums actually spent or indebtedness actually incurred.

(e) Borrower pays to Lender, or any other person or party entitled thereto, all fees and costs then due and payable in connection with this Agreement and the subject hereof.

6.4 Subsequent Advances. Lender shall not be obligated to make any subsequent advance to Borrower unless and until:

(a) Borrower shall have delivered to Lender a duplicate original of all Construction Contracts in the forms approved by Lender.

(b) Borrower, Architect and, if Lender requests, the Independent Supervising Architect shall have executed, or caused to be executed, and delivered to Lender a Disbursement Request Form as described in Section 6.3(d) hereof and the data referred to therein, or made request for disbursement on such other form acceptable to Lender.

(c) Lender shall have received (i) an endorsement (if permitted or required by virtue of the form thereof) to the Title Insurance increasing the coverage thereof to the full amount of the sum advanced and reflecting no changes in the status of title or the Title Insurance since the previous advance, or, if such endorsement cannot be obtained, an abstractor's certificate or other evidence satisfactory to Lender from the Title Company reflecting that there have been no such changes in the status of title or the Title Insurance, (ii) certification from the Architect and, if Lender elects, the Independent Supervising Architect that, in their opinion, the construction of the Improvements theretofore performed has been in substantial accordance with the Plans, (iii) the survey called for in Section 3.2(v) hereof and as may be required by the Title Company to issue the endorsement or other evidence referred to in Section 6.4(c)(I) hereof, (iv) at the request of Lender, lien waivers or releases (in recordable form) from all contractors, subcontractors, laborers and materialmen employed or furnishing materials in connection with the construction of the Improvements, (v) all amendments, modifications and revisions satisfactory to Lender in the form of tenant lease, (vi) at the request of Lender, a written certification signed by Borrower as to all Leases and the names of the tenants and rents payable thereunder, together with copies of all such Leases, and (vii) such other certifications or evidence of cost and Completion as Lender may request.

(d) Borrower shall have satisfied, if then applicable, the provisions of Section 3.4 hereof.

6.5 Any Advance. Notwithstanding anything to the contrary contained in or inferable from any of the above, Lender shall not be required to make any advance hereunder if, at any time of the requested advance, any of the following exists:

(a) Any Event of Default exists hereunder or under any other Security Document.

(b) The requested advance, plus the sum of the previous advances (including retained amounts deemed to have been advances pursuant to Section 6.2 hereof) or other sums disbursed by Lender under the Security Documents, exceed the face amount of the Note.

(c) In the judgment of Lender, the Improvements will not be completed in substantial accordance with the Plans and the other provisions of this Agreement on or before the Completion Date, regardless of the cause of such failure to complete.

(d) In the judgment of Lender, the sum of the unadvanced loan proceeds plus other sums being held by Lender in escrow for Borrower are insufficient to complete the Improvements in substantial accordance with the Plans and this Agreement, unless and until the provisions of Section 3.4 are satisfied.

(e) The Mortgaged Property (or any part thereof) is demolished or substantially destroyed or condemnation or similar type proceedings are commenced with reference thereto.

(f) Any change in the status of title to the Land or the Improvements has occurred subsequent to the date hereof without Lender's prior written consent.

(g) Borrower is unable to satisfy all of the conditions set forth in Sections 6.2, 6.3 or 6.4 hereof.

(h) Any event has occurred which has given or could give rise to a lien claim of equal or superior rank to the liens and security interests intended to be created by the Security Documents.

(i) An order or decree in any court of competent jurisdiction exists enjoining the construction of the Improvements or enjoining or prohibiting Borrower or Lender or either of them from performing their respective obligations under this Agreement.

(j) Any material deviation exists in the construction of the Improvements from the Plans without the prior written approval of Lender; or it appears to Lender or the Independent Supervising Architect that there are material defects in the workmanship or materials.

(k) Any encroachment exists which has occurred without the approval of Lender.

(l) Construction has ceased prior to completion of the Improvements for a continuous period of ten (10) days or more for caused other than those beyond the control of Borrower or consented to in writing by Lender.

6.6 Third Party Beneficiaries. All conditions precedent to Lender's obligation to make advances hereunder are imposed solely and exclusively for Lender's benefit. No person or entity other than Lender shall have any standing to require satisfaction of such conditions or be entitled to assume that Lender will refuse to make advances absent strict compliance therewith, and any or all of such conditions may be freely waived (in whole or in part) by Lender at any time or times.

ARTICLE 7 **EVENTS OF DEFAULT**

Each of the following shall constitute an Event of Default hereunder:

7.1 Conditions to Advances. If, at any time, Borrower is unable to satisfy any condition or cure any circumstances specified in Article 6 hereof, including, without limitation the occurrence of any circumstance described in Section 6.5 hereof, the satisfaction or curing of which being precedent to its right to receive an advance hereunder, and such inability continues for a period in excess of thirty (30) days.

7.2 Voluntary Bankruptcy. If Borrower or any Guarantor or, if Borrower or any Guarantor is a partnership, joint venture, trust or other type of business association, if any of the parties comprising Borrower or any Guarantor, shall (i) voluntarily be adjudicated as bankrupt or insolvent, (ii) file any petition or commence any case or proceeding under any provision or chapter of the Federal Bankruptcy Code or any other federal or state law relating to its insolvency, bankruptcy, rehabilitation, liquidation or reorganization, (iii) make a general assignment for the benefit of its creditors, (iv) have an order for relief entered under the Federal Bankruptcy Code with respect to it, (v) convene a meeting of its creditors, or any class thereof, for the purpose of effecting a moratorium upon or extension or composition of its debts, (vi) fail to pay its debts as they mature, (vii) admit in writing that it is generally not able to pay its debts as they mature or generally not pay its debts as they mature, or (viii) become insolvent.

7.3 Involuntary Bankruptcy. If (i) a petition is filed or any case or proceeding described in Section 7.2 hereof is commenced against Borrower or any Guarantor or, if Borrower or any Guarantor is a partnership, joint venture, trust or other type of business association, against any of the parties comprising Borrower or any Guarantor, or against the assets of any such persons or entities, unless such petition and the case or proceeding initiated thereby is dismissed within sixty (60) days from the date of the filing, (ii) an answer is filed by Borrower or any Guarantor or, if Borrower or any Guarantor is a partnership, joint venture, trust or other type of business association, by any of the parties comprising Borrower or any Guarantor, admitting the allegations of any such petition, or (iii) a court of competent jurisdiction enters an order, judgment or decree appointing, without the consent of Borrower or any Guarantor, or, if Borrower or any Guarantor is a partnership, joint venture, trust or other type of business association, of any of the parties comprising Borrower or any Guarantor, a custodian, trustee, agent or receiver for it, or for all or any part of its property, or authorizing the taking possession by a custodian, trustee, agent or receiver of it, or all or any part of its property unless such appointment is vacated or dismissed or such possession is terminated within sixty (60) days from the date of such appointment or commencement of such possession, but not later than five (5) days before the proposed sale of any assets of Borrower or any Guarantor, or if Borrower or any Guarantor is a partnership, joint venture, trust or other business association, of any of the parties comprising Borrower or any Guarantor, by such custodian, trustee, agent or receiver, other than in the ordinary course of the business of Borrower or any Guarantor.

7.4 Payment of Indebtedness. If Borrower shall fail, refuse or neglect to pay, in full, any installment or portion of the Indebtedness as and when the same shall become due and payable, whether at the due date thereof stipulated in the Security Documents, or at a date fixed for prepayment or otherwise, and such failure, refusal or neglect continues for a period of ten (10) days thereafter; provided, however, that if such installment or portion of the Indebtedness becomes due and payable as a result of Lender's accelerating the maturity of the Indebtedness in accordance with the Security Documents, the ten (10) day grace period for payment set forth in this Section 7.4 shall not apply to the accelerated due date.

7.5 Performance of Obligations. If Borrower shall fail, refuse or neglect to perform and discharge fully and timely any of the Obligations as and when called for and such failure, refusal or neglect shall either be incurable or, if curable, shall remain uncured for a period of thirty (30) days after the earlier to occur of (i) the date Lender gives written notice thereof to Borrower or

(ii) the date upon which Borrower had actual knowledge of the Obligation to be performed; provided, however, that if such default is curable but requires work to be performed, acts to be done or conditions to be remedied which, by their nature, cannot be performed, done or remedied, as the case may be, within such thirty (30) day period, no Event of Default shall be deemed to have occurred if Borrower commences same within such thirty (30) day period and thereafter diligently and continuously prosecutes the same to completion within forty-five (45) days after such notice or date of actual knowledge.

7.6 False Representations. If any representation, statement or warranty made by Borrower, Guarantor or others in, under or pursuant to any of the Security Documents or any affidavit or other instrument executed in connection with the Security Documents shall be false or misleading in any material respect as of the date hereof or shall become so at any time prior to the repayment in full of the Indebtedness.

7.7 Destruction of Improvements. If the Mortgaged Property is demolished, destroyed or substantially damaged so that (in Lender's judgment) it cannot be restored or rebuilt with available funds to the condition existing immediately prior to such demolition, destruction or damage within a reasonable period of time.

7.8 Change in Financial Condition. If Lender reasonably determines that the likelihood of payment of the Indebtedness or performance of the Obligations secured by the Deed of Trust is threatened by reason of a material adverse change in the financial condition or credit standing of Borrower or any Guarantor or, if Borrower or any Guarantor is a partnership, joint venture, trust or other type of business association, of any of the parties comprising Borrower or any Guarantor, or if the estate held by Borrower in the Land is a leasehold estate, of the ground lessor.

7.9 Foreclosure of Other Liens. If the holder of any lien or security interest on the Mortgaged Property (without hereby implying Lender's consent to the existence, placing, creating or permitting of any such lien or security interest) institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.

ARTICLE 8 **REMEDIES**

8.1 Rights, Remedies and Recourses. Upon the happening of any Event of Default, Lender shall have, in addition to any and all other rights, remedies and recourses available to it under any of the Security Documents or otherwise available at law or in equity, including, without limitation, the right to declare immediately due and payable the unpaid advanced principal and unpaid accrued interest on the Note and to foreclose any and all liens and security interests securing the repayment of same, the right (i) to take exclusive possession of the Mortgaged Property, (ii) to use any funds of Borrower, including, without limitation, the Completion Deposit (if any) and any sums which may remain unadvanced hereunder, to complete the Improvements, (iii) to make such changes in and revisions to the Plans a Lender may deem desirable, (iv) to prosecute and defend all actions or proceedings relating to the construction of the Improvements, (v) to pay, settle or compromise all existing bills and claims which are or may

be liens against the Mortgaged Property, or may be necessary or desirable for the completion of the Improvements or the clearance of title, (vi) to executed in Borrower's name all applications, certificates and other instruments which may be required by any Construction Contracts, (vii) to do any and every act with respect to the construction of the Improvements which Borrower may do in its own behalf and (viii) to employ such contractors, subcontractors, agents, attorneys, architects, accountants, watchmen and inspectors as Lender may deem desirable to accomplish any of the above purposes. For these purposes, Borrower hereby constitutes and appoints Lender its true and lawful attorney-in-fact with full power of substitution to take any and all of the above described action, which power of attorney shall be deemed to be coupled with an interest and shall be irrevocable. All sums expended by Lender for any of the above purposes shall be deemed to be advances hereunder and shall be secured by the Security Documents.

8.2 Cessation of Lender's Obligations. Upon the happening of any Event of Default hereunder or under any other Security Document, all obligations (if any) of Lender hereunder, including, without limitation, any obligation to advance funds hereunder, shall immediately cease and terminate.

8.3 Acceleration. Notwithstanding anything to the contrary herein contained or inferable from any provision of this Agreement, upon the happening of an Event of Default as set forth in Sections 7.2, 7.3 or 7.9 hereof, the unpaid principal and unpaid accrued interest on the Note shall immediately become due and payable in full, without the necessity of any further action on the part of Lender, and Borrower expressly waives any requirement of notice of intent to accelerate, or of notice of such acceleration of, the maturity of the Indebtedness.

ARTICLE 9

GENERAL TERMS AND PROVISIONS

9.1 Performance at Borrower's Expense. Subject to the provisions of Section 9.5 hereof, Borrower shall (i) pay all legal fees incurred by Lender in connection with the preparation of this Agreement and any and all other Security Documents contemplated hereby (including any amendments hereto or thereto or consents, releases or waivers hereunder or thereunder), (ii) pay all out-of-pocket expenses of Lender in connection with the administration of this Agreement and the other Security Documents, (iii) reimburse Lender, promptly upon demand, for all amounts expended, advanced or incurred by Lender to satisfy any obligation of Borrower under this Agreement or any other Security Documents, which amounts shall include all court costs, attorneys' fees (including, without limitation, for trial, appeal or other proceedings), fees of auditors and accountants, and investigation expenses reasonably incurred by Lender in connection with any such matter, and (iv) pay any and all other costs and expenses required to satisfy any provision of this Agreement, including, without limitation, documentary taxes and recording, brokerage, attorneys', surveyors', accountants', engineers', architects' and inspectors' fees and Title Insurance premiums. Except to the extent that certain of these costs and expenses are included within the definition of "Indebtedness", the payment by Borrower of any of these costs and expenses shall not be credited, in any way or to any extent, against any portion of the Indebtedness.

9.2 Approval of Lender and Further Assurances. All instruments and policies of insurance to be executed and/or delivered to Lender, and all proceedings to be taken in connection with this Agreement and the loan provided for herein, and all persons or parties responsible in any way for the construction of the Improvements or any obligation to be performed hereunder or under the other Security Documents, shall be subject to the acceptance of Lender as to form, substance, coverage and identity. Immediately upon request of Lender, Borrower will execute, acknowledge and deliver to Lender such further instruments and do such further acts a Lender may deem necessary to carry out more effectively the purpose of this Agreement or to subject to the liens and security interests of the Security Documents any property intended by the terms thereof to be covered thereby, including, without limitation, any renewals, additions, substitutions, replacements, betterments or appurtenances to the Mortgaged Property.

9.3 No Waiver. Any failure by Lender to insist, or any election by Lender not to insist, upon Borrower's or any Guarantor's strict performance of any of the terms, provisions or conditions of the Security Documents shall not be deemed to be a waiver of same or of any other term, provision or condition thereof; and Lender shall have the right at any time thereafter to insist upon strict performance by Borrower of any and all of same. In specific, no advance by Lender of any loan proceeds hereunder absent Borrower's strict compliance with Article 6 hereof shall in any way preclude Lender from thereafter declaring such failure to comply to be an Event of Default hereunder.

9.4 Modification. This Agreement shall not be amended, waived, discharged or terminated orally but only by an instrument executed by the party against which enforcement of the amendment, waiver, discharge or termination is sought.

9.5 Applicable Law. This Agreement has been executed under, and shall be construed and enforced in accordance with, the laws of the State of Texas from time to time in effect except to the extent preempted by United States federal law. This Agreement and all of the Security Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with the applicable Texas law governing the maximum rate or amount of interest payable on the Indebtedness (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law). If the applicable law is ever judicially interpreted so as to render usurious any amount called for under the Security Documents or contracted for, charged, taken, reserved or received with respect to the Indebtedness, or if the acceleration of the maturity of the Indebtedness or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable law, then it is Borrower's and Lender's express intent that all excess amounts theretofore collected by Lender be credited on the principal balance of the Note (or, if the Note has been or would thereby be paid in full, refunded to Borrower), and the provisions of Security Documents immediately be deemed reformed and the amounts thereafter collectible thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder. All sums paid or agreed to be paid to Lender for the use, forbearance or detention of the Indebtedness shall, to the extent permitted by applicable law, be amortized, prorated, allocated

and spread throughout the full term of such Indebtedness until payment in full so that the rate or amount of interest on account of such Indebtedness does not exceed the usury ceiling from time to time in effect and applicable to the Indebtedness for so long as the Indebtedness is outstanding. To the extent that Lender is relying on Chapter 303 of the Texas Finance Code, as amended, of the Revised Civil Statutes of Texas to determine the maximum rate (the "Maximum Rate") payable on the Indebtedness, Lender will utilize the indicated (weekly) rate ceiling from time to time in effect as provided in Chapter 303 of the Texas Finance Code, as amended. To the extent United States federal law permits Lender to contract for, charge or receive a greater amount of interest, Lender will rely on United States federal law instead of Chapter 303 of the Texas Finance Code, as amended, for the purpose of determining the Maximum Rate. Additionally, to the extent permitted by applicable law now or hereafter in effect, Lender may, at its option and from time to time, implement any other method of computing the Maximum Rate under such Chapter 303 of the Texas Finance Code, as amended, or under other applicable law by giving notice, if required, to Borrower as provided by applicable law now or hereafter in effect. In no event shall the provisions of Chapter 346 of the Texas Finance Code of the Revised Civil Statutes of Texas (which regulates certain revolving credit loan accounts and revolving tri-party accounts) apply to the loan evidenced hereby. Notwithstanding anything to the contrary contained herein or in any of the other Security Documents, it is not Lender's intention to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

9.6 Severability. If any provision hereof or of any of the other Security Documents or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, neither the application of such provision to any other person or circumstance nor the remainder of the instrument in which such provision is contained shall be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

9.7 Rights, Remedies and Recourses Cumulative. All rights, remedies and recourses afforded Lender in the Security Documents or otherwise available at law or in equity, including specifically, but without limitation, those granted by the Uniform Commercial Code in effect in the State of Texas (i) shall be deemed cumulative and concurrent, (ii) may be pursued separately, successively or concurrently against Borrower, any Guarantor or anyone else obligated under any or all of the Security Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Lender, (iii) may be exercised as often as the occasion therefor shall arise, it being understood by Borrower that the exercise, failure to exercise or election not to exercise any of the same shall in no event be construed as a waiver of same or of any other right, remedy or recourse available to Lender, and (iv) are intended to be, and shall be, nonexclusive.

9.8 Successors and Assigns. Subject to the provisions of Section 7.9 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, legal representatives and assigns.

9.9 Notices. All notices or other communications required or permitted to be given pursuant to the provisions of this Agreement shall be in writing and shall be considered properly given if mailed by first class United States mail, postage prepaid, registered or certified with return

receipt requested, or by delivering same in person to the intended addressee, or by prepaid telegram, telex or teletype. Notice so mailed shall be effective upon its deposit in the custody of the U.S. Postal Service. Notice given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the addressee of the parties shall be as follows:

To Lender: Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711

To Borrower: ■

Either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days notice to the other party in the manner set forth herein.

9.10 Participations. Lender may, at any time, sell, transfer, assign or grant participations in any loan or in any loan documents that Borrower or the partners or joint venturers of Borrower have entered into, executed, or granted in favor of Lender; and Lender may forward to each participant and prospective participant all documents and information relating to any such loan, whether furnished by Borrower or otherwise, as Lender determines necessary or desirable.

9.11 Lender's Right to Perform the Obligations. If Borrower shall fail, refuse or neglect to make any payment or perform any act required by the Security Documents, then Lender at any time thereafter, without notice to or demand upon Borrower and without waiving or releasing any other right, remedy or recourse Lender may have because of same, may make such payment or perform such act for the account of and at the expense of Borrower, and shall have the right to enter the Land and Improvements for such purpose and to take all action with respect to the Mortgaged Property as it may deem desirable. If Lender shall elect to pay any statement, invoice or tax bill, Lender may do so in reliance on any bill, statement or assessment procured from the appropriate Governmental Authority or company without inquiring into the accuracy or validity thereof. Similarly, in making any payments to protect the security intended to be created by the Security Documents, Lender shall not be bound to inquire into the validity of any apparent or threatened adverse title, lien, encumbrance, claim or charge before making an advance for the purpose of preventing or removing the same. Borrower shall indemnify Lender for all losses, expenses, damages, claims and causes of action, including reasonable attorneys' fees, incurred or accruing by reason of any acts performed by Lender pursuant to the provisions of this Section 9.11 or by reason of any other provision in the Security Documents. All sums paid by Lender pursuant to this Section 9.11, and all sums expended by Lender to which it shall be entitled to be indemnified, together with interest thereon at the Default Rate (as such term is defined in the Note) from the date of such payment or expenditure until paid, shall constitute advances on and additions to the Indebtedness, shall be secured by the Security Documents and shall be paid by Borrower to Lender upon demand. This indemnification shall survive the payment of all

amounts payable pursuant to and secured by, the Security Documents. Payment by Lender shall not be a condition precedent to the obligations of Borrower under this indemnity.

9.12 Headings. The Article, Paragraph and Subparagraph entitlements hereof are inserted for convenience of reference only and in no way shall alter, modify or define, or be used in construing, the text of such Articles, Paragraphs or Subparagraphs.

9.13 Supplement to Deed of Trust. The provisions of this Agreement are not intended to supersede the provisions of the Deed of Trust but shall be construed as supplemental thereto. In the event of any inconsistency between the provisions hereof and the Deed of Trust, the Deed of Trust shall be controlling. This Agreement shall remain in effect until the Indebtedness has been paid in full.

EXECUTED as of the date first above written.

BORROWER:



By: _____
Name: _____
Title: _____

LENDER:

**TEXAS DEPARTMENT OF HOUSING
AND COMMUNITY AFFAIRS**

By: _____
Name: Edwina P. Carrington
Title: Executive Director

EXHIBIT "A"

LEGAL DESCRIPTION OF THE LAND

CONTRACTOR AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF * §

WHEREAS, it is proposed that **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official department of the State of Texas ("Lender"), make a Construction Loan (herein so called) to * ("Borrower"), for, among other things, construction of improvement upon the Land (herein so called) situated in the county and state first herein mentioned, more particularly described in Exhibit "A" hereto (the Land, such improvements, and any and all personal property and fixtures now or hereafter affixed to, used in and about, or arising in connection with the Land and such improvements, called the "Project"), to be secured by, among other things, liens and security interests (the "Lender Liens") against the Project and the Construction Contract (hereinafter described); and

WHEREAS, the undersigned ("Contractor") proposes to hereafter perform labor, specially fabricate materials, furnish labor, and/or furnish materials (collectively, the "Work") for construction or repair of all or portions of improvements on the Land pursuant to a Construction Contract (as hereafter amended, supplemented, and/or restated from time to time, herein so called) dated as of * between Contractor and Borrower.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledge, and to induce Lender to make the Construction Loan to Borrower, Contractor hereby agrees with Lender as follows:

1. Contractor represents and warrants to Lender that as of the date hereof (a) Contractor has not reached any agreement or entered into any contract, written or oral, with respect to the construction or repair of improvements on the Land, other than the Construction Contract, which has been duly executed and is in full force and effect, (b) no materials have been delivered to or stored upon the Land, and (c) no work of any kind has been performed on the Land in connection with the construction or repair of any improvements on the Land.

2. Contractor consents and agrees in all respects to the creation in favor of Lender by Borrower of a security interest in Borrower's rights in the Construction Contract as security for the full and complete payment and performance of Borrower's indebtedness and obligations to Lender, and Contractor further agrees with Lender that: (a) if a default occurs in connection with the Construction Loan, Contractor will, upon Lender's request, complete the performance of the Work pursuant to the Construction Contract for the benefit of Lender (notwithstanding any previous default thereunder by Borrower, and Contractor agrees that Lender shall have no liability to it whatsoever by reason of any such default by Borrower), provided that Contractor is paid, in accordance with the Construction Contract, for all Work thereafter rendered by Contractor for the benefit of Lender; (b) upon the occurrence of a default by Borrower under the Construction Contract, Contractor will not exercise any remedies thereunder (other than the cessation of the Work for monetary defaults pending either the cure thereof or the request by Lender that, pursuant to (a) preceding, Contractor complete the Work for the benefit of Lender)

until it has notified Lender thereof in writing and granted Lender a period of 30 days (or a reasonable amount of time if such default cannot be cured in 30 days) after receipt by Lender of such notice in which Lender shall be entitled, but not obligated, to cure such default; (c) in the event any of the proceeds of the Construction Loan are disbursed by Lender directly to Contractor, Contractor will receive all such disbursements, will hold the same as a trust fund for the purpose of paying the costs of the Work under the Construction Contract, and will apply the same only to the payment of such costs and for no other purposes; (d) upon request by Lender, Contractor will furnish to Lender a current list of all persons or firms with whom Contractor has entered into subcontracts or other agreements relating to the Work in connection with the Project, together with a statement as to the status of each such subcontract or agreement and the respective amounts, if any, owed by Contractor thereunder; (e) Contractor shall make timely payment or deposit of all amounts of tax required to be withheld and paid to or deposited with the United States pursuant to the provision of Subtitle C of the Internal Revenue Code of 1954, as from time to time amended, with respect to any and all wages paid to employees of Contractor from funds paid to Contractor by Borrower or Lender; and (f) after execution and delivery of the Construction Contract, Contractor will not amend the Construction Contract without the prior written consent of Lender if such amendment would result in a "Material Change" (as hereinafter defined). As used herein, the term "Material Change" means a change in the Construction Contract or plans for the Project which: (a) increases or decreases (individually, solely as a result of any single change) the costs for or related to construction of the Project set forth in the original budget for the Project by an amount equal to more than \$10,000; or (b) increases or decreases (collectively, when added to all other such changes previously made) the costs for or related to construction of the Project set forth in the original budget for the Project by an amount equal to more than \$25,000; or (c) extends, or is likely to extend, the date of completion of the Project beyond *; or (d) causes the plans for the Project not to comply with all applicable laws.

3. Contractor hereby subordinates any and all "Contractor Liens" (as hereinafter defined) to any and all Lender Liens with the same force and effect as though the deeds of trust and any other instrument creating or evidencing the Lender Liens had been executed, delivered, and recorded prior to the creation or inception of the Contractor Liens. As used herein, the term "Contractor Liens" means all constitutional, statutory, contractual, or other liens, rights to liens, claims, and/or demands, if any, of whatever kind and nature, and against any property or rights of whatever kind and nature, that may now or hereafter exist or be claimed or asserted by, through, or under Contractor for any Work in connection with all or portions of any improvements on the Land, whether pursuant to the Construction Contract or otherwise.

4. Nothing herein shall be construed to impose upon Lender any duty to see to the application of the proceeds of the Construction Loan. Contractor acknowledges that Lender is obligated with respect thereto only to Borrower and to no other person or entity.

5. This instrument shall be binding upon Contractor and its heirs, personal representatives, successors, and assigns and shall inure to the benefit of Lender and its successors and assigns.

EXECUTED on this ____ day of *, 2003.

EXHIBIT "A"

LAND

TO BE FILED IN THE REAL PROPERTY RECORDS OF * COUNTY, TEXAS

FINANCING STATEMENT

This is a financing statement to be filed with the County Clerk, * County, Texas, in order to perfect a security interest in the collateral hereinafter described which has been granted to the Secured Party as hereinafter named by the Debtor as hereinafter named:

NAME AND ADDRESS OF DEBTOR:

*

NAME AND ADDRESS OF SECURED PARTY:

**TEXAS DEPARTMENT OF HOUSING
AND COMMUNITY AFFAIRS**
507 Sabine St.
P.O. Box 13491
Austin, Texas 78711-3941

DESCRIPTION OF COLLATERAL:

1. All furniture, equipment and other personal property now or hereafter owned by Debtor and used in connection with, located on or related in any way to the real property ("Property") described in Exhibit "A" hereto attached and made a part hereof, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached in any manner to the buildings and other improvements now or hereafter erected, constructed or developed on the Property ("Project");

2. All building materials and equipment now or hereafter delivered to the Property and all building and construction materials, equipment and parts intended to be installed in or on the Property or Project;

3. All plans and specifications for the Project;

4. All contracts and subcontracts relating to the Project;

5. All deposits (including tenants' security deposits, if any), funds, accounts, contract rights, instruments, documents, general intangibles (including trademarks, trade names and symbols used in connection therewith), and notes or chattel paper arising from or by virtue of any transactions related to the Property;

6. All permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Property;
7. All bank accounts in which rental income, if any, from the Property is deposited;
8. All proceeds arising from or by virtue of the sale, lease or other disposition of any of the real or personal property described herein;
9. All proceeds (including premium refunds) payable or to be payable under each policy of insurance relating to the Project;
10. All proceeds arising from the taking of all or a part of the Property or any rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, for any public or quasi-public use under any law or by rights of eminent domain, or by private or other purchase in lieu thereof; and
11. All other interest of every kind and character which Debtor now has or at any time hereafter acquires in and to the above-described personal property and all property which is used or useful in connection therewith.

SIGNATURE OF DEBTOR:

*

By: _____
Name:
Title:

DOCUMENT CORRECTION AGREEMENT

LENDER: **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official department of the State of Texas

BORROWER: *

PROPERTY: *

DATE: *

AGREEMENT TO CORRECT MISSTATED INFORMATION OR PROVIDE ADDITIONAL DOCUMENTATION OR FEES: In consideration of Lender disbursing funds for the closing of the Loan secured by the Property being encumbered, and regardless of the reason for any loss, misplacement, or inaccuracy in any Loan documentation, Borrower(s) agrees as follows: If any document is lost, misplaced, misstated or inaccurately reflects the true and correct terms and conditions of the Loan, upon request of the Lender, Borrower(s) will comply with Lender's request to execute, acknowledge, initial and deliver to Lender any documentation Lender deems necessary to replace or correct the lost, misplaced, misstated or inaccurate document(s). If the original promissory note is replaced, the Lender hereby indemnifies the Borrower(s) against any loss associated with a demand on the original note. All documents Lender requests of Borrower(s) shall be referred to as "Replacement Documents." Borrower(s) agrees to deliver the Replacement Documents within ten (10) days after receipt by Borrower(s) of a written request for such replacements. Borrower(s) also agrees that upon request Borrower(s) will supply additional amounts and/or pay to Lender any additional sum previously disclosed to Borrower(s) as a cost or fee associated with the Loan, which for whatever reason was not collected at closing.

REQUEST BY LENDER: Any request under this Agreement may be made by the Lender, (including assignees and persons acting on behalf of the Lender) or Settlement Agent, and shall be prima facie evidence of the necessity for same. A written statement addressed to Borrower(s) at the address indicated in the Loan documentation shall be considered conclusive evidence of the necessity for Replacement Documents.

BORROWER LIABILITY: If Borrower(s) fails or refuses to execute, acknowledge, initial and deliver the Replacement Documents or provide the Additional Documents or fees to Lender more than ten (10) days after being requested to do so by Lender, and understanding that Lender is relying on these representations, Borrower(s) agree(s) to be liable for any and all loss or damage which Lender reasonably sustains thereby, including but not limited to all reasonable attorney's fees and costs incurred by Lender.

FAILURE TO DELIVER REPLACEMENT DOCUMENTS CAN CONSTITUTE DEFAULT: Borrower's failure or refusal to comply with the terms of the correction request may constitute a default under the note and/or deed of trust, and may give Lender the option of declaring all sums secured by the loan documents immediately due and payable.

This Agreement shall survive the closing of the Loan, and inure to the benefit of Lender's successors and assigns and be binding upon the heirs, devisees, personal representatives, successors and assigns of Borrower(s).

BORROWER:

*

By: _____
Name: _____
Title: _____

DEED OF TRUST
(WITH SECURITY AGREEMENT AND ASSIGNMENT OF RENTS)

THE STATE OF TEXAS §
 §
COUNTY OF ■ §

ARTICLE I
Definitions

The following terms shall have the respective meanings assigned to them when used herein.

1.01 Grantor: ■

1.02 Grantor's mailing address: ■

1.03 Beneficiary: TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official department of the State of Texas, and any lawful owner, holder, pledgee, or assignee of any indebtedness secured hereby.

1.04 Beneficiary's mailing address: 507 Sabine St., P.O. Box 13491, Austin, Travis County, Texas 78711-3941.

1.05 Trustee: Edwina P. Carrington of Travis County, Texas.

1.06 Mortgaged Property: The Real Property and the Personal Property.

1.07 Project: The buildings and other improvements now or hereafter erected, constructed or developed on the Real Property.

1.08 Real Property: The real property described in Exhibit "A" attached hereto and located in ■ County, Texas, together with (i) all improvements thereon, all rights, hereditaments and appurtenances belonging thereto including rights of ingress and egress, easements, licenses, and all reversionary rights or interests of Grantor; (ii) all fixtures and personal property now or hereafter attached to the Real Property; (iii) all renewals or replacements thereof or articles in substitution therefor, whether or not now or later attached to the Project in any manner; and (iv) all other interests of every kind which Grantor now has or at any time hereafter acquires in and to the Real Property.

1.09 Personal Property: (i) all furniture, equipment and other personal property now or hereafter owned by Grantor and used in connection with, located on or related in any way to the Mortgaged Property, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Project in any manner; (ii) all building materials and equipment now or hereafter delivered to the Mortgaged Property and all building and construction materials, equipment and parts intended to be installed in or on the Real

Property or Project; (iii) all plans and specifications for the Project; (iv) all contracts and subcontracts relating to the Project; (v) all deposits (including tenant's security deposits, if any), funds, accounts (including any accounts in which escrows are deposited as a reserve for the payment of taxes, assessments and insurance on the Mortgaged Property), contract rights, instruments, documents, general intangibles (including trademarks, trade names and symbols used in connection therewith), and notes or chattel paper arising from or by virtue of any transactions related to the Mortgaged Property; (vi) all permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Mortgaged Property; (vii) all bank accounts in which rental income from the Mortgaged Property is deposited; (viii) all proceeds arising from or by virtue of the sale, lease or other disposition of any of the Real or Personal Property; (ix) all proceeds (including premium refunds) payable or to be payable under each policy of insurance relating to the Project; (x) all proceeds arising from the taking of all or a part of the Real Property or any rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, for any public or quasi-public use under any law, or by rights of eminent domain, or by private or other purchase in lieu thereof; (xi) all other interests of every kind and character which Grantor now has or at any time hereafter acquires in and to the Personal Property and all property which is used or useful in connection therewith.

1.10 Construction Loan Agreement: The Construction Loan Agreement of even date herewith executed by and between Grantor (or the maker of the Note if different from Grantor) and Beneficiary, which agreement sets forth, among other things, the procedure and requirements for disbursing the loan proceeds to be evidenced by the Note.

1.11 LURA: The Land Use Restriction Agreement dated of even date herewith executed by Grantor (or the maker of the Note if different from Grantor) and Beneficiary, which agreement sets forth certain occupancy and rent restrictions for the Project.

1.12 Note: The promissory note of even date herewith executed by Grantor payable to the order of Beneficiary in the original principal sum of \$■ payable as therein provided and finally maturing on ■, and all modifications, extensions and renewals thereof.

1.13 Loan Documents: The Note, this Deed of Trust, the Construction Loan Agreement, the LURA, and any and all other document or instrument heretofore or hereafter executed by Grantor (or the maker of the Note if different from Grantor) securing, evidencing or in any way pertaining to the indebtedness evidenced by the Note.

■ (OPTIONAL DEFINITIONS)

1.14 First Note: The promissory note dated _____ in the original principal sum of \$_____ executed by _____ payable to the order of _____.

1.15 First Mortgage: The deed of trust of even date with the First Note from _____ to _____, Trustee, which is of record at Volume _____, Page _____, _____ Records of _____ County, Texas, and all other documents securing the First Note.

1.16 Prior Deed of Trust: The deed of trust dated _____, executed by Grantor to _____, Trustee for Beneficiary, recorded in Volume _____, Page _____, Records of _____, Texas, said Prior Deed of Trust having been given to secure the indebtedness of that one certain promissory note of even date therewith in the original principal sum of \$ _____, executed by Grantor to the order of Beneficiary.

ARTICLE II **Conveyance in Trust**

2.01 Grant. Grantor, for and in consideration of the debt evidenced by the Note, has granted, assigned, and conveyed, and by these presents does grant, assign and convey the Mortgaged Property, in trust unto the Trustee, his successors and assigns, to have and to hold the Mortgaged Property, unto Trustee, his successors and assigns, forever. To the extent permitted by law, the Personal Property shall be deemed to be a part of and affixed to the Real Property. In the event the estate of the Grantor in and to any of the Mortgaged Property is a leasehold estate, this conveyance shall include and the lien and security interest and assignment created hereby shall encumber and extend to all other, further or additional title, estates, interest or rights which may exist now or at any time be acquired by Grantor in or to the property demised under the lease creating such leasehold estate and including Grantor's rights, if any, to purchase the property demised under such lease and, if fee simple title to any of such property shall ever become vested in Grantor, such fee simple interest shall be encumbered by this Deed of Trust in the same manner as if Grantor had fee simple title to such property as of the date of execution hereof. Grantor hereby binds itself, its successors and assigns, to warrant and forever defend the Mortgaged Property unto Trustee, his successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

2.02 Security. This conveyance is made in trust, however, to secure and enforce the payment of the Note, the obligations of Grantor (and/or the maker of the Note, if different from Grantor) under the other Loan Documents and payment of the Other Indebtedness as defined herein. If Grantor shall perform the covenants and agreements herein contained, then, and only then, this conveyance shall become null and void and shall be released at Grantor's expense; otherwise it shall remain in full force and effect. No release of this conveyance, or of the lien or security interest or assignment created and evidenced hereby, shall be valid unless executed by Beneficiary.

2.03 Other Indebtedness. This Deed of Trust shall secure, in addition to the Note, all funds hereafter advanced by Beneficiary to or for the benefit of Grantor as contemplated by any provision herein or for any other purpose, and all Other Indebtedness, of whatever kind or character, owing or which may hereafter become owing by Grantor to Beneficiary, whether such indebtedness is evidenced by note, open account, overdraft, endorsement, surety agreement, guaranty, or otherwise, it being contemplated that Grantor may hereafter become indebted to Beneficiary in further sum or sums ("Other Indebtedness"); provided, however, in no event shall this Deed of Trust secure payment of any installment loan or any open-end line of credit established under the Texas Finance Code. This Deed of Trust shall also secure all renewals and extensions of any of the Other Indebtedness secured hereby. All indebtedness secured hereby shall be payable at Beneficiary's address as set forth in Section 1.04; and, unless otherwise

provided in the instrument evidencing such indebtedness, shall bear interest at the highest rate which Grantor could lawfully contract to pay Beneficiary (or if there is no such highest rate, at the rate of one and one-half percent per month) from the date of accrual of such indebtedness until paid. If the Note or Other Indebtedness shall be collected by legal proceedings, whether through a probate or bankruptcy court or otherwise, or shall be placed in the hands of an attorney for collection after maturity, whether matured by the expiration of time or by any option given to the Beneficiary to mature same, Grantor agrees to pay Beneficiary's attorney's and collection fees in the amount set forth in the Note, and such fees shall be a part of the indebtedness secured hereby.

ARTICLE III **Grantor's Covenants and Representations**

Grantor hereby covenants, warrants and represents to and agrees with Beneficiary and with Trustee as follows:

3.01 Payment and Performance. Grantor (i) will pay all of the indebtedness secured hereby, together with the interest thereon, when the same shall become due, in accordance with the terms of the Note or any other instrument evidencing, securing, or pertaining to such indebtedness or evidencing any renewal or extension of such indebtedness, or any part thereof, and (ii) will punctually and properly perform all of Grantor's covenants, obligations, and liabilities under any of the other Loan Documents.

3.02 Title and Right to Convey. Grantor (i) has in its own right good and indefeasible title in fee simple, except as otherwise provided herein, to the Mortgaged Property which is free from encumbrance superior to the indebtedness hereby secured, except as otherwise provided herein, and (ii) has full right to make this conveyance.

3.03 Insurance. Grantor shall obtain and maintain at Grantor's sole expense: (1) all-risk insurance with respect to all insurable Mortgaged Property, against loss or damage by fire, lightning, windstorm, explosion, hail, tornado and such hazards as are presently included in so-called "all-risk" coverage and against such other insurable hazards as Beneficiary may reasonably require, in an amount not less than the unpaid balance of the Note, or if available and requested by Beneficiary 100% of the full replacement cost, including the cost of debris removal, without deduction for depreciation and sufficient to prevent Grantor and Beneficiary from becoming a coinsurer, such insurance to be in Builder's Risk (non-reporting) form during and with respect to any construction on the Real Property; (2) if and to the extent any portion of the Project is in a special flood hazard area, a flood insurance policy in an amount equal to the lesser of the principal face amount of the Note or the maximum amount available; (3) commercial general liability insurance, on an "occurrence" basis, against claims for bodily injury, death or property damage occurring on or about the Project, to afford protection in a "single limit" of not less than \$1,000,000 in the event of bodily injury to, or death of, any number of persons or of damage to property arising out of one occurrence, for the benefit of Grantor and Beneficiary as named insureds; and (4) such other insurance on the Mortgaged Property as may from time to time be reasonably required by Beneficiary, if available, (including but not limited to rent loss or boiler and machinery insurance) and 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, type, construction, location, use and occupancy of buildings and improvements. All insurance policies shall be issued and maintained by insurers, in amounts, with deductibles, and in form reasonably satisfactory to Beneficiary, and shall require not less than thirty (30) days' prior written notice to Beneficiary of any cancellation or change of coverage. All insurance policies maintained, or caused to be maintained, by Grantor with respect to the Mortgaged Property, except for public liability insurance, shall provide that each such policy shall be primary without right of contribution from any other insurance that may be carried by Grantor or Beneficiary and that all of the provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured. If any insurer which has issued a policy of hazard, liability or other insurance required pursuant to this Deed of Trust becomes insolvent or the subject of any bankruptcy, receivership or similar proceeding or if in Beneficiary's reasonable opinion the financial responsibility of such insurer is or becomes inadequate, Grantor shall, in each instance promptly upon the request of Beneficiary and at Grantor's expense, obtain and deliver to Beneficiary a like policy (or, if and to the extent permitted by Beneficiary, a certificate of insurance) issued by another insurer, which insurer and policy meet the requirements of this Deed of Trust. All such policies for loss of or damage to the Mortgaged Property shall contain a standard mortgage clause (without contribution) naming Beneficiary as mortgagee with loss proceeds payable to Beneficiary notwithstanding (i) any act, failure to act or negligence of or violation of any warranty, declaration or condition contained in any such policy by any named insured; (ii) the occupation or use of the Mortgaged Property for purposes more hazardous than permitted by the terms of any such policy; (iii) any foreclosure or other action by Beneficiary under this Deed of Trust; or (iv) any change in title to or ownership of the Mortgaged Property or any portion thereof, such proceeds to be held for application as provided in this Deed of Trust. A copy of each initial insurance policy (or a satisfactory certificate of insurance) shall be delivered to Beneficiary at the time of execution of this Deed of Trust, with premiums fully paid, and each renewal or substitute policy (or certificate) shall be delivered to Beneficiary, with premiums fully paid, at least ten (10) days before the termination of the policy it renews or replaces. Grantor shall pay all premiums on policies required hereunder as they become due and payable and promptly deliver to Beneficiary evidence satisfactory to Beneficiary of the timely payment thereof. If any loss occurs at any time when Grantor has failed to perform Grantor's covenants and agreements in this section, Beneficiary shall nevertheless be entitled to the benefit of all insurance covering the loss and held by or for Grantor, to the same extent as if it had been made payable to Beneficiary. Upon any foreclosure hereof or transfer of title to the Mortgaged Property in extinguishment of the whole or any part of the secured indebtedness, all of Grantor's right, title and interest in and to the insurance policies referred to in this section (including unearned premiums) and all proceeds payable thereunder shall thereupon vest in the purchaser at foreclosure or other such transferee, to the extent permissible under such policies. Beneficiary shall have the right (but not the obligation) to receive the proceeds of, all insurance for loss of or damage to the Mortgaged Property. If Grantor fails to act reasonably and promptly in making proof of loss for, or settling or adjusting any claim under, any such insurance, then Beneficiary shall have the right to make such proof and settle and/or adjust, such claim; and the expenses incurred by Beneficiary in the adjustment and collection of insurance proceeds shall be a part of the secured indebtedness and shall be due and payable to Beneficiary on demand. Beneficiary shall not be, under any circumstances, liable or responsible for failure to collect or exercise

diligence in the collection of any of such proceeds or for the obtaining, maintaining or adequacy of any insurance or for failure to see, to the proper application of any amount paid over to Grantor. Any such proceeds received by Beneficiary shall, after deduction therefrom of all reasonable expenses actually incurred by Beneficiary, including attorneys' fees, at Beneficiary's option be (a) released to Grantor, or (b) applied (upon compliance with such reasonable terms and conditions as may be required by Beneficiary) to repair or restoration, either partly or entirely, of the Mortgaged Property so damaged, or (c) applied to the payment of the secured indebtedness in such order and manner as Beneficiary, in its sole discretion, may elect, whether or not due; provided, however, that Beneficiary shall make such proceeds available to Grantor to pay for restoration or repair of the Mortgaged Property, so damaged, if either (i) the amount of such proceeds is less than \$25,000.00, or (ii) Grantor agrees to reasonable, "construction-loan" provisions (primarily regarding advances of those proceeds and Beneficiary's "pricing" of its activities and expenses connected therewith) and amendments to the loan documents executed in connection with the Note, as then proposed by Beneficiary. In any event, the unpaid portion of the secured indebtedness shall remain in full force and effect and the payment thereof shall not be excused. Grantor shall at all times comply with the requirements of the insurance policies required hereunder and of the issuers of such policies and of any board of fire underwriters or similar body as applicable to or affecting the Mortgaged Property.

3.04 Taxes and Other Impositions. Grantor will pay all taxes and assessments against or affecting the Mortgaged Property as the same become due and payable, and, if Grantor fails to do so, Beneficiary may pay them, together with all costs and penalties thereon, at Grantor's expense. Grantor, however, may in good faith, in lieu of paying such taxes and assessments as they become due and payable, contest by appropriate proceedings the validity thereof, and pending such contest Grantor shall not be deemed in default hereunder because of such nonpayment, (i) if prior to delinquency of the asserted tax or assessment, Grantor furnishes Beneficiary an indemnity bond, conditioned that such tax or assessment with interest, cost and penalties be paid as herein stipulated, secured by a deposit in cash, or security or surety acceptable to Beneficiary, in the amount of the contested tax or assessment, and a reasonable additional sum to pay all possible costs, interest and penalties imposed or incurred in connection therewith, and (ii) if Grantor promptly pays any amount adjudged by a court of competent jurisdiction to be due, with all costs, penalties and interest thereon, before such judgment becomes final or before any writ or order is issued under which the Mortgaged Property may be sold pursuant to such judgment, whichever first occurs.

3.05 Tax and Insurance Escrow. Grantor will create a reserve for the payment of all insurance premiums, taxes, and assessments against or affecting the Mortgaged Property by depositing (and providing Beneficiary written evidence of such deposits monthly, in form satisfactory to Beneficiary) in an account in a federally insured bank or savings and loan approved by Beneficiary, on the same day as regular payments are made under the Note until maturity of the Note, a sum equal to the premiums that will next become due and payable on the hazard insurance policies covering the Mortgaged Property, or any part thereof, plus taxes and assessments next due on the Mortgaged Property, or any part thereof, as estimated by Beneficiary, less all sums deposited therefor, divided by the number of months to elapse before one month prior to the date when such premiums, taxes and assessments will become delinquent. Grantor shall have the right to rely upon tax information furnished by applicable taxing

authorities in the payment of such taxes or assessments and shall have no obligation to make any protest of any such taxes or assessments. Any excess over the amounts required for such purposes shall be held in such account for future use as provided in this section. All such funds so deposited may not be mingled with the general funds of Grantor and shall be applied by Grantor toward the payment of such taxes, assessments, charges and premiums when statements therefor are presented to Grantor. Any interest accrued on such funds deposited shall be for the account of Grantor and may be withdrawn from the account by Grantor from time to time. The conveyance or transfer of Grantor's interest in the Mortgaged Property for any reason (including without limitation the foreclosure of a subordinate lien or security interest or a transfer by operation of law) shall constitute an assignment or transfer of Grantor's interest in and rights to such funds under this section but subject to the rights of Beneficiary hereunder.

3.06 Assignment of Awards. Grantor hereby assigns all judgments, decrees and awards for injury or damage to the Mortgaged Property, all awards or settlements pursuant to proceedings for condemnation thereof, in their entirety to Beneficiary, who may apply the same to the indebtedness secured hereby in such manner as it may elect. Grantor authorizes Beneficiary to execute and deliver valid acquittances for, and to appeal from, any such award, judgment or decree in the name of Grantor. In the event Beneficiary, as a result of any such judgment or decree of award, believes that the payment or performance of any obligation secured by this Deed of Trust is impaired, Grantor authorizes Beneficiary to declare, without notice, all of the indebtedness secured hereby immediately due and payable.

3.07 Trustee's Title and Future Laws. If, while this trust is in force, the title of Trustee to, or the interest of Beneficiary in, the Mortgaged Property or any part thereof, shall be endangered or shall be attacked directly or indirectly, Grantor authorizes Beneficiary, at Grantor's expense, to take all necessary and proper steps for the defense of such title or interest, including the employment of counsel, the prosecution or defense of litigation, and the compromise or discharge of claims made against such title or interest. If at any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Deed of Trust, or upon any rights, titles, liens, or security interests created hereby, or upon the Note, or any part thereof, Grantor shall immediately pay all such taxes. In the alternative, Grantor may, in the event of the enactment of such a law, and must, if it is unlawful for Grantor to pay such taxes, prepay the Note and the Other Indebtedness in full within sixty (60) days after demand therefor by Beneficiary. Grantor shall at any time and from time to time, furnish promptly, upon request, a written statement or affidavit, in such form as may be required by Beneficiary, stating the unpaid balance of the Note, and that there are no offsets or defenses against full payment of the Note and performance of the terms hereof, or if there are any such offsets and defenses, specifying them.

3.08 Repayment to Beneficiary. If, pursuant to any covenant contained herein or in any other instrument executed in connection with the loan evidenced by the Note or in connection with any Other Indebtedness secured hereby, Beneficiary shall expend any money chargeable to Grantor or subject to reimbursement by Grantor under the terms of such covenant or agreement, Grantor will repay the same to Beneficiary immediately at the place where the Note or Other Indebtedness secured hereby is payable, together with interest thereon at the rate of interest payable on account of the Note or such Other Indebtedness in the event of a default thereunder

from and after the date of Beneficiary's making such payment. The sum of each such payment shall be added to the indebtedness hereby secured and thereafter shall form a part of the same, and it shall be secured by this Deed of Trust and, by subrogation to all of the rights of the person or entity receiving such payment.

3.09 Condition of Property. Upon completion of certain renovations, additions and improvements to the Project, Grantor will keep every part of the Mortgaged Property in good condition and presenting a good appearance, making promptly all repairs, renewals and replacements necessary to such end, and doing promptly all else necessary to such end. Grantor will discharge all claims for labor performed and material furnished therefor, and will not suffer any lien of mechanics or materialmen to attach to any part of the Mortgaged Property. Grantor will guard every part of the Mortgaged Property from removal, destruction and damage, and will not do or suffer to be done any act whereby the value of any part of the Mortgaged Property may be lessened.

3.10 Successors. If the ownership, control or management of the Mortgaged Property or any part thereof becomes vested in a person other than Grantor, or in the event of a change of ownership of more than thirty percent (30%) interest in any Grantor other than an individual, Grantor agrees that Beneficiary may, without notice to Grantor, deal with such successor or successors in interest with reference to this Deed of Trust and to the indebtedness hereby secured in the same manner as with Grantor without in any way vitiating or discharging Grantor's liability hereunder or upon the indebtedness hereby secured. No sale of the Mortgaged Property, and no forbearance on the part of Beneficiary, and no extension of the time for the payment of the indebtedness hereby secured, given by Beneficiary, shall operate to release, discharge, modify, change or affect the original liability of Grantor or the liability of any guarantors or sureties of Grantor, either in whole or in part.

ARTICLE IV **Events of Default**

4.01 Events of Default. The following shall be events of default ("Events of Default") hereunder:

(a) The sale of the Mortgaged Property, or any part thereof. **■OR IF A DEVELOPMENT LOAN AGREEMENT IS PART OF THE TRANSACTION USE THE FOLLOWING LANGUAGE INSTEAD** Title to all or any part of the Mortgaged Property shall become vested in any party other than Grantor, whether by operation of law or otherwise.

(b) Grantor's agreement to or the granting of an easement, restrictive covenant or other encumbrance affecting the Mortgaged Property **■ADD THE FOLLOWING LANGUAGE WHEN A DEVELOPMENT LOAN AGREEMENT IS PART OF THE TRANSACTION** without the prior written consent of Beneficiary.

■[Alternatives]

(c) If Grantor is a corporation, partnership, or limited liability company, more than thirty percent (30%) of ownership of Grantor (determined by interest held and not by number of the shareholders, partners or members, as applicable) changes other than changes resulting from the transfer of shares or interest among the present owners of Grantor, such determination to be made by aggregating all ownership changes (other than those involving only the present owners of Grantor) occurring subsequent to the date hereof.

(c) In the event there shall occur any change in the legal or equitable ownership of a controlling interest in Grantor (or of the maker of the Note if different from the Grantor), or any change in the management of Grantor (or of the maker of the Note if different from Grantor), if in Beneficiary's sole judgment such a change materially and adversely effects the ability of Grantor to perform Grantor's obligations under this Deed of Trust [provided, however, Grantor may sell or transfer limited partnership interests without the consent of the Beneficiary and such sale or transfer shall not be considered an event of default hereunder].

(d) Grantor's failure to promptly pay when due the indebtedness secured hereby, or any part thereof and such failure continues for a period of ten (10) days after written notice of such failure is given by Beneficiary to Grantor; or Grantor's failure to keep and perform any of the covenants (other than the failure to pay the indebtedness) or agreements contained herein or in any of the other Loan Documents within thirty (30) days after written notice of such failure is given by Beneficiary to Grantor.

(e) Beneficiary's discovery that any statement, representation or warranty in the Note, this Deed of Trust or the other Loan Documents, or in any other writing delivered to Beneficiary in connection with the indebtedness secured hereby is false, misleading or erroneous in any material respect ■ **ADD THE FOLLOWING LANGUAGE WHEN A DEVELOPMENT LOAN AGREEMENT IS PART OF THE TRANSACTION**, and remains so for a period of thirty (30) days following written notice by Beneficiary to Grantor.

(f) If Grantor, or any person liable for the indebtedness secured hereby, or any part thereof, including any guarantor of or surety for the performance of any obligation hereunder, (i) files a voluntary petition in bankruptcy; (ii) makes an assignment for the benefit of any creditor; (iii) suffers an order for relief in bankruptcy to be entered against it; (iv) admits in writing its inability to pay its debts generally as they become due; (v) applies for or consents to the appointment of a receiver, trustee, or liquidator of Grantor or of any such guarantor or surety or of all or a substantial part of its assets; (vi) takes advantage of or seeks any relief under any bankruptcy, reorganization, debtor's relief or other insolvency law now or hereafter existing; (vii) files an answer admitting the material allegations of, or consenting to, or defaulting in, a petition against Grantor or any such guarantor or surety, in any bankruptcy, reorganization, or other insolvency proceedings; or (viii) institutes or voluntarily is or becomes a party to any other judicial proceedings intended to effect a discharge of the debts of Grantor or of any guarantor or surety, in whole or in part, or to effect a postponement of the maturity or the collection thereof, or to effect a suspension of any of the rights or powers of Beneficiary granted in the Note, this Deed of Trust or in any other instrument evidencing or securing the indebtedness secured hereby.

(g) If an order, judgment or decree shall be entered by any court of competent jurisdiction appointing a receiver, trustee or liquidator of Grantor or of any guarantor or surety or of all or any substantial part of the assets of Grantor or of any such guarantor or surety; or if Grantor or any guarantor or surety shall fail to pay any money judgment against it within thirty (30) days after any such judgment becomes final and non-appealable.

(h) If Grantor or any such guarantor or surety shall fail to have discharged any attachments, sequestration, or similar proceedings against any assets of Grantor or of any guarantor or surety which remains undischarged and unstayed for a period of thirty (30) consecutive days; or if the Mortgaged Property is placed under control or in the custody of any court, or if Grantor abandons any of the Mortgaged Property.

(i) Grantor's execution or delivery of any pledge, security agreement, mortgage or deed of trust covering all or any portion of the Mortgaged Property ("Subordinate Mortgage") without the prior written consent of Beneficiary (which consent may be withheld). In the event of consent by Beneficiary to the foregoing or in the event the foregoing prohibition is determined by a court of competent jurisdiction to be unenforceable by the provisions of any applicable law, Grantor will not execute or deliver any Subordinate Mortgage unless there shall have been delivered to Beneficiary not less than ten (10) days prior to the date thereof a copy thereof which shall contain express covenants to the effect:

(i) That the Subordinate Mortgage is in all respects unconditionally subject and subordinate to the lien, security interest and assignment evidenced by this Deed of Trust and each term and provision hereof;

(ii) That if any action or proceeding shall be instituted to foreclose the Subordinate Mortgage (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), no tenant of any portion of the Mortgaged Property will be named as a party defendant, nor will any action be taken with respect to the Mortgaged Property which would terminate any occupancy or tenancy of the Mortgaged Property without the prior written consent of Beneficiary;

(iii) That all of the rents, royalties (including, but not limited to, royalties arising out of the sale of oil, gas, and any other minerals produced from the Mortgaged Property, or any properties pooled with the Mortgaged Property), issues, profits, revenue, income and other benefits derived from the Mortgaged Property or arising from the use or enjoyment of any portion thereof or from any lease or agreement pertaining thereto, if collected through a receiver or by the holder of the Subordinate Mortgage, shall be applied first to the obligations secured by this Deed of Trust, including principal and interest due and owing on or to become due and owing on the Note and the Other Indebtedness secured hereby and then to the payment of maintenance, operating charges, taxes, assessments, and disbursements incurred in connection with the ownership, operating and maintenance of the Mortgaged Property; and

(iv) That if any action or proceeding shall be brought to foreclose the Subordinate Mortgage, written notice of the commencement thereof will be given to Beneficiary contemporaneously with the commencement of such action or proceeding.

(j) The liquidation, termination, dissolution, merger, consolidation or failure to maintain good standing in the State of Texas (or in the case of an individual, the death or legal incapacity) of the owner of the Mortgaged Property or any person obligated to pay any part of the secured indebtedness.

(k) The liens, mortgages or security interests of Beneficiary in any of the Mortgaged Property become unenforceable in whole or in part, or cease to be of the priority herein required, or the validity or enforceability thereof, in whole or in part, shall be challenged or denied by Grantor or any person obligated to pay any part of the secured indebtedness.

(l) If the ownership of any of the Mortgage Property is forfeited or otherwise transferred to any governmental agency under a federal or state law for which forfeiture of property is a potential penalty or remedy.

(m) A default or event of default occurs under any other documents executed as security for or in connection with the Note or under any other documents evidencing a loan or indebtedness owed by Grantor to Beneficiary or any other agency of the State of Texas, and the same is not remedied within the applicable period for curing such default (if any).

(n) A default or event of default occurs under the LURA executed by Grantor of even date herewith and filed in the Real Property Records of ■ County, Texas, and same is not remedied within the applicable period for curing such default.

(o) Any portion of the surface of the Mortgaged Property is disturbed or otherwise used by any person in connection with the exploration for or production of any oil, gas or other minerals without the prior written consent of Beneficiary.

4.02 Remedies. Upon the occurrence of any Event of Default, Beneficiary, at its sole option, may declare the Note and all Other Indebtedness secured hereby immediately due and payable and/or may pursue any rights and remedies it may have hereunder or at law or in equity.

ARTICLE V **Nonjudicial Foreclosure and Sale**

5.01 Trustee's Sale. If Grantor shall default hereunder, Grantor authorizes and empowers the Trustee, at the request of Beneficiary, at any time during the continuance of any default, to sell all or any portion of the Mortgaged Property, at public auction, to the highest bidder, for cash or for credit against the indebtedness secured hereby if Beneficiary is the highest bidder, at the county court house of the county in Texas in which such Mortgaged Property or any part thereof is situated, as herein described, in the area designated by the commissioners court for such purpose pursuant to a recordation of such designation in the real property records of such county, or if no such recorded designation by the commissioners court has been made, in the area at the county court house designated in the notice of proposed sale posted, filed and served in accordance with the further provisions of this paragraph, between the hours of 10:00 o'clock

A.M. and 4:00 o'clock P.M. on the first Tuesday of any month. The Trustee shall give notice of the time, place and terms of said sale, and of the property to be sold, as follows:

Notice of such proposed sale shall be given by posting written notice thereof at least twenty-one days preceding the date of the sale at the court house door, and by filing a copy of the Notice in the office of the county clerk of the county in which the sale is to be made, and if the property to be sold is situated in more than one county, one notice shall be posted at the court house door and filed with the county clerk of each county in which the property to be sold is situated. In addition, Beneficiary shall, at least twenty-one days preceding the date of sale, serve written notice of the proposed sale by certified mail on each debtor obligated to pay the debt secured hereby according to the records of Beneficiary. Service of such notice shall be completed upon deposit of the notice, enclosed in a postpaid wrapper, properly addressed to such debtor at the most recent address as shown by the records of Beneficiary, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of service.

Any notice that is required or permitted to be given to Grantor may be addressed to Grantor at Grantor's mailing address. Any notice that is to be given by certified mail to any other debtor may, if no address for such other debtor is shown by the records of Beneficiary, be addressed to such other debtor at Grantor's mailing address. Notwithstanding the foregoing provisions of this paragraph, notice of such sale given in accordance with the requirements of the applicable law of the State of Texas in effect at the time of such sale shall constitute sufficient notice of such sale. Grantor hereby authorizes and empowers the Trustee to sell all or any portion of the Mortgaged Property, together or in lots or parcels, as the Trustee may deem expedient, and to execute and deliver to the purchaser or purchasers of such property, good and sufficient deeds of conveyance of fee simple title with covenants of general warranty made on behalf of the Grantor. In no event shall the Trustee be required to exhibit, present or display at any such sale, any of the personalty described herein to be sold at such sale. The Trustee making such sale shall receive the proceeds thereof and shall apply the same as follows: (i) first, he shall pay the reasonable expense of executing this trust including a reasonable Trustee's fee or commission; (ii) second, he shall pay, so far as may be possible, the indebtedness secured hereby, discharging first that portion of the indebtedness arising under the covenants or agreements herein contained and not evidenced by the Note; (iii) third, he shall pay the residue, if any, to the person or persons legally entitled thereto. Payment of the purchase price to the Trustee shall satisfy the obligation of the purchaser at such sale therefor, and such purchaser shall not be bound to look after the application thereof. The sale or sales by the Trustee of less than the whole of the Mortgaged Property shall not exhaust the power of sale herein granted, and the Trustee is specifically empowered to make successive sale or sales under such power until the whole of the Mortgaged Property shall be sold; and if the proceeds of such sale or sales of less than the whole of such Mortgaged Property shall be less than the aggregate of the indebtedness secured hereby and the expense of executing this trust, this Deed of Trust and the lien, security interest and assignment hereof shall remain in full force and effect as to the unsold portion of the Mortgaged Property just as though no sale or sales had been made; provided,

however, that Grantor shall never have any right to require the sale or sales of less than the whole of the Mortgaged Property, but Beneficiary shall have the right, at its sole election, to request the Trustee to sell less than the whole of the Mortgaged Property. If default is made hereunder, the holder of the indebtedness or any part thereof on which the payment is delinquent shall have the option to proceed with foreclosure in satisfaction of such item either through judicial proceedings or by directing the Trustee to proceed as if under a full foreclosure, conducting the sale as herein provided without declaring the entire indebtedness secured hereby due, and if sale is made because of default of an installment, or a part of an installment, such sale may be made subject to the unmatured part of the Note and Other Indebtedness secured by this Deed of Trust; and it is agreed that such sale, if so made, shall not in any manner affect the unmatured part of the indebtedness secured by this Deed of Trust, but as to such unmatured part, this Deed of Trust shall remain in full force and effect as though no sale had been made under the provisions of this paragraph. Several sales may be made hereunder without exhausting the right of sale for any unmatured part of the indebtedness secured hereby.

5.02 Successor Trustee. If the Trustee shall die or become disqualified from acting in the execution of this trust, or shall fail or refuse to execute the same when requested by Beneficiary to do so; or if, for any reason, Beneficiary shall prefer to appoint a substitute Trustee to act instead of the Trustee named herein, Beneficiary shall have full power to appoint, by written instrument, a substitute Trustee, and, if necessary, several substitute Trustees in succession, who shall succeed to all the estate, rights, powers, and duties of the original Trustee named herein. Such appointment may be executed by any authorized agent of Beneficiary; and if Beneficiary is a corporation and such appointment is executed in its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. In the event of an assignment of the interests of Beneficiary under this Deed of Trust, all rights and remedies granted to Beneficiary in this Deed of Trust shall inure to the benefit of, and may be exercised by, the assignee.

5.03 Acts and Statements of Trustee. Grantor hereby agrees, in its behalf and in behalf of its heirs, executors, administrators, successors, personal representatives and assigns, that any and all statements of fact or other recitals made in any deed of conveyance given by the Trustee, with respect to the identity of Beneficiary, or with respect to the occurrence or existence of any default, or with respect to the acceleration of the maturity of any indebtedness secured hereby, or with respect to the request to sell, the notice of sale, the giving of notice to all debtors legally entitled thereto, the time, place, terms, and manner of sale, and receipt, distribution, and application of the money realized therefrom, or with respect to the due and proper appointment of a substitute Trustee, and, without being limited by the foregoing, with respect to any other act or thing having been duly done by the Beneficiary or by the Trustee hereunder, shall be taken by all courts of law and equity as prima facie evidence that the statements or recitals state facts and are without further question to be so accepted, and Grantor hereby ratifies and confirms every act that Trustee or any substitute Trustee hereunder may lawfully do in the premises by virtue hereof.

5.04 Disaffirmance by Purchaser. The purchaser at any trustee's or foreclosure sale hereunder may disaffirm any easement granted, or rental, lease or other contract made, in

violation of any provision of this Deed of Trust, and may take immediate possession of the Mortgaged Property free from, and despite the terms of, such grant of easement and rental or lease contract.

5.05 Beneficiary May Bid. Beneficiary shall have the right to become the purchaser at all sales to enforce this trust, being the highest bidder, and to have the amount of which such property is sold credited on the indebtedness secured hereby which is then owing.

ARTICLE VI **Hazardous Materials**

6.01 Definitions. For the purpose of this Deed of Trust, Grantor, Beneficiary and Trustee agree that, unless the context otherwise specifies or requires, the following terms shall have the meaning herein specified:

(a) **Hazardous Materials:** Any substance the presence of which on the Mortgaged Property is regulated by any Governmental Requirements (as hereinafter defined), including but not limited to: (i) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), as amended from time to time, and regulations promulgated thereunder; (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.) ("CERCLA" or "SuperFund"), as amended from time to time, and regulations promulgated thereunder; (iii) asbestos; (iv) polychlorinated biphenyls; (v) any petroleum-based products; and (vi) underground storage tanks, whether empty, filled or partially filled with any substance.

(b) **Governmental Requirements:** All laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the city, or any other political subdivision in which the Mortgaged Property is located, and any other political subdivision, agency or instrumentality exercising jurisdiction over Grantor or the Mortgaged Property.

(c) **Hazardous Materials Contamination:** The contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on, over or under the Mortgaged Property by Hazardous Materials, or the contamination of the improvements, facilities, soil, ground-water, air or other elements on, over or under any other property as a result of Hazardous Materials at any time (whether before or after the date of this Deed of Trust) emanating from the Mortgaged Property.

6.02 Representations and Warranties. Grantor hereby represents and warrants that:

(a) No Hazardous Materials are located on the Mortgaged Property or have been released into the environment, or deposited, discharged, placed or disposed of at, on, under or near the Mortgaged Property, or transported to or from the Mortgaged Property. No portion of the Mortgaged Property is being used or, to the best of Grantor's knowledge, has been used at any previous time, for the disposal, storage, treatment, processing, manufacturing or other

handling of Hazardous Materials nor is any part of the Mortgaged Property affected by any Hazardous Materials Contamination.

(b) To the best of Grantor's knowledge (i) no Hazardous Materials are located on property adjoining the Mortgaged Property; (ii) no property adjoining the Mortgaged Property has ever been used at any previous time for the disposal, storage, treatment, processing, manufacturing or other handling of Hazardous Materials; and (iii) no property adjoining the Mortgaged Property is affected by Hazardous Materials Contamination.

(c) No asbestos or asbestos-containing materials have been installed, used, incorporated into, or disposed of on the Mortgaged Property.

(d) No polychlorinated biphenyls or materials containing polychlorinated biphenyls are located on or in the Mortgaged Property, in the form of electrical transformers, fluorescent light fixtures with ballasts, cooling oils, or any other device or form.

(e) No underground storage tanks are located on the Mortgaged Property or, to the best of Grantor's knowledge, were previously located on the Mortgaged Property and subsequently removed or filled.

(f) No investigation, administrative order, consent order, agreement, litigation or settlement with respect to Hazardous Materials or Hazardous Materials Contamination is proposed, threatened, anticipated or in existence with respect to the Mortgaged Property. The Mortgaged Property and its existing and prior uses comply and at all times have complied with any applicable Governmental Requirements relating to environmental matters or Hazardous Materials. There is no condition on the Mortgaged Property which is in violation of any applicable Governmental Requirements relating to Hazardous Materials, and Grantor has received no communication from or on behalf of any Governmental Authority that any such condition exists. The Mortgaged Property is not currently on, and to the best of Grantor's knowledge, has never been on, any federal, state or local "Superfund" or "Superlien" list.

(g) Except for studies, audits, and reports pertaining to the Mortgaged Property which have been made available to Beneficiary, there have been no environmental investigations, studies, audits, tests, reviews or other analyses conducted by or which are in the possession of or available to Grantor in relation to the Mortgaged Property.

(h) All representations and warranties contained in this Section 6.02 shall survive the consummation of the transactions contemplated by this Deed of Trust.

6.03 Covenants. Grantor agrees: (a) that Grantor shall not receive, store, dispose or release any Hazardous Materials on or to the Mortgaged Property or transport any Hazardous Materials to or from the Mortgaged Property or permit the existence of any Hazardous Materials Contamination; (b) to give written notice to Beneficiary immediately upon Grantor's acquiring knowledge of the presence of any Hazardous Materials on the Mortgaged Property or of the transport of any Hazardous Materials to or from the Mortgaged Property or of the existence of any Hazardous Materials Contamination, with a full description thereof; (c) promptly, at

Grantor's sole cost and expense, to comply with any Governmental Requirements requiring the removal, treatment or disposal of such Hazardous Materials or Hazardous Materials Contamination and provide Beneficiary with satisfactory evidence of such compliance; (d) to provide Beneficiary, within thirty (30) days after demand by Beneficiary, with financial assurance evidencing to Beneficiary's satisfaction that the necessary funds are available to pay the cost of removing, treating and disposing of such Hazardous Materials or Hazardous Materials Contamination and discharging any assessments which may be established on the Mortgaged Property as a result thereof; and (e) to insure that all leases, licenses, and agreements of any kind now or hereafter executed which permit any party to occupy, possess, or use in any way the Mortgaged Property or any part thereof, whether written or oral, include an express prohibition on the disposal or discharge of any Hazardous Materials at or affecting the Mortgaged Property, and a provision that failure to comply with such prohibition shall expressly constitute a default under any such agreement.

6.04 Liens. Grantor shall not cause or suffer any liens to be recorded against the Mortgaged Property as a consequence of, or in any way related to, the presence, remediation or disposal of Hazardous Materials in or about the Mortgaged Property, including any so-called state, federal or local "Superfund" lien relating to such matters.

6.05 Site Assessments. Beneficiary (by its officers, employees and agents) at any time and from time to time, either prior to or after the occurrence of an Event of Default, may contract for the services of persons (the "Site Reviewers") to perform environmental site assessments ("Site Assessments") on the Mortgaged Property for the purpose of determining whether there exists on the Mortgaged Property any environmental condition which could result in any liability, cost or expense to the owner, occupier or operator of such Mortgaged Property arising under any Governmental Requirements relating to Hazardous Materials. The Site Assessments may be performed at any time or times, upon reasonable notice, and under reasonable conditions established by Grantor which do not impede the performance of the Site Assessment. The Site Reviewers are hereby authorized to enter upon the Mortgaged Property for such purposes. The Site Reviewers are further authorized to perform both above and below-ground testing for environmental damage or the presence of Hazardous Materials or Hazardous Materials Contamination on the Mortgaged Property and such other tests on the Mortgaged Property as may be necessary to conduct the Site Assessments in the reasonable opinion of the Site Reviewers. Grantor will supply to the Site Reviewers such historical and operational information regarding the Mortgaged Property as may be reasonably requested by the Site Reviewers to facilitate the Site Assessments and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. On request, Beneficiary shall make the results of such Site Assessments fully available to Grantor, which (prior to an Event of Default) may at its election participate under reasonable procedures in the direction of such Site Assessments and the description of tasks of the Site Reviewers. The cost of performing such Site Assessments shall be paid by Grantor upon demand of Beneficiary and any such obligations shall be indebtedness secured by this Deed of Trust.

6.06 INDEMNIFICATION GRANTOR SHALL AT ALL TIMES RETAIN ANY AND ALL LIABILITIES ARISING FROM THE PRESENCE, HANDLING, TREATMENT, STORAGE, TRANSPORTATION, REMOVAL OR DISPOSAL OF HAZARDOUS

MATERIALS ON THE MORTGAGED PROPERTY. REGARDLESS OF WHETHER ANY SITE ASSESSMENTS ARE CONDUCTED HEREUNDER, AND REGARDLESS OF WHETHER ANY EVENT OF DEFAULT (AS DEFINED IN SECTION 4.01 OF THIS DEED OF TRUST) SHALL HAVE OCCURRED AND BE CONTINUING OR ANY REMEDIES IN RESPECT TO THE MORTGAGED PROPERTY ARE EXERCISED BY BENEFICIARY, GRANTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS BENEFICIARY AND TRUSTEE (AND ANY SUCCESSOR TO THE TRUSTEE) FROM AND AGAINST ANY AND ALL LIABILITIES (INCLUDING STRICT LIABILITY), SUITS, ACTIONS, CLAIMS, DEMANDS, PENALTIES, DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, CONSEQUENTIAL DAMAGES, INTEREST, PENALTIES, FINES AND MONETARY SANCTIONS), LOSSES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND REMEDIAL COSTS) (THE FOREGOING ARE HEREINAFTER COLLECTIVELY REFERRED TO AS "LIABILITIES") WHICH MAY NOW OR IN THE FUTURE (WHETHER BEFORE OR AFTER THE CULMINATION OF THE TRANSACTIONS CONTEMPLATED BY THIS DEED OF TRUST) BE INCURRED OR SUFFERED BY BENEFICIARY OR TRUSTEE (OR ANY SUCCESSOR TO THE TRUSTEE) BY REASON OF, RESULTING FROM, IN CONNECTION WITH, OR ARISING IN ANY MANNER WHATSOEVER OUT OF THE BREACH OF ANY WARRANTY OR COVENANT OR THE INACCURACY OF ANY REPRESENTATION OF GRANTOR CONTAINED OR REFERRED TO IN THIS ARTICLE VI OR IN ANY LOAN AGREEMENT MADE AND ENTERED INTO BETWEEN GRANTOR AND BENEFICIARY RELATING TO THE MORTGAGED PROPERTY OR WHICH MAY BE ASSERTED AS A DIRECT OR INDIRECT RESULT OF THE PRESENCE ON OR UNDER, OR ESCAPE, SEEPAGE, LEAKAGE, SPILLAGE, DISCHARGE, EMISSION OR RELEASE FROM THE MORTGAGED PROPERTY OF ANY HAZARDOUS MATERIALS OR ANY HAZARDOUS MATERIALS CONTAMINATION OR ARISE OUT OF OR RESULT FROM THE ENVIRONMENTAL CONDITION OF THE MORTGAGED PROPERTY OR THE APPLICABILITY OF ANY GOVERNMENTAL REQUIREMENTS RELATING TO HAZARDOUS MATERIALS, REGARDLESS OF WHETHER OR NOT CAUSED BY OR WITHIN THE CONTROL OF GRANTOR, BENEFICIARY OR TRUSTEE (OR ANY SUCCESSOR TO THE TRUSTEE).

SUCH LIABILITIES SHALL INCLUDE, WITHOUT LIMITATION: (I) INJURY OR DEATH TO ANY PERSON; (II) DAMAGE TO OR LOSS OF THE USE OF ANY PROPERTY; (III) THE COST OF ANY DEMOLITION AND REBUILDING OF ANY IMPROVEMENTS NOW OR HEREAFTER SITUATED ON THE MORTGAGED PROPERTY OR ELSEWHERE, AND THE COST OF ANY REPAIR OR REMEDIATION OF ANY SUCH IMPROVEMENTS; (IV) THE COST OF ANY ACTIVITY REQUIRED BY ANY GOVERNMENTAL AUTHORITY; (V) ANY LAWSUIT BROUGHT OR THREATENED, GOOD FAITH SETTLEMENT REACHED, OR GOVERNMENTAL ORDER RELATING TO THE PRESENCE, DISPOSAL, RELEASE OR THREATENED RELEASE OF ANY HAZARDOUS MATERIALS, ON, FROM OR UNDER THE MORTGAGED PROPERTY; AND (VI) THE IMPOSITION OF ANY LIENS ON THE MORTGAGED PROPERTY ARISING FROM THE ACTIVITY OF GRANTOR OR GRANTOR'S PREDECESSORS IN INTEREST ON THE

MORTGAGED PROPERTY OR FROM THE EXISTENCE OF HAZARDOUS MATERIALS UPON THE MORTGAGED PROPERTY OR HAZARDOUS MATERIALS CONTAMINATION. THE COVENANTS, WARRANTIES, AGREEMENTS AND INDEMNIFICATIONS CONTAINED IN THIS ARTICLE VI SHALL SURVIVE THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS DEED OF TRUST.

6.07 Right of Entry. Beneficiary shall have the right but not the obligation, without in any way limiting Beneficiary's other rights and remedies under this Deed of Trust, to enter onto the Mortgaged Property or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Materials or Hazardous Materials Contamination on or under the Mortgaged Property following receipt of any notice from any person or entity asserting the existence of any Hazardous Materials or Hazardous Materials Contamination pertaining to the Mortgaged Property, or any part thereof which, if true, could result in an order, notice, suit, imposition of a lien on the Mortgaged Property, or other action, and/or which, in Beneficiary's sole opinion, could jeopardize Beneficiary's security upon this Deed of Trust. All costs and expenses paid or incurred by Beneficiary in the exercise of any such rights shall be indebtedness secured by this Deed of Trust and shall be payable by Grantor upon demand.

ARTICLE VII **Additional Provisions**

7.01 Rights of Beneficiary. If any of the indebtedness hereby secured shall become due and payable, Trustee or Beneficiary shall have the right and power to proceed by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure hereunder or for the sale of the Mortgaged Property under the judgment or decree of any court or courts of competent jurisdiction or for the appointment of a receiver pending any foreclosure hereunder or the sale of the Mortgaged Property under the order of a court or courts of competent jurisdiction or under executory or other legal process, or for the enforcement of any other appropriate legal or equitable remedy. Grantor agrees, to the full extent that it lawfully may, that in case one or more of the defaults hereunder shall have occurred and shall not have been remedied, then, and in every such case, the Beneficiary shall have the right and power to enter into and upon and take possession of all or any part of the Mortgaged Property in the possession of the Grantor, its successors or assigns, or its or their agents or servants, and may exclude Grantor, its successors or assigns, and all persons claiming under Grantor, and its or their agents or servants, wholly or partly therefrom; and, holding the same, the Beneficiary may use, administer, manage, operate and control the Mortgaged Property and conduct the business thereof to the same extent as Grantor, its successors or assigns, might at the time do and may exercise all rights and powers of Grantor, in the name, place and stead of Grantor, or otherwise as the Beneficiary shall deem best; and in the exercise of any of the foregoing rights and powers Beneficiary shall not be liable to Grantor for any loss or damage thereby sustained.

7.02 The Lien. Any part of the Mortgaged Property may be released by the Beneficiary without affecting the lien, security interest and assignment hereof against the remainder. The

lien, security interest and other rights granted hereby shall not affect or be affected by any other security taken for the same indebtedness or any part thereof. The taking of additional security, or the extension or renewal of the indebtedness secured hereby or any part thereof, shall not release or impair the lien, security interest and other rights granted hereby, or affect the liability of any endorser, guarantor or surety, or improve the right of any permitted junior lienholder; and this Deed of Trust, as well as any instrument given to secure any renewal or extension of the indebtedness secured hereby, or any part thereof, shall be and remain a first and prior lien, except as otherwise provided herein on all of the Mortgaged Property not expressly released until the indebtedness secured hereby is completely paid.

7.03 Waiver. To the extent that Grantor may lawfully do so, Grantor agrees that Grantor shall not assert and hereby expressly waives, any right under any statute or rule of law pertaining to the marshalling of assets, the exemption of homestead, the administration of estates of decedents, or other matter whatever to defeat, reduce or affect the right of Beneficiary, under the terms of this Deed of Trust, to sell the Mortgaged Property for the collection of the indebtedness secured hereby (without any prior or different resort for collection) or the right of Beneficiary, under the terms of this Deed of Trust, to the payment of such indebtedness out of the proceeds of sale of the Mortgaged Property in preference to every other person and claimant whatever (only reasonable expenses of such sale being first deducted). No provision of this Deed of Trust or any other document securing or pertaining to the Note shall be construed to impose on Beneficiary any duty to sell the Mortgaged Property or any other collateral for the Note for collection of the indebtedness secured by this Deed of Trust or to pursue any other remedy in Beneficiary's power whatsoever. Grantor expressly waives and relinquishes any right or remedy which it may have or be able to assert by reason of the provisions of Chapter 34 of the Business and Commerce Code of the State of Texas, pertaining to the rights and remedies of sureties. To the full extent permitted by applicable law, Grantor waives any right to require Beneficiary to use diligence in collection of any indebtedness secured by this Deed of Trust, to proceed against or exhaust any security or collateral for the loan evidenced by the Note, to mitigate Beneficiary's damages in connection with the loan evidenced by the Note, or to pursue any other remedy in Beneficiary's power whatsoever.

7.04 Subrogation. To the extent that proceeds of the Note are used to pay an outstanding lien, charge or encumbrance against or affecting the Mortgaged Property, such proceeds have been advanced by Beneficiary at Grantor's request, and Beneficiary shall be subrogated to all rights, interests and liens owned or held by any owner or holder of such outstanding liens, charges and encumbrances, irrespective of whether such liens, charges or encumbrances are released of record.

7.05 Limitation on Interest. All agreements between Grantor and Beneficiary, whether now existing or hereafter arising and whether written or oral, are expressly limited so that in no contingency or event whatsoever shall the amount paid, or agreed to be paid, to Beneficiary for the use, forbearance, or detention of the money to be loaned pursuant to the Note or otherwise, or for the performance or payment of any covenant or obligation contained herein, exceed the maximum amount permissible under applicable law. If from any circumstance whatsoever fulfillment of any provision hereof at the time performance of such provision shall be due shall involve transcending the limit of validity prescribed by law, then, ipso facto, the obligation to be

fulfilled shall be reduced to the limit of such validity, and if from any such circumstance Beneficiary shall ever receive as interest under such Note or this Deed of Trust or otherwise an amount that would exceed the highest lawful rate, such amount that would be excessive interest shall be applied to the reduction of the principal amount owing under the Note or on account of the Other Indebtedness secured hereby and not to the payment of interest or if such excessive interest exceeds the unpaid balance of principal of the Note and such Other Indebtedness, such excess shall be refunded to Grantor, or to the maker of the Note or other evidence of indebtedness if other than Grantor. All sums paid or agreed to be paid to Beneficiary for the use, forbearance, or detention of the indebtedness secured hereby shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the actual rate of interest on account of such indebtedness is uniform throughout the term thereof. The terms and provisions of this Section shall control and supersede every other provision of all agreements between Grantor, the maker of the Note or other evidence of indebtedness if other than Grantor, and Beneficiary.

7.06 Waiver and Invalidity. No waiver of any default on the part of Grantor or breach of any of the provisions of this Deed of Trust or of any other instrument executed in connection with the indebtedness secured hereby shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers herein granted shall be construed as a waiver of such rights and powers, and likewise no exercise or enforcement of any rights or powers hereunder shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. If any provision of this Deed of Trust is held to be illegal, invalid, or unenforceable under present or future laws effective while this Deed of Trust is in effect, the legality, validity, and enforceability of the remaining provisions of this Deed of Trust shall not be affected thereby, and in lieu of each such illegal, invalid, or unenforceable provision there shall be added automatically as a part of this Deed of Trust a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. If any of the liens, security interest or assignment of rents created by this Deed of Trust shall be invalid or unenforceable, the unsecured portion of the indebtedness secured hereby shall be completely paid prior to the payment of the remaining and secured portion of such indebtedness and all payments made on account of such indebtedness shall be considered to have been paid on and applied first to the complete payment of the unsecured portion of such indebtedness.

7.07 Tenancy at Will. In the event of a trustee's sale hereunder and if at the time of such sale the Grantor occupies the portion of the Mortgaged Property so sold, or any part thereof, Grantor shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either tenant or landlord, at a reasonable rental per day based upon the value of the portion of the Mortgaged Property so occupied, such rental to be due and payable daily to the purchaser. An action of forcible detainer shall lie if the tenant holds over after a demand in writing for possession of such Mortgaged Property and premises; and this agreement and any trustee's deed shall constitute a lease and agreement under which the tenant's possession, each and all, arose and continued.

7.08 Security Agreement. With respect to any portion of the Mortgaged Property which constitutes personal property or fixtures governed by the Uniform Commercial Code of the State

of Texas (hereinafter called the "Code"), this Deed of Trust shall constitute a security agreement between Grantor as the Debtor and Beneficiary as the Secured Party, and Grantor hereby grants to Beneficiary a security interest in such portion of the Mortgaged Property. Cumulative of all other rights of Beneficiary hereunder, Beneficiary shall have all of the rights conferred upon secured parties by the Code. Grantor will execute and deliver to Beneficiary all financing statements that may from time to time be required by Beneficiary to establish and maintain the validity and priority of the security interest of Beneficiary, or any modification thereof, and all costs and expenses of any searches reasonably required by Beneficiary. Beneficiary may exercise any or all of the remedies of a secured party available to it under the Code with respect to such property, and it is expressly agreed that if upon default Beneficiary should proceed to dispose of such property in accordance with the provisions of the Code, then (10) days' notice by Beneficiary to Grantor shall be deemed to be reasonable notice under any provision of the Code requiring such notice; provided, however, that Beneficiary may at its option dispose of such property in accordance with Beneficiary's rights and remedies with respect to the real property pursuant to the provisions of this Deed of Trust, in lieu of proceeding under the Code.

7.09 Changes in Grantor's Identity. Grantor shall give advance notice in writing to Beneficiary of any proposed change in Grantor's name, address, identity, or corporate structure and will execute and deliver to Beneficiary, prior to or concurrently with the occurrence of any such change, all additional financing statements that Beneficiary may require to establish and maintain the validity and priority of Beneficiary's security interest with respect to any Mortgaged Property described or referred to herein.

7.10 Fixtures. Some of the items of Mortgaged Property described herein are goods that are or are to become fixtures related to the real estate described herein, and it is intended that as to those goods, this Deed of Trust shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the county in which the Mortgaged Property is situated. Information concerning the security interest created by this instrument may be obtained from Beneficiary, as secured party, at the address of Beneficiary stated above. The mailing address of the Grantor, as debtor, is as stated in Section 1.02.

7.11 Annual Statements. Grantor shall deliver to Beneficiary, (i) within ninety (90) days after the end of each calendar year, then current audited annual statements, in form and content satisfactory to Beneficiary, itemizing the income and expenses of the Mortgaged Property and financial statements of Grantor (and each of them) all in detail satisfactory to Beneficiary, (ii) a copy of Grantor's federal income tax return for each tax year during the term of the Note and all amendments thereto within thirty (30) days after Grantor's filing of same with the Internal Revenue Service, and (iii) certified monthly operating statements for the Project in form and content satisfactory to Beneficiary.

7.12 Applicable Law. All references in this Deed of Trust to the "law" or to "lawful rate" shall be construed to be the laws of the State of Texas and the United States, whichever is applicable. "Applicable law" as used herein means (a) the law pertaining to maximum rates of interest that is now in effect, and (b) any law that comes into effect at any time in the future allowing a higher maximum rate than the law now in effect.

7.13 Binding Effect. The covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, personal representatives, successors and assigns of the parties hereto, and to any substitute Trustee. Whenever used, the singular number shall include the plural and the singular, and the use of any gender shall be applicable to all genders. The duties, covenants, conditions, obligations and warranties of Grantor in this Deed of Trust shall be joint and several obligations of Grantor and each Grantor if more than one, and Grantor's heirs, personal representatives, successors and assigns. Each party who executes this Deed of Trust (other than Beneficiary), and each subsequent owner of the Mortgaged Property, or any part thereof, covenants and agrees that it will perform, or cause to be performed, each condition, term, provision, and covenant of this Deed of Trust.

7.14 Right to Inspect. Beneficiary shall have at all times a right of access to and upon the Mortgaged Property for purposes of inspection and, at Beneficiary's option, for purposes of performing any obligations required of Grantor hereunder.

7.15 Notices. All notices, requests, consents, demands and other communications required or which any part desires to give hereunder shall be in writing. Notice will be deemed effective upon deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed to the party to whom directed at the addresses specified in Article I of this Deed of Trust (unless changed by notice in writing given by the particular party whose address is to be changed). Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. Provided, however, service of a notice required by Texas Property Code Section 51.002, as amended, shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon receipt. This section shall not be construed in any way to affect or impair any waiver of notice or demand provided in the Note or any other instrument securing the Note or to require giving of notice or demand to or upon any person in any situation or for any reason.

7.16 Assignment of Rents. All of the rents, royalties (including, but not limited to, royalties arising out of the sale of oil, gas, and any other minerals produced from the Mortgaged Property, or any properties pooled with the Mortgaged Property), issues, profits, revenue, income and other benefits derived from the Mortgaged Property or arising from the use or enjoyment of any portion thereof or from any lease or agreement pertaining thereto (hereinafter called the "Rents and Profits") are hereby assigned, transferred, conveyed and set over to Beneficiary as security for (i) payment of the principal and interest and all other sums payable on the Note, (ii) payment of any Other Indebtedness secured hereby and (iii) the performance and discharge of each and every obligation, covenant and agreement of Grantor set forth herein or in the Note or in any other instrument securing payment of the Note. Prior to the occurrence of any default hereunder, Grantor shall collect and receive all Rents and Profits, and Grantor shall apply the funds so collected first to the payment of the principal and interest and all other sums payable on the Note and in payment of all Other Indebtedness secured hereby and thereafter, so long as no default hereunder has occurred, the balance shall be distributed to the account of Grantor. Grantor will not (i) execute an assignment of any of its right, title or interest in the Rents and Profits, or (ii) except in the ordinary course of business, including but not limited to where the lessee is in default thereunder, terminate or consent to the cancellation or surrender of any lease of the

Mortgaged Property or any part thereof, now or hereafter existing having an unexpired term of one year or more except that any lease may be canceled, provided that promptly after the cancellation or surrender thereof a new lease is entered into with a new lessee having a credit standing, in the judgment of Beneficiary, at least equivalent to that of the lessee whose lease was canceled, on substantially the same terms as the terminated or canceled lease, or (iii) except in the ordinary course of business, modify any lease of the Mortgaged Property or any part thereof so as to shorten the unexpired term thereof or so as to decrease any amount of the rent payable thereunder, or (iv) accept prepayments of any installments of rent to become due under any of such leases in excess of one month, except prepayments in the nature of security for the performance of the lessee thereunder, or (v) in any other manner impair the value of the Mortgaged Property or the security of this Deed of Trust. Upon default in the payment of the Note or any Other Indebtedness secured hereby, Beneficiary may, at its option, and without notice to Grantor receive and collect all Rents and Profits. Effective upon such default and for the foregoing purpose Grantor has irrevocably made, constituted and appointed, and by these presents does irrevocably make, constitute and appoint Beneficiary as its true and lawful attorney for it and in its name, place and stead to receive and collect the Rents and Profits, compromise and settle all claims therefor, and execute, deliver, cancel, modify and to release any and all leases and lessees, giving and granting unto Beneficiary full power and authority to do and perform all and every act and thing whatsoever, requisite and necessary to be done in connection therewith, as fully, to all intents and purposes, as Grantor might or could do if personally present and also giving and granting unto Beneficiary full power to substitute one or more attorney or attorneys under it, concerning such matters. Default shall be presumed upon Beneficiary's filing with the County Clerk of the County in which the Mortgaged Property is located of an affidavit to the effect that default has occurred hereunder and all persons dealing with Beneficiary may rely upon such affidavit. Grantor agrees that all persons dealing with Beneficiary and its substitutes that this power of attorney shall remain effective for so long as there is default under the terms hereof. Grantor agrees to indemnify and hold Beneficiary and its substitutes harmless from any and all liability arising out of Beneficiary's or its substitutes' acts pursuant to the authority herein granted to the extent allowed by law. This power of attorney is one coupled with an interest.

7.17 Construction Mortgage. This Deed of Trust constitutes a "construction mortgage" as defined in the Texas Business and Commerce Code and secures an obligation incurred for the construction of improvements on the real property described herein.

7.18 Construction Loan Agreement. It is understood and agreed that all or a portion of the funds to be advanced under the Note are to be used in the ■ [acquisition and] [rehabilitation] [construction] of the Project in accordance with the Construction Loan Agreement, which Construction Loan Agreement is incorporated herein by reference to the same extent and effect as if fully set forth herein and made a part hereof. This Deed of Trust secures the payment of all sums and the performance of all covenants required by Grantor (or the maker of the Note if different from Grantor) under the Construction Loan Agreement, and upon the failure of Grantor (or the maker of the Note if different from Grantor) to keep and perform all the covenants, conditions and agreements of the Construction Loan Agreement, the indebtedness secured hereby shall, at the option of Beneficiary, become due and payable, anything herein contained to the contrary notwithstanding.

7.19 Attorney in Fact. Grantor has irrevocably made, constituted and appointed, and by these presents does irrevocably make, constitute and appoint Beneficiary its true and lawful attorney, for it and in its name, place and stead to contract for the sale of and convey all or any part of the Mortgaged Property, giving and granting unto Beneficiary full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in connection therewith, as fully, to all intents and purposes, as Grantor might or could do if personally present and also giving and granting unto Beneficiary full power to substitute one or more attorneys under it, in or concerning such matters. Grantor agrees that this power of attorney shall be effective upon default in the payment of the Note or under any instrument executed as security therefor, and Grantor agrees and represents to those dealing with Beneficiary, and its substitute or substitutes, that this power of attorney shall be effective upon Beneficiary's filing with the County Clerk of ■ County, Texas, an affidavit to the effect that default has occurred under the terms of the Note or any instruments executed as security therefor and such persons may rely upon Beneficiary's representation with regard to the continuation of such default, Grantor agrees with all persons dealing with Beneficiary, its substitute and substitutes that this power of attorney shall remain effective for so long as there is default under the terms of the Note or any instruments executed as security therefor, and further agrees with such persons that they may rely upon the representations of Beneficiary, its substitute and substitutes, with regard to the continuation of such default. **SUBJECT TO THE LIMITATIONS CONTAINED HEREIN, GRANTOR AGREES TO INDEMNIFY AND HOLD BENEFICIARY AND ITS SUBSTITUTES HARMLESS FROM ANY AND ALL LIABILITY ARISING OUT OF BENEFICIARY'S OR ITS SUBSTITUTES' ACTS PURSUANT TO THE AUTHORITY HEREIN GRANTED TO THE EXTENT ALLOWED BY LAW. THIS POWER OF ATTORNEY IS ONE COUPLED WITH AN INTEREST.**

7.20 Subordination to LURA. Notwithstanding anything to the contrary, the lien and security interest created hereby are expressly subordinate to the LURA.

EXECUTED this _____ day of ■, 2003.

■

By: _____
 Name:
 Title:

THE STATE OF TEXAS §
 §
 COUNTY OF ■ §

This instrument was acknowledged before me on this _____ day of ■, 2003, by ■, ■ of ■, a ■ corporation, on behalf of said corporation.

Notary Public, State of Texas

OR, IF IN OR OUT-OF-STATE CORPORATION IS GENERAL PARTNER TO LIMITED PARTNERSHIP

THE STATE OF ■ §
 §
COUNTY OF ■ §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared ■, known to me to be the ■ of ■, a ■ corporation, general partner of ■, the limited partnership that executed the foregoing instrument, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said limited partnership, and that he executed the same as the act of such limited partnership for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of ■, 2003.

Notary Public, State of Texas

7. Renewal and Extension. This Deed of Trust and the liens, rights and interest herein created and granted are in renewal and extension, but not in extinguishment, of the liens, rights, and interest originally created in or arising out of the Prior Deed of Trust. All liens, rights and interest granted in or arising out of the Prior Deed of Trust are hereby ratified, renewed and brought forward for the benefit of Beneficiary, and Beneficiary is subrogated into and entitled to the benefits of said prior deed of trust, and it is agreed that none of the rights of Beneficiary, including, but not limited to, the priority of Beneficiary's lien, shall be in any way adversely affected hereby.

VENDOR'S LIEN CLAUSE (Optional)

7. Secured by Vendor's Lien. The Note is primarily secured by the vendor's lien and superior title retained in deed of even date herewith from _____ to Grantor conveying the Mortgaged Property. The acceptance of this Deed of Trust with power of sale shall not be construed as a waiver of said vendor's lien and superior title retained in said deed which have been transferred to Beneficiary.

SECOND LIEN CLAUSE (Optional)

7. Second Lien. Notwithstanding any provision of this Deed of Trust to the contrary, the lien and security interest created hereby are expressly subordinate and inferior to the lien created by

the First Mortgage which secures the First Note. Any default under the terms of the First Note or pursuant to any instruments securing same shall constitute default hereunder, under the terms of the Note and all instruments securing same. In the event of such default, Beneficiary shall have the right (but not the obligation) to cure same in which event all monies advanced and costs expended for such purpose shall be an obligation of Grantor secured hereby and payable on demand, together with interest thereon at the highest lawful rate Grantor could contract to pay to Beneficiary at the time of Beneficiary's advance or expenditure, or if there is no such highest lawful rate at the rate of 18% per annum. Beneficiary's curing of such default shall not cure the default hereunder. Grantor shall: (i) not agree to allow any renewal, extension, modification or rearrangement of the First Note or the First Mortgage without Beneficiary's prior written consent; (ii) not increase the indebtedness secured by the liens and security interest created by the First Mortgage; (iii) timely perform all of the covenants contained in the First Note and the First Mortgage; and (iv) promptly deliver to Beneficiary copies of all notices received by Grantor from the holder of the First Note and the First Mortgage.

PREPARED BY:

Texas Department of Housing
and Community Affairs
Legal Services
507 Sabine St.
Austin, Texas 78701
(512) 475-3902

AFTER RECORDING RETURN TO:

Texas Department of Housing
and Community Affairs
Legal Services
P.O. Box 13941
Austin, Texas 78711-3941

LAND USE RESTRICTION AGREEMENT
(Multifamily Properties)
(HOME)

THE STATE OF TEXAS §
 §
COUNTY OF ■ §

THIS LAND USE RESTRICTION AGREEMENT ("Agreement"), effective ■, 2003, is between ■ ("Owner"), and the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official department of the State of Texas (the "Department").

RECITALS :

Owner is the owner of certain improvements ("Improvements") known as ■ (the "Project") situated on real property ("Land") located in the City of ■, County of ■, State of Texas, more fully described in Exhibit "A" attached hereto and incorporated herein by reference. The Land and Improvements are hereinafter collectively referred to as the "Property".

Of even date herewith, the Department has agreed to loan certain funds (the "Loan") to Owner, made available to the Department under the Federal Act and State Act (hereafter defined), in accordance with that certain Construction Loan Agreement executed by and between Owner and the Department, which funds shall be used by Owner for the ■[acquisition] of the Property ■ and/or [rehabilitation] [construction] of the Project.

Pursuant to the Federal Act and State Act and the HOME Regulations, as amended, Owner, as a condition to the Department making the Loan, must agree to comply with certain occupancy, rent and other restrictions, and the parties have entered into this Agreement to evidence Owner's agreement to comply with such restrictions during the Term (hereinafter defined).

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE I
Definitions

Section 1.1. General. Capitalized terms used in this Agreement shall have, unless the context clearly requires otherwise, the meanings specified in this Article I. Certain additional terms may be defined elsewhere in this Agreement.

(a) **"Adjusted Income"** means "adjusted income" as defined in 24 C.F.R. Section 92.203.

(b) **"Agreement"** means this Land Use Restriction Agreement, as it may from time to time be amended.

(c) **"Annual Income"** means "annual income" as defined in 24 C.F.R. Section 92.203.

(d) **"Area Median Income"** means the median income, adjusted for family size, for the area where the Property is located, as such median income is established by HUD at least annually in accordance with the Federal Act, or as otherwise established by the Department.

(e) **"Displaced Persons"** means a person that moves from the Project or moves personal property from the Project, permanently, as a direct result of acquisition, reconstruction, rehabilitation or demolition of the Project or as otherwise provided in the HOME Regulations.

(f) **"Department Compliance Monitoring and Auditing Procedures"** means procedures and requirements adopted or imposed by the Department or HUD for the purpose of monitoring and auditing the Property and the books and records of the Owner for compliance with this Agreement, the HOME Regulations, the HOME Manual, those inspections and examinations allowed pursuant to Section 2306.231 of the State Act and any and all other Governmental Requirements (as defined below).

(g) **"Extremely Low Income Families"** means families and individuals whose Annual Incomes do not exceed thirty percent (30%) of the Area Median Income in the area in which the Property is located, as determined by the Department in accordance with the State Act.

(h) **"Federal Act"** means the Cranston-Gonzalez National Affordable Housing Act, as set forth in 42 U.S.C. Section 12701 et seq. or any corresponding provision or provisions of succeeding law as it or they may be amended from time to time.

(i) **"Governmental Authority"** means the United States of America, the State of Texas, the County of ■, Texas, and the City of ■, Texas, and any political subdivision of any of the foregoing, and any other political subdivision, agency, or instrumentality exercising jurisdiction over Borrower or the Property.

(j) **"Governmental Requirements"** means all federal, state and local laws, statutes, ordinances, rules, regulations, orders and decrees of any court or administrative body or tribunal related to the activities and performances under this Agreement.

(k) **"Hazardous Substance"** means any substance defined as a hazardous substance, hazardous material, hazardous waste, toxic substance or toxic waste in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. Section 9601 et seq.; the Hazardous Materials Transportation Act, as amended, 39 U.S.C. Section 1801 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq.; or any similar applicable federal, state or local law; or in any regulation adopted or publication promulgated pursuant to any said law, either existing or promulgated from time to time.

(l) **"HOME Manual"** means the State of Texas HOME Implementation Manual, as amended or superseded from time to time, which serves as a comprehensive guidebook to those entities that have been provided funds through the Department pursuant to the HOME Program, together with any and all other manuals and guidelines developed by the Department in connection with the implementation and operation of the HOME Program.

(m) **"HOME Program"** means the federal housing program designated as the HOME Investment Partnership Program and established pursuant to the Federal Act and State Act and the HOME Regulations.

(n) **"HOME Regulations"** means the regulations promulgated pursuant to the Federal Act and State Act by HUD and the Department, respectively, or any respective successor, as finalized and amended from time to time, which regulations govern the HOME Program. The HOME Regulations are set forth at Title 24 Part 92 of the Code of Federal Regulations and Title 10 Chapter 53 of the Texas Administrative Code.

(o) **"HUD"** means the United States Department of Housing and Urban Development and its successor.

(p) **"Low Income Families"** means families and individuals whose Annual Incomes do not exceed eighty percent (80%) of the Area Median Income, or such other income limits as established by HUD in accordance with the Federal Act or as otherwise determined by the Department.

(q) **"Monthly Adjusted Income"** means one-twelfth (1/12) of the Annual Income.

(r) **"Project"** means the ■-unit multifamily rental housing project to be located on the Land, including Owner's activities concerning the ownership, rehabilitation and operation of the Property. The general reference name for the Project is ■.

(s) **"Project Documents"** means all tenant lists, applications, (whether accepted or rejected), leases, lease addenda, tenant and owner certifications, advertising records, waiting lists, rental calculations and rent records, utility allowance documentation, income examinations and re-examinations relating to the Project and other documents otherwise required by the Department.

(t) **"Qualified Tenant"** means a family or individual tenant of a Qualifying Unit who satisfies the requirements of Article II of this Agreement with respect to such Qualifying Unit.

(u) **"Qualifying Unit"** means a unit that (i) is rented to either a Low Income Family, a Very Low Income Family, or an Extremely Low Income Family, and (ii) is used in complying with the occupancy requirements of Article II of this Agreement.

(v) **"Relocation Plan"** means a residential anti-displacement and relocation assistance plan as established by HUD and which: (i) includes provisions consistent with the requirements of Section 104(d) of the Housing and Community Development Act of 1974, as amended (42 USC §

5304(d)) and the HOME Regulations and HOME Manual and (ii) is in form and substance consistent with requirements of the Department.

(w) **"Special Needs Individual" or "Special Needs Family"** means a Low Income, Very Low Income, or Extremely Low Income, individual or family with at least one member who is considered: (1) elderly (62 years of age or older); (2) victims of domestic violence; (3) a person with HIV/AIDS, and their families; (4) migrant farm workers; or (5) persons with disabilities; (6) persons with alcohol or other drug addiction; or (7) homeless. A disability is defined as a physical or mental impairment, or being regarded as having such an impairment. According to the definition, disabilities may include, but are not limited to: HIV/AIDS, epilepsy, heart disease, disfigurement, obesity, diabetes, mental retardation, emotional illness, cancer, learning disabilities, sensory impairment, or psychological disorders. The disability must be long-term, permanent and/or progressive, as certified in writing by a medical statement or public service agency with access to medical records.

(x) **"State Act"** means TEX. GOV'T CODE Chap. 2306 as amended from time to time.

(y) **"Term"** means the period commencing on the effective date of this Agreement and ending on the date which is ■ (■) years from the effective date of this Agreement.

(z) **"Unit"** means a residential accommodation constituting a part of the Property and containing separate and complete living facilities.

(aa) **"Utility Allowance"** means a monthly allowance for utilities and services (excluding telephone) to be paid by the tenant, which monthly allowance is provided by the local public housing authority or as determined by the Department annually and from time to time as required under the HOME Regulations.

(bb) **"Very Low Income Families"** means families and individuals whose Annual Incomes do not exceed fifty percent (50%) of the Area Median Income, or such other income limits as established by HUD in accordance with the Federal Act or as otherwise determined by the Department.

Section 1.2. Generic Terms. Unless the context clearly indicates otherwise, where appropriate the singular shall include the plural and the masculine shall include the feminine or neuter, and vice versa, to the extent necessary to give the terms defined in this Article I and/or the terms otherwise used in this Agreement their proper meanings.

ARTICLE II

Use and Occupancy of the Property

Section 2.1. Use of the Property. During the Term, Owner will maintain the Property as rental housing and will rent or hold available for rental each Unit on a continuous basis in order to meet the occupancy requirements of this Agreement.

Section 2.2. Common Areas. During the Term, Owner agrees that any common areas, including, without limitation, any laundry or community facilities on the Property shall be for the exclusive use of the tenants and their guests and shall not be available for use by the general public.

Section 2.3. Occupancy Requirements.

(a) Initial Occupancy Requirements. Notwithstanding anything herein to the contrary, at the time of occupancy of the Property or the time funds are invested pursuant to the HOME Program in connection with the Property, whichever is later, Owner must comply with the following occupancy requirements:

(1) at least ■ of the ■ Qualifying Units ■[acquired] [rehabilitated] [constructed] with funds provided under the HOME Program must be occupied by Low Income Families whose Annual Incomes do not exceed eighty percent (80%) of the area Median Income;

(2) at least ■ of the ■ Qualifying Units ■[acquired] [rehabilitated] [constructed] with funds provided under the HOME Program must be occupied by Low Income Families whose Annual Incomes do not exceed sixty percent (60%) of the Area Median Income;

(3) at least ■ of the ■ Qualifying Units ■[acquired] [rehabilitated] [constructed] with funds provided under the HOME Program must be occupied by Very Low Income Families; and

(4) The remaining ■ Units of the ■ Qualifying Units [acquired] [rehabilitated] [constructed] with funds provided under the HOME Program may be occupied by Extremely Low Income Families.

(b) Long Term Occupancy Requirements. Subject to subsection (a) of this Section 2.3, during the Term, Owner will make available for occupancy:

(1) Low Income Families whose Annual Incomes do not exceed eighty percent (80%) of the Area Median Income not less than ■ of the Qualifying Units;

(2) Low Income Families whose Annual Incomes do not exceed sixty percent (60%) of the Area Median Income not less than ■ of the Qualifying Units; and

(3) Very Low income Families not less than ■ of the Qualifying Units; and

(4) Extremely Low income Families the remaining ■ Units of the Qualifying Units.

Owner shall use its best efforts to distribute Units reserved for Low Income Families, Very Low Income Families and Extremely Low Income Families among unit sizes in proportion to the distribution of unit sizes in the Property and to avoid concentration of Low Income Families, Very Low Income Families and Extremely Low Income Families in any area or areas of the Property. In

addition, at least ■ Units of all Qualifying Units, shall be made available for occupancy by Special Needs Individuals or Special Needs Families that are elderly of which: at least ■ Units of all Qualifying Units, shall be made available for occupancy by Special Needs Individuals or Special Needs Families with hearing or vision impairments.

■[OPTIONAL FOR NEW CONSTRUCTION OR SET ASIDE IF NOT NEW CONSTRUCTION]In addition at least ■ Units or five percent (5%) of all Qualifying Units, whichever is greater, shall be made available for occupancy by Special Needs Individuals or Special Needs Families with mobility impairments and at least ■ Units or two percent (2%) of all Qualifying Units, whichever is greater, shall be made available for occupancy by Special Needs Individuals or Special Needs Families with hearing or vision impairments.

■ (c) Very Low Income Families. The total number of Very Low Income and Extremely Low Income units required under subsections (a) and (b) above are at least 20% of the Qualifying Units.

Section 2.4. Income Determination.

(a) The determination of whether the Annual Income of a family or individual occupying or seeking to occupy a Qualifying Unit complies with the requirements for Extremely Low Income Families or Very Low Income Families or Low Income Families shall be made by Owner prior to admission of such family or individual to occupancy in a Qualifying Unit (or to designation of a Unit occupied by such family or individual as a Qualifying Unit). Thereafter, such determinations shall be made by Owner at least annually.

(b) If the Annual Income of a tenant which previously was classified as Very Low Income or Extremely Low Income Families shall be determined upon reexamination to exceed the applicable income limit for Very Low Income Families, but does not exceed 80% of Area Median Income (the applicable income limit for Low Income Families), the Unit shall continue to be counted as occupied by a Qualified Tenant during such family's or individual's continuing occupancy of such Unit, and the Owner shall not be considered out of compliance with the occupancy requirements of Section 2.3, provided Owner shall hold the next available Unit available for occupancy by Very Low Income Families or as otherwise may be necessary to comply with the occupancy requirements of Section 2.3.

(c) If the Annual Income of a tenant which previously was classified as Extremely Low Income Families, Very Low Income Families or Low Income Families shall be determined upon reexamination to exceed 80% of Area Median Income (the applicable income limit for Low Income Families), the Unit occupied by such family or individual shall continue to be counted as occupied by a Qualified Tenant during such family's or individual's continuing occupancy of such Unit and the Owner shall not be considered out of compliance with the occupancy requirements of Section 2.3, provided (A) such family or individual pays as rent thirty percent (30%) of such family's or individual's Monthly Adjusted Income, as recertified; and (B) Owner shall hold the next available Unit available for occupancy by Extremely Low Income Families, Low Income Families or Very Low Income Families, whichever is necessary to comply with the occupancy requirements of Section 2.3.

(d) If the initial determination made in Section 2.4(a) results in such family or individual exceeding the applicable income limit, such family or individual shall not be considered a Qualified Tenant.

■ [OPTIONAL]

■ **Section 2.5 Mixed Income Restrictions.** If, during the Term, Owner markets and/or rents Units in the Property to persons other than Low Income Families or Very Low Income Families, Owner agrees each building in the Property shall satisfy the rent and occupancy requirement of Article II and Article III of this Agreement.

ARTICLE III

Rent

Section 3.1. Rent Limitations for Low Income Families. The maximum monthly rent charged by Owner for Units occupied by Low Income Families other than Very Low Income Families shall not exceed the limits determined by the applicable calculations required by HUD or the Department in accordance with Title 24, Section 92.252 of the Code of Federal Regulations, as may be amended or modified from time to time.

Section 3.2. Rent Limitations for Very Low Income Families. The maximum monthly rent charged by Owner for Qualifying Units occupied by Very Low Income Families shall not exceed the limits determined by the applicable calculations required by HUD or the Department in accordance with Title 24, Section 92.252 of the Code of Federal Regulations as may be amended or modified from time to time.

ARTICLE IV

Administration

Section 4.1. Lease Provisions. All tenant leases entered into with Qualified Tenants during the Term shall be in writing and contain provisions wherein each individual tenant (i) certifies the accuracy of the information provided in connection with the examination or reexamination of Annual Income of the household of such lessee, and in connection therewith, agrees to execute an Income Certification form prescribed by the Department, and (ii) agrees that the Annual Income and other eligibility requirements shall be deemed substantial and material obligations of his or her tenancy, that he or she will comply promptly with all requests for information with respect thereto from Owner or the Department, and that his or her failure to provide accurate information regarding such requirements (regardless of whether such inaccuracy is intentional or unintentional) or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of his or her tenancy and constitute cause for immediate termination thereof. All tenant leases entered into with Qualified Tenants during the Term shall also contain provisions which are consistent with the HOME Regulations and HOME Manual, including, without limitation, the rent restrictions provided herein and allowing for

necessary increases in rent pursuant to Section 2.4(c) and (d) herein. In addition, all tenant leases entered into with Qualified Tenants during the Term shall be supplemented and amended by a HOME Addendum to Lease in a form prescribed by the Department.

Section 4.2. Nondiscrimination.

Owner shall select Qualified Tenants for available Units from a written waiting list in chronological order of their application, insofar as it is practical, and without regard as to disability, religion, race, color, family composition, national origin or sex or whether such Qualified Tenants are holders of a certificate of family participation under Title 24 Part 882 of the Code of Federal Regulations (Rental Certificate Program) or a rental voucher under Title 24 Part 887 of the Code of Federal Regulations (Rental Voucher Program) or holders of a comparable document evidencing participation in a HOME tenant-based rental assistance program and without regard as to whether such Qualified Tenants receive or rely on any other rent-based assistance or other assistance from any state or federal program.

Section 4.3. Examination and Re-examination of Incomes.

(a) Owner shall be responsible for determination of the Annual Income and family composition of Qualified Tenants at initial occupancy of a Unit, and for reexamination of Annual Income and family composition of Qualified Tenants at least annually, based on information collected, verified and certified by Owner, in accordance with procedures set forth in the HOME Regulations and HOME Manual, or as otherwise required by the Department.

(b) As a condition of admission to occupancy of a Qualifying Unit, Owner shall require the household head and other such household members as it designates to execute a Department-approved release and consent authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to Owner and to the Department such information as Owner or Department determines to be necessary. Owner shall also require the household to submit directly documentation determined to be necessary. Information or documentation shall be determined to be necessary if it is required for purposes of determining or auditing a household's eligibility as a Qualified Tenant, or for verifying related information. The use or disclosure of information obtained from a household or from another source pursuant to this release and consent shall be limited to purposes directly connected with administration of this Agreement.

(c) Owner shall not be deemed to be in violation of Articles II and III of this Agreement if, in determining Annual Income and family composition of a Qualified Tenant, (i) Owner has relied in good faith upon information which is supplied to Owner by the tenant, (ii) Owner has no reason to believe such information is false, and (iii) Owner shall have complied with all requirements of the Department with respect to verification of household income and family composition.

Section 4.4. Certification by Owner. During the Term, Owner shall, at least monthly or as the Department may otherwise approve, submit to the Department in a form prescribed by the Department, a certificate of continuing compliance with all occupancy standards, terms and

provisions of this Agreement. The certification will also include statistical data relating to Special Needs Individuals race, ethnicity, income and fair housing opportunities and other information requested by the Department. In addition, Owner shall include in its certification information detailing the resolution of any fair housing complaints received by Owner.

Section 4.5. Maintenance of Documents. All Project Documents and any other report or records which Owner is required to prepare and/or provide to the Department pursuant to this Agreement, the HOME Regulations or HOME Manual must be retained for the periods set out in the HOME Regulations, or if no specific period is set out, for five (5) years after the end of the Term, or as otherwise specified by law or required by the Department. All Project Documents shall at all times be kept separate and identifiable from any other business of Owner which is unrelated to the Property, and shall be maintained in compliance with the HOME Regulations, the HOME Manual, and any other requirements of the Department, in a reasonable condition for proper audit and subject to examination and photocopying during business hours by representatives of the Department, HUD, or the United States Comptroller General. Owner agrees and acknowledges that any and all of the Project Documents are confidential in nature. Owner agrees not to disclose the Project Documents or any of the terms, provisions or conditions thereof, or any other information that is deemed confidential under federal law or state law related to tenants' or applicants' income, social security number, employment status, disability, or other related matters to any party outside of Owner's organization, except as otherwise expressly required in this Agreement or by the HOME Regulations or HOME Manual. Owner further agree that within its organization, the Project Documents and other confidential information will be disclosed and exhibited only to those persons within Owner's organization whose position and responsibilities make such disclosure necessary.

Section 4.6. Compliance Review. During the Term, Owner agrees to permit Department and HUD, or its designated representative, access to the Property for the purpose of performing Department Compliance Monitoring Procedures. The Department or HUD periodically will monitor and audit Owner's compliance with the requirements of this Agreement, the HOME Regulations, the HOME Manual and any and all other Governmental Requirements, in accordance with Department Compliance Monitoring Procedures. In conducting its compliance review, the Department and HUD will rely primarily on information obtained from Owner's records and reports, findings from on-site monitoring, and audit reports. The Department and HUD may also consider relevant information gained from other sources, including litigation and citizen complaints. In accordance with Section 2306.231 of the State Act, and to the extent permitted by the Federal Act and its implementing regulations, Owner shall reimburse the Department or HUD, as appropriate, on demand for their respective costs incurred in connection with monitoring, auditing, inspecting and examining the Owner's compliance with the requirements of this Agreement.

Section 4.7. Hazardous Materials: Indemnification. (a) Owner agrees (i) that Owner shall not receive, store, dispose or release any Hazardous Materials on or to the Property or transport any Hazardous Materials to or from the Property or permit the existence of any Hazardous Materials Contamination; (ii) to give written notice to the Department immediately upon Owner's acquiring knowledge of the presence of any Hazardous Materials on the Property or the transport of any Hazardous Materials to or from the Property or of the existence of any Hazardous Materials Contamination, with a full description thereof; (iii) promptly, at Owner's sole cost and expense, to comply with any Governmental Requirements requiring the removal, treatment or disposal of such

Hazardous Materials or Hazardous Materials Contamination and provide the Department with satisfactory evidence of such compliance; (iv) to provide the Department, within thirty (30) days after demand by the Department, with financial assurance evidencing to the Department's satisfaction that the necessary funds are available to pay the cost of removing, treating and disposing of such Hazardous Materials or Hazardous Materials Contamination and discharging any assessments which may be established on the Property as a result thereof; and (v) to insure that all leases, licenses, and agreements of any kind now or hereafter executed which permit any party to occupy, possess, or use in any way the Property or any part thereof, whether written or oral, include an express prohibition on the disposal or discharge of any Hazardous Materials at or affecting the Property, and a provision that failure to comply with such prohibition shall expressly constitute a default under any such agreement.

(b) Owner shall not cause or suffer any liens to be recorded against the Property as a consequence of, or in any way related to, the presence, remediation or disposal of Hazardous Materials in or about the Property, including any so-called state, federal or local "Superfund" lien relating to such matters.

(c) OWNER SHALL AT ALL TIMES RETAIN ANY AND ALL LIABILITIES ARISING FROM THE PRESENCE, HANDLING, TREATMENT, STORAGE, TRANSPORTATION, REMOVAL OR DISPOSAL OF HAZARDOUS MATERIALS ON THE PROPERTY. REGARDLESS OF WHETHER ANY EVENT OF DEFAULT (AS DEFINED IN SECTION 6.1 OF THIS AGREEMENT) SHALL HAVE OCCURRED AND BE CONTINUING OR ANY REMEDIES IN RESPECT OF THE PROPERTY ARE EXERCISED BY THE DEPARTMENT, OWNER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE DEPARTMENT FROM AND AGAINST ANY AND ALL LIABILITIES (INCLUDING STRICT LIABILITY), SUITS, ACTIONS, CLAIMS, DEMANDS, PENALTIES, DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, CONSEQUENTIAL DAMAGES, INTEREST, PENALTIES, FINES AND MONETARY SANCTIONS), LOSSES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND REMEDIAL COSTS) (THE FOREGOING ARE HEREINAFTER COLLECTIVELY REFERRED TO AS "LIABILITIES") WHICH MAY NOW OR IN THE FUTURE (WHETHER BEFORE OR AFTER THE CULMINATION OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT) BE INCURRED OR SUFFERED BY THE DEPARTMENT BY REASON OF, RESULTING FROM, IN CONNECTION WITH, OR ARISING IN ANY MANNER WHATSOEVER OUT OF THE BREACH OF ANY WARRANTY OR COVENANT OR THE INACCURACY OF ANY REPRESENTATION OF OWNER CONTAINED OR REFERRED TO IN THIS SECTION 4.7 OR WHICH MAY BE ASSERTED AS A DIRECT OR INDIRECT RESULT OF THE PRESENCE ON OR UNDER, OR ESCAPE, SEEPAGE, LEAKAGE, SPILLAGE, DISCHARGE, EMISSION OR RELEASE FROM THE PROPERTY OF ANY HAZARDOUS MATERIALS OR ANY HAZARDOUS MATERIALS CONTAMINATION OR ARISE OUT OF OR RESULT FROM THE ENVIRONMENTAL CONDITION OF THE PROPERTY OR THE APPLICABILITY OF ANY GOVERNMENTAL REQUIREMENTS RELATING TO HAZARDOUS MATERIALS, REGARDLESS OF WHETHER OR NOT CAUSED BY OR WITHIN THE CONTROL OF OWNER OR THE DEPARTMENT.

SUCH LIABILITIES SHALL INCLUDE, WITHOUT LIMITATION: (I) INJURY OR DEATH TO ANY PERSON; (II) DAMAGE TO OR LOSS OF THE USE OF ANY PROPERTY; (III) THE COST OF ANY DEMOLITION AND REBUILDING OF ANY IMPROVEMENTS NOW OR HEREAFTER SITUATED ON THE PROPERTY OR ELSEWHERE, AND THE COST OF REPAIR OR REMEDIATION OF ANY SUCH IMPROVEMENTS; (IV) THE COST OF ANY ACTIVITY REQUIRED BY ANY GOVERNMENTAL AUTHORITY; (V) ANY LAWSUIT BROUGHT OR THREATENED, GOOD FAITH SETTLEMENT REACHED, OR GOVERNMENTAL ORDER RELATING TO THE PRESENCE, DISPOSAL, RELEASE OR THREATENED RELEASE OF ANY HAZARDOUS MATERIAL, ON, FROM OR UNDER THE PROPERTY; AND (VI) THE IMPOSITION OF ANY LIENS ON THE PROPERTY ARISING FROM THE ACTIVITY OF OWNER OR OWNER'S PREDECESSORS IN INTEREST ON THE PROPERTY OR FROM THE EXISTENCE OF HAZARDOUS MATERIALS UPON THE PROPERTY OR HAZARDOUS MATERIALS CONTAMINATION.

The covenants and agreements contained in this Section 4.7 shall survive the consummation of the transactions contemplated by this Agreement.

Section 4.8. Affirmative Marketing. Owner shall maintain and abide by an affirmative marketing plan to be approved by the Department which shall be designed to attract tenants and Project management employees from all racial, ethnic, gender, and Special Needs groups and shall require all press releases and written materials, advertising or promoting of the Project to, when feasible, include the equal housing opportunity logo or slogan. Owner further agrees to maintain documents and records evidencing its compliance with said plan and the affirmative marketing requirements imposed by the HOME Regulations and the HOME Manual.

Section 4.9. Federal and State Requirements. Owner shall comply with the HOME Regulations and HOME Manual and each and every Governmental Requirement as the same may be amended.

Section 4.10. Access and Inspection. Owner will permit the Department, its agents, employees and representatives, and any interested Governmental Authority at any and all reasonable times during business hours, to enter upon and inspect the Project and all materials to be used in the ■ [rehabilitation] [construction] thereof and to examine and copy all of Owner's books, records, contracts and bills pertaining to the Project. Owner will also cooperate and cause all Contractors to cooperate with the Department and its agents, employees and representatives during such inspections; provided, however, nothing herein shall be deemed to impose upon the Department any duty or obligation to undertake such inspections or any liability for the failure to detect or failure to act with respect to any defect which was or might have been disclosed by such inspections.

Section 4.11. Property Standards. Owner agrees that any HOME-Assisted Unit shall be rehabilitated or constructed, as applicable, and maintained in accordance with the requirements set forth in the HOME Regulations and the HOME Manual.

Section 4.12. Fair Lease and Grievance Procedure; Tenant Participation. Owner shall maintain and abide by the fair lease and grievance procedure approved by the Department and shall

have any changes in said procedures approved by the Department prior to the effective date of said changes. Owner agrees to maintain and abide by a program of tenant participation in management decisions as set forth in the HOME Regulations and the HOME Manual.

Section 4.13. Reports. Owner shall deliver to the Department:

(a) Within ten (10) days after the last day of each quarter in each fiscal year of Owner, or as requested by the Department, a rent roll for the Project, setting forth with respect to each portion of the Project which is subject to a separate lease: a Rental Housing Compliance Report for the Project and a Tenant Income Certification in a form acceptable to the Department for each household that begins occupying a unit or undergoes recertification during the reporting period.

(b) From time to time and promptly upon each request, such data, certificates, reports, statements, documents, or further information regarding the assets or the business, liabilities, financial position, projections, results of operations, or business prospects of Owner or such other matters concerning Owner's compliance with the HOME Regulations and HOME Manual as the Department may reasonably request or as necessary to assist the Department in meeting its recordkeeping and reporting requirements under the HOME Regulations, including, without limitation, the following:

1. Records that demonstrate that the Project meets the Property Standards set out in Title 24 Section 92.251 of the Code of Federal Regulations;

2. Records that demonstrate that the Project meets the requirements set out in Title 24 Section 92.252 of the Code of Federal Regulations for the Term;

3. Records that demonstrate compliance with the requirements of Title 24 Section 92.253 of the Code of Federal Regulations for tenant protections;

4. Records that indicate whether the Project is mix-income, mix-use, or both.

5. Other federal requirements records:

(i) Equal opportunity and fair housing records containing:

(A) Data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for, participated in, or benefited from, any program or activity funded in whole or in part with HOME funds.

(B) Documentation of actions undertaken to meet the requirements of Title 24 Section 92.350 of the Code of Federal Regulations, which implements Section 3 of the Housing Development Act of 1968, as amended (12 U.S.C. 1701u).

- (C) Documentation and data on the steps taken to implement the Owner's outreach programs to minority-owned and female-owned businesses including data indicating the racial/ethnic or gender character of each business entity receiving a contract or subcontract of \$25,000 or more paid, or to be paid, with HOME funds; the amount of the contract or subcontract, and documentation of Owner's affirmative steps to assure that minority business and women's business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction, and services.
- (D) Documentation of the actions the Owner has taken to affirmatively further fair housing;
 - (ii) Records indicating the affirmative marketing procedures and requirements under Title 24 Section 92.351 of the Code of Federal Regulations.
 - (iii) Records that demonstrate compliance with environmental review requirements in Title 24 Section 92.352 of the Code of Federal Regulations (and part 58 of this title).
 - (iv) Records which demonstrate compliance with the requirements in Title 24 Section 92.353 of the Code of Federal Regulations regarding displacement, relocation, and real property acquisition, including project occupancy lists identifying the name and address of all persons occupying the real property on the date described in 92.353(c)(2)(i)(A) of the Code of Federal Regulations, moving into the property on or after the date described in Section 92.353(c)(2)(i)(A), and occupying the property upon completion of the project.
 - (v) Records demonstrating compliance with labor requirements in Title 24 Section 92.354 of the Code of Federal Regulations, including contract provisions and payroll records.
 - (vi) Records concerning lead-based paint under Title 24 Section 92.355 of the Code of Federal Regulations.
 - (vii) Records supporting requests for waivers of the conflict of interest prohibition in Title 24 Section 92.356 of the Code of Federal Regulations.

- (viii) Records of certifications concerning debarment and suspension required by Title 24, Part 92 of the Code of Federal Regulations.
- (ix) Records demonstrating compliance with flood insurance requirements under Title 24, Part 92 of the Code of Federal Regulations.
- (x) Records demonstrating intergovernmental review, as required by Title 24, Part 52 of the Code of Federal Regulations.

Section 4.14. Information and Reports Regarding the Project. Owner shall deliver to the Department, at any time within thirty (30) days after notice and demand by the Department but not more frequently than once per month, (a) a statement in such reasonable detail as the Department may request, certified by Owner, of the leases relating to the Project, and (b) a statement in such reasonable detail as the Department may request, certified by a certified public accountant or, at the option of the Department, by the Owner, of the income from and expenses of any one or more of the following: (i) the conduct of any business on the Project, (ii) the operation of the Project, or (iii) the leasing of the Project or any part thereof, for the last twelve (12) month calendar period prior to the giving of such notice, and, on demand, Owner shall furnish to the Department executed counterparts of any such tenant leases and any other contracts and agreements pertaining to facilities located on the Property or which otherwise generate ancillary income for the Project, for the audit and verification of any such statement.

Section 4.15. Other Information. Owner shall deliver to the Department, at any time within thirty (30) days after notice and demand by the Department, any information or reports required by the laws of the State of Texas or as otherwise reasonably required by the Department.

Section 4.16. Displaced Persons. In the event there are any Displaced Persons as a result of any of the Units being acquired, rehabilitated or reconstructed with HOME Funds, Owner shall comply with the requirements and provisions of the Relocation Plan.

ARTICLE V

Representations and Warranties of Owner

Section 5.1. Representations and Warranties. Owner represents and warrants to the Department that:

(a) **Valid Execution.** Owner has validly executed this Agreement and the same constitutes the binding obligation of Owner. Owner has full power, authority and capacity (i) to enter into this Agreement, (ii) to carry out Owner's obligations as described in this Agreement and (iii) to assume responsibility for compliance with all applicable Governmental Requirements, including, without limitation, those in the HOME Regulations and the HOME Manual.

(b) **No Conflict or Contractual Violation.** To the best of Owner's knowledge the making of this Agreement and Owner's obligations thereunder:

(i) will not violate any contractual covenants or restrictions (A) between Owner or any third party or (B) affecting the Property;

(ii) if Owner is other than an individual, will not conflict with any of the instruments that create or establish Owner's authority;

(iii) will not conflict with any applicable public or private restrictions;

(iv) do not require any consent or approval of any public or private authority which has not already been obtained; and

(v) are not threatened with invalidity or unenforceability by any action, proceeding or investigation pending or threatened, by or against (A) Owner, without regard to capacity, (B) any person with whom Owner may be jointly or severally liable, or (C) the Property or any part thereof.

(c) No Litigation. No action, litigation, investigation or proceeding is now pending or, to the best of Owner's knowledge, threatened against Owner which, if adversely determined, could individually or in the aggregate have an adverse effect on title to or the use and enjoyment or value of the Property, or any portion thereof, or which could in any way interfere with the consummation or enforceability of this Agreement.

(d) No Bankruptcy. There is not pending or, to Owner's best knowledge, threatened against Owner any case or proceeding or other action in bankruptcy, whether voluntary or otherwise, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for Owner under any federal, state or other statute, law, regulation relating to bankruptcy, insolvency or relief for debtors.

(e) Prior Warranties, Representations, and Certifications. All warranties, representations and certifications made and all information and materials submitted or caused to be submitted to the Department in connection with the Project are true and correct, and there have been no material changes in or conditions affecting any of such warranties, representations, certifications, materials or information prior to the effective date hereof.

(f) Conflicting Agreements. Owner has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

(g) Consideration. Owner has freely and without reservation placed itself under the obligations of this Agreement and that the receipt of financial assistance from the Department or HUD is an essential part of the consideration for this Agreement.

(h) Conflicts of Interest. No member, employee, officer, agent, consultant, or official of the Owner, nor any member of their immediate family, during their tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or any proceeds or benefits

arising therefrom, except as allowed by Title 24, Section 92.356 of the Code of Federal Regulations, as amended from time to time, relating to an employee or agent of the owner or developer who occupies a housing unit as the project manager or maintenance worker.

(i) Debarment and Suspension. Neither Owner nor any of its principals are presently debarred, suspended, proposed for debarment, suspension, declared ineligible, or voluntarily excluded from participation in this transaction of the HOME Program by any federal department or agency.

(j) No Religious Organization. Owner is not a religious organization and is not in any way controlled by a religious organization.

(k) Flood Insurance. Except to the extent Owner has previously notified the Department in writing to the contrary, the Property is not located in an area identified by the Federal Emergency Management Agency ("FEMA") as having special flood hazards. In the event the Property is in such an area, Owner warrants and represents to the Department that (i) such area is participating in The National Flood Insurance Program or less than one (1) year has passed since FEMA notification regarding such hazards; and (ii) Owner has obtained flood insurance for the Property in an amount and form satisfactory to the Department.

■ [OPTIONAL IF OWNER IS A CHDO]

(l) Community Housing Development Organization. (a) Owner is a Community Housing Development Organization and meets the requirements of the same under the HOME Regulations; (b) Owner has no part of its net earnings inuring to the benefit of any member, founder, contributor or individual; (c) Owner is neither controlled by nor under the direction of individuals or entities seeking to derive profit or gain from Owner; (d) if Owner is sponsored or created by a for-profit entity, said for-profit entity does not: (i) have as its primary purpose the development, building or management of housing; or (ii) have the right to or the power to appoint in excess of one third (1/3) of the members of Owner's governing body; (e) no member of Owner's governing body (which member was appointed by a for-profit entity) has the right or power to appoint any of the remaining two thirds (2/3) members of the Owner's governing body; (f) if the Owner is sponsored or created by a for-profit entity, the Owner is free to contract for goods and services from vendors of its own choosing; (g) Owner has been issued a ruling or determination letter from the Internal Revenue Service, which letter establishes that Owner is exempt from federal income taxation under one of the subsections of Section 501(c) of the Internal Revenue Code of 1986, as amended, and said letter is still in effect; (h) no member of Owner's governing body receives compensation for its services rendered to Owner; (i) Owner is not a state department, agency, board, bureau, commission, authority, public corporation, participating jurisdiction (as said term is defined in the HOME Regulations), public housing authority, redevelopment agency, urban renewal agency, redevelopment authority, down town development authority, housing finance agency or instrumentality thereof (hereinafter referred to as "Public Body") and is not significantly controlled by a Public Body; (j) if Owner is sponsored, created, or chartered by a Public Body, said Public Body neither has the right nor the power to appoint in excess of one third (1/3) of the members of the Owner's governing body; (k) no more than one third (1/3) of the members of the Owner's governing body are public officials; (l) no member of Owner's governing body (which member was appointed

by a Public Body) has the right or power to appoint any of the remaining two thirds (2/3) members of the Owner's governing body; (m) Owner has in effect and follows financial accountability standards which conform to 24 CFR 84.21, "Standards For Financial Management Systems;" (n) Owner has among its purposes the provision of decent housing that is affordable to Low Income Families and Very Low Income Families, as evidenced in its charter, articles of incorporation, resolutions or by-laws; (o) Owner: (i) maintains at least one third (1/3) of its governing board membership for either residents of low income neighborhoods or residents of other low income communities (as said term is defined in the HOME Regulations) in which the Project is located, or elected representatives of low income neighborhood organizations, including but not limited to block groups, town watch organizations, civic associations, neighborhood church groups and neighborhood work groups; and (ii) has a written process by which Low Income Families and Very Low Income Families may advise Owner in its decisions regarding the design, siting, development and management of the Project; (p) Owner has either (i) experienced accomplished key staff who have successfully completed projects similar to Project; or (ii) an enforceable contract for services with a consultant which consultant has successfully completed projects similar to the Project and said contract for services includes training by said consultant of appropriate key members of the Owner's staff; and (q) Owner has served the community in which the Project is located for at least one year, or if Owner is less than one year old, Owner's non-profit parent organization has served the community in which the Project is located for at least one year.

Section 5.2. Misrepresentations and Omission. Acts constituting fraud, false filings, misrepresentation or omission may subject the alleged offender to criminal prosecution and may also result in the alleged offender being barred from further participation in the Department's programs.

Section 5.3. INDEMNIFICATION. OWNER AGREES TO INDEMNIFY AND HOLD HARMLESS THE DEPARTMENT FROM AND AGAINST ALL LIABILITIES, LOSSES, CLAIMS, DAMAGES, JUDGMENTS, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES) INCURRED BY THE DEPARTMENT AS A RESULT OF ANY MATERIAL INACCURACY OR BREACH IN ANY OF THE REPRESENTATIONS AND WARRANTIES CONTAINED IN SECTION 5.1 HEREOF. OWNER FURTHER AGREES TO INDEMNIFY AND HOLD HARMLESS THE DEPARTMENT FROM AND AGAINST ANY AND ALL LIABILITY, LOSSES, CLAIMS AND DAMAGES (INCLUDING ALL FORESEEABLE AND UNFORESEEABLE CONSEQUENTIAL DAMAGES), JUDGMENTS, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, THE COST OF ANY REPAIR, CLEANUP, DETOXIFICATION OR REMEDIATION, AND THE PREPARATION OF ALL CLOSURE AND OTHER REQUIRED PLANS), WHETHER SUCH ACTION IS REQUIRED OR NECESSARY, PRIOR TO OR FOLLOWING THE DATE OF THIS AGREEMENT, DIRECTLY OR INDIRECTLY ARISING OUT OF THE USE, GENERATION, MANUFACTURE, STORAGE, OR DISPOSAL OF HAZARDOUS SUBSTANCE ON, UNDER, OR ABOUT THE PROPERTY.

ARTICLE VI
Default, Enforcement and Remedies

Section 6.1. Events of Default. Occurrence of one or more of the following events will, at the sole election of the Department, constitute an event of default ("Event of Default") under this Agreement:

(a) Owner shall default in the performance of any of its obligations under this Agreement or breaches any covenant, agreement, restriction, representation or warranty set forth herein, and such default remains uncured for a period of thirty (30) days after notice thereof shall have been given by the Department (or for an extended period approved by the Department if the default or breach stated in such notice can be corrected, but not within such 30-day period, unless Owner does not commence such correction or commences such correction within such 30-day period but thereafter does not diligently pursue the same to completion within such extended period);

(b) Owner shall be adjudged bankrupt or insolvent, or a petition or proceeding for bankruptcy or for reorganization shall be filed against it and it shall admit the material allegations thereof, or an order, judgment or decree shall be entered approving such petition and such order, judgment or decree shall not be vacated or stayed within thirty (30) days of its entry or a receiver or trustee shall be appointed for the Owner or the Property, Land or any part thereof and remain in possession thereof for thirty (30) days; or

(c) Owner shall sell or otherwise transfer the Property, in whole or in part (except leases of individual Units/ for a period not to exceed one (1) year and otherwise in accordance with this Agreement), without the prior written consent of Department.

Section 6.2. Remedies. Upon an occurrence of an Event of Default, the Department, in its sole discretion may, (i) apply to any court having jurisdiction of the subject matter for specific performance of this Agreement, and/or for an injunction against any violation of this Agreement, for the appointment of a receiver to take over and operate the Property in accordance with the terms of this Agreement, or (ii) take any and all action at law, in equity, or otherwise for such other relief as may be appropriate, it being acknowledged that the beneficiaries of Owner's obligations thereunder cannot be adequately compensated by monetary damages in the event of Owner's default. The Department shall be entitled to its reasonable attorneys' fees in any such judicial action in which the Department shall prevail. The Department shall also be compensated for fees associated with additional compliance monitoring during corrective periods of non-compliance upon a default by Owner hereunder.

Section 6.3. Cumulative and Concurrent Remedies. Each right, power and remedy of the Department provided for in this Agreement now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the Department of any one or more of the rights, powers or remedies provided for in this Agreement or now or hereafter

existing at law or in equity or by statute or otherwise shall not preclude the simultaneous of later exercise by the Department of any or all such other rights, powers or remedies.

Section 6.4. Enforcement and Remedies of Other Parties. The occupancy and maximum rent requirements set forth in Articles II and III hereof, respectively, also shall inure to the benefit of, and may be judicially enforced against Owner by, affected Low Income Families, Very Low Income Families or Extremely Low Income Families. Any of the persons or entities described above shall be entitled to judicially enforce Sections 2.3, 2.4, 3.1, 3.2 or 4.2 of this Agreement in the same manner that the Department may seek judicial enforcement in accordance with Sections 6.2 and 6.3, and any such party that prevails in any such judicial action shall be entitled to its reasonable attorneys' fees. Further, any deed, lease, conveyance of contract made in violation of this Agreement shall be void and may be set aside on petition of one or more of the parties to the Agreement, and all successors in interest, heirs, executors, administrators, or assigns, shall be deemed parties to this Agreement to the same effect as the original signer; and when any such conveyance or other instrument is set aside by decree of a court of competent jurisdiction, all costs and all expenses of such proceedings shall be taxed against the offending party or parties, and shall be declared by the court to constitute a lien against the real estate so wrongfully deeded, sold, leased, or conveyed, until paid, and such lien may be enforced in such manner as the court may order.

Section 6.5. Reliance Upon Information. In carrying out its obligations hereunder, Owner shall be entitled to rely upon information provided by the Department with respect to (i) income limits applicable to Lower Income Individuals and Families, Very Low Income Families and Extremely Low Income Families, (ii) the method for calculating the incomes of such individuals and families and (iii) the maximum rents which may be charged to such individuals and families pursuant to Sections 3.1 and 3.2 hereof.

ARTICLE VII **Miscellaneous**

Section 7.1. Amendments. This Agreement may not be amended or modified except by written instrument signed by Owner and the Department, or their respective heirs, successors or assigns, which instrument shall not be effective until it is recorded in the Real Property Records of the county in which the Property is located.

Section 7.2. Notices. All notices required or permitted to be given under this Agreement must be in writing. Notice will be deemed effective upon deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, and properly addressed to the party to be notified. Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

Department:	507 Sabine, Suite 400 P.O. Box 13941 Austin, Texas 78711-3941
Attention:	Director of Multifamily Finance Production HOME Program

with copy to: Texas Department of Housing and Community Affairs
507 Sabine, Suite 400
P.O. Box 13941
Austin, Texas 78711-3941
Attention: Director of Portfolio Management & Compliance

Owner: ■
■
■
Attention: ■

Any party may change its address for notice purposes by giving notice to the other parties in accordance with this Section 7.2.

Section 7.3. Entire Agreement. This Agreement contains the entire understanding between the parties hereto with respect to the subject matter hereof. There are no representations, oral or otherwise, other than those expressly set forth herein. Time is of the essence of this Agreement.

Section 7.4. Cooperation. Should any claims, demands, suits or other legal proceedings be made or instituted by any person against the Department which arise out of any of the matters relating to this Agreement, Owner shall cooperate fully by giving Department all pertinent information and reasonable assistance in the defense or other disposition thereof.

Section 7.5. Choice of Law and Venue. In the event the enforceability or validity of any provision of this Agreement is challenged or questioned, such provision shall be governed by, and shall be construed in accordance with, the laws of the State of Texas or the federal laws, whichever may be applicable. This Agreement is performable in Travis County, Texas and Owner consents to any suit, action or proceeding with respect to this Agreement being, at the option of the Department, brought in any court of competent jurisdiction located in Travis County, Texas, unless dictated otherwise by state law. Owner further waives any objection that it may have now or hereafter to the venue of any such suit, action or proceeding in any such court and any claim that any of the foregoing has been brought in an inconvenient forum.

Section 7.6. Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

Section 7.7. Binding Effect; Covenants Running with the Land. During the Term, this Agreement and the covenants, reservations and restrictions contained herein shall be deemed

covenants running with the land for the benefit of the Department and its successors, and shall pass to and be binding on Owner's heirs, assigns and successors in title to the Property, or if the Property shall not include title to land, but shall include a leasehold interest in land, this Agreement and the covenants, restrictions and reservations shall bind the leasehold interest as well as the Property and shall pass to and be binding upon all heirs, assigns and successors to such interests; provided, however, that upon expiration of the Term in accordance with the terms hereof said covenants, reservations and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. If a portion or portions of the Property are conveyed, all of such covenants, reservations and restrictions shall run to each portion of the Property. Owner, at its cost and expense, shall cause this Agreement to be duly recorded or filed and re-recorded or refiled in such places, and shall pay or cause to be paid all recording, filing, or other taxes, fees and charges, and shall comply with all such statutes and regulations as may be required by law, in the opinion of qualified counsel, in order to establish, preserve and protect the ability of the Department to enforce this Agreement.

Section 7.8. Counterparts. This Agreement and any amendments hereto may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

Section 7.9. Section Titles. Section titles and the table of contents are for descriptive purposes only and shall not control or limit the meaning of this Agreement as set forth in the text.

Section 7.10. Change in Neighborhood. A substantial or radical change in the character of the neighborhood surrounding the Property will not extinguish the restrictive covenants of this Agreement. The restrictive covenants shall survive any and all changed circumstances, including but not limited to the following: housing pattern changes; zoning amendments; the issuance of variances affecting the immediate or surrounding area; increased traffic or road conditions; enhancement of the value of the Land or Property; growing industrial activity; encroachment of business areas; development of natural resources; financial downturn of the Owner; or commercialization of the neighborhood in question.

EXECUTED to be effective as of the date first written above.

■

By: _____
Name: _____
Title: _____

**TEXAS DEPARTMENT OF HOUSING AND
COMMUNITY AFFAIRS**

By: _____
Name: Edwina P. Carrington
Title: Executive Director

THE STATE OF TEXAS §
 §
COUNTY OF ■ §

This instrument was acknowledged before me on this ____ day of ■, 2003, by ■, ■ of ■, a ■ corporation, on behalf of said corporation.

Notary Public, State of Texas

**OR, IF IN OR OUT-OF-STATE CORPORATION IS GENERAL PARTNER TO
LIMITED PARTNERSHIP**

THE STATE OF ■ §
 §
COUNTY OF ■ §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared ■, known to me to be the ■ of ■, a ■ corporation, general partner of ■, the limited partnership that executed the foregoing instrument, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said limited partnership, and that he executed the same as the act of such limited partnership for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of ■, 2003.

Notary Public in and for _____ County, _____.

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Edwina P. Carrington, Executive Director of the Texas Department of Housing and Community Affairs, a public and official department of the State of Texas, on behalf of such department.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of ■, 2003.

Notary Public in and for Travis County, Texas

“EXHIBIT “A”

(LAND)

PROMISSORY NOTE

U.S. \$■

■ ____, 2003

For value received, ■ ("Maker") promises to pay to the order of **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS** ("Payee") at 507 Sabine St., P.O. Box 13941 in the City of Austin, Travis County, Texas 78711-3941 (or at such other place in Austin, Travis County, Texas, as Payee may from time to time designate by written notice to Maker), the sum of \$■ or so much thereof as may be advanced and outstanding, together with interest thereon as hereinafter provided.

No interest shall accrue on this Note for ■ (■) years from the date of this Note, unless the maturity of this Note has been accelerated as hereinafter provided. Beginning ■ (■) years after the date of this Note until maturity, interest shall accrue on the outstanding principal balance hereunder at the rate of ■ percent (■%) per annum.

The principal and interest of this Note shall be due and payable in legal tender of the United States of America as follows: one installment of \$■ shall be due and payable on the __ day of ■, 2001, and an installment in the same amount shall be due and payable on the same day of each succeeding month until the _____ day of ■, ■, on which date the entire balance of principal plus accrued interest shall be due and payable ("maturity"). Each installment shall be applied first to the payment of interest accrued to the date the installment is paid and the remainder shall be applied to principal.

Computations of interest on the unpaid principal balance of this Note shall be made on the basis of 365 or 366 days in a year, as applicable.

After maturity (by acceleration or otherwise) and until paid, the unpaid principal balance and accrued interest then due shall bear interest at the lesser of (i) ten percent (10%) per annum or (ii) the highest interest rate allowed by Applicable Law ("Default Interest Rate"). Notwithstanding any other provision of this Note, the daily Default Interest Rate shall be calculated by dividing the Default Interest Rate per annum applicable for such day by the actual number of days in the calendar year (whether 365 or 366).

This Note may be prepaid in part or in its entirety at any time, without notice or penalty but any amounts prepaid may not be reborrowed. Partial prepayment shall be applied first to accrued and unpaid interest with the balance to the principal installments in inverse order of maturity. Any payment received more than thirty (30) days before it is due shall be considered a prepayment, unless Maker otherwise designates in writing at the time such payment is made.

All amounts owing on this Note shall be payable at the address of Payee stated above (or at such other place in Austin, Travis County, Texas designated by Payee in writing delivered to Maker at the address of Maker set forth below) in lawful money of the United States of America that is legal tender for public and private debts at the time of payment. The making of any payment in other than immediately available funds, which Payee, at its option, elects to accept shall be subject to collection, and interest shall continue to accrue until the funds by which such payment is made are available to Payee for its use.

If any payment required under this Note is not paid when it becomes due and payable, then Maker shall pay to Payee, subject to the provisions of this Note limiting the amount of interest, the payment of a late charge (the "Late Charge") to compensate Payee for the loss of use of funds and for the administrative expenses and costs of handling such delinquent payment equal to a one-time charge of ten percent (10%) of the amount of such payment that was not timely paid (but such Late Charge together with all interest payable hereon shall not exceed the maximum lawful rate under Applicable Law). The term "Applicable Law" as used herein means (1) the law pertaining to maximum rates of interest that is now in effect and (2) any law that comes into effect at any time in the future allowing a higher maximum interest rate than the law now in effect. Payee is not obligated to accept any past due payment that is not accompanied by a Late Charge, but may accept such payment without waiving its rights to collect the Late Charge. In no event shall a Late Charge be payable by reason of the acceleration of the indebtedness evidenced by this Note; therefore, a Late Charge would only be due and payable with respect to payments under this Note which became delinquent prior to the acceleration of the indebtedness evidenced hereby.

Except as provided in this Note, Maker and each endorser and guarantor of this Note jointly and severally waive grace, presentment for payment, notice of renewals and extensions, notice of nonpayment, notice of protest, notice of and demand for payment of installments or other amounts coming due under this Note that are not paid when due, notice of intent or election to accelerate maturity or the actual acceleration of maturity of the indebtedness evidenced by this Note, and diligence in the collection of this Note, in filing suit on this Note and in seizing or foreclosing on any collateral securing this Note and agree to one or more extensions of maturity and partial payments before or after maturity without prejudice to rights of the holder of this Note.

If this Note is placed in the hands of an attorney for collection or is collected by legal proceedings of any kind, Maker agrees to pay all costs of collection, including reasonable attorneys' fee and costs.

■ All obligations of this Note are the joint and several obligations of each signer.

This Note is secured by the liens and security interests granted in the deed of trust (with security agreement and assignment of rents) of even date herewith from Maker to Edwina P. Carrington, Trustee for Payee, upon and against the real property described in Exhibit "A" attached hereto and made a part thereof.

The proceeds of this Note will be advanced to Maker at its special instance and request in accordance with the terms of that certain Construction Loan Agreement (the "Loan Agreement") executed effective of even date herewith between Maker and Payee.

In the event of default in the payment of any part of the principal or interest on this Note and Maker's failure to cure the default within ten (10) days after Payee's delivery of written notice of default to Maker, or in the event of default in the performance of any other agreement contained in the Loan Agreement or any document securing the payment of this Note or otherwise executed in connection herewith, including, without limitation, that certain Land Use Restriction Agreement of

even date herewith executed by and between Payee and Maker (or grantor under the deed of trust if different from Maker), and Maker's failure to cure the default within thirty (30) days after Payee's delivery of written notice of the default to Maker, then the holder of this Note shall have the unconditional right, without demand, notice, or other action, to declare the unpaid principal balance of this Note, together with interest accrued on the unpaid principal balance, at once due and payable and to foreclose each lien and security interest securing the payment of this Note, either under any power of sale contained in any documents creating such lien or security interest or by court proceedings, as the holder may elect. Notice shall be deemed to have been delivered upon actual receipt or upon deposit, if deposited in an official depository of the United States Postal Service, properly addressed to the party entitled to the notice, marked certified mail, return receipt requested, and containing sufficient postage. For the purpose of notice, Maker's address is ■. Maker shall have the right to change its address and specify any other address within the United States of America by at least five (5) days' written notice to Payee.

All agreements and transactions between Maker and Payee, whether now existing or hereafter arising, whether contained herein or in any other instrument, and whether written or oral, are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of the maturity hereof, prepayment, demand for payment or otherwise, shall the amount contracted for, charged or received by Payee from Maker for the use, forbearance, or detention of the principal indebtedness or interest hereof, which remains unpaid from time to time, exceed the maximum amount permissible under Applicable Law, it particularly being the intention of the parties hereto to conform strictly to the law of the State of Texas and of the United States of America, whichever is applicable. Any interest payable hereunder or under any other instrument relating to the loan evidenced hereby that is in excess of the legal maximum under Applicable Law, shall, in the event of acceleration of maturity, prepayment, demand for payment or otherwise, be automatically, as of the date of such acceleration, prepayment, demand or otherwise, applied to a reduction of the principal indebtedness hereof and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of such principal, such excess shall be refunded to Maker. To the extent permitted by Applicable Law, determination of the legal maximum amount of interest shall at all times be made by amortizing, prorating, allocating and spreading in equal parts during the period of the full stated term of the loan, all interest at any time contracted for, charged or received from Maker in connection with the loan, so that the actual rate of interest on account of such indebtedness is uniform throughout the term thereof.

This Note shall be governed by and construed in accordance with the laws of the State of Texas and the United States of America from time to time in effect.

Maker warrants and represents to Payee and to each present and future owner and holder of this Note that all loans evidenced by this Note are for business, commercial, investment, agricultural or other similar purpose and not primarily for personal, family, or household use, as such terms are used in the Texas Finance Code.

.....

This Note is given in renewal and extension, and not in extinguishment, of the sum of \$_____ left owing and unpaid by Maker herein on that one certain Promissory Note in the

original principal sum of \$_____, dated _____, executed by Maker and payable to the order of Payee, more fully described in and secured by a Deed of Trust of even date therewith to Daisy A. Stiner, Trustee, duly recorded in Volume ____, Page ____, Real Property Records of _____ County, Texas, and all liens, rights and interests securing same are hereby ratified, renewed and bought forward for the benefit of Payee.



This Note is guaranteed jointly and severally by ■.

■ Notwithstanding anything herein to the contrary, Payee shall have no recourse against Maker, nor against any guarantor, if any, for payment and performance of all of the obligations, covenants and agreements of Maker under this Note and the documents securing same including, but not limited to the Deed of Trust (said documents hereafter collectively called "Security Documents"), except to the full extent of all of the Property which constitutes security for this Note. If default occurs in the timely and proper payment of any portion of such indebtedness or in the timely performance of any of such obligations, agreement or covenants, any judicial proceedings brought by Payee against Maker or any guarantor shall be limited to the protection and preservation of the Property, the preservation, enforcement and foreclosure of the liens, mortgages, assignments, rights and security interests now or at any time hereafter securing the payment of the Note, and enforcement and collection of obligations, covenants and indebtedness for which Maker and any guarantors remain liable as provided in this paragraph. If there is a foreclosure of any such liens, mortgages, assignments, rights, and security interests securing the payment of this Note, by power of sale or otherwise, no judgment for any deficiency upon such indebtedness shall be sought or obtained by Payee against Maker. Notwithstanding the foregoing provisions of this paragraph or any other agreement, Payee shall have full recourse against Maker and all guarantors, if any, for: (a) fraud or misrepresentation by Maker or any guarantor in connection with the transactions herein contemplated; (b) failure to pay taxes, assessments, charges for labor or materials or other charges that can create liens on any portion of the Property; (c) the misapplication of (i) proceeds of insurance covering any portion of the Property, or (ii) proceeds of the sale or condemnation of any portion of the Property, or (iii) rentals received by or on behalf of Maker subsequent to the date on which Payee gives written notice of the posting of foreclosure notices, (d) failure to prevent waste to the Property unless Payee is compensated therefor by insurance proceeds collected by Maker; (e) the return to Payee of all unearned advance rentals and security deposits paid by tenants of the Property and not refunded to or forfeited by such tenants, (f) the return of, or reimbursement for, all personalty taken from the Property by or on behalf of Maker, (g) all court costs and for all attorneys' fees provided for in any instrument governing, securing or pertaining to the payment of the Note; and (h) failure to comply with any indemnification provision or covenants pertaining to environmental matters contained in the Security Documents.

THIS WRITTEN AGREEMENT AND THE OTHER WRITTEN AGREEMENTS, INCLUDING THE COLLATERAL AGREEMENTS, SIGNED CONTEMPORANEOUSLY WITH THE SIGNING HEREOF REPRESENT THE FINAL AGREEMENT BETWEEN THE

PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.



By: _____
Name: _____
Title: _____

NOTICE OF INVALIDITY OF ORAL AGREEMENTS

TO: Borrower and all other Debtors and Obligors with respect to the Loan which is identified below.

1. **THE WRITTEN LOAN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.**

THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

2. As used in this Notice:

"Borrower" means the Borrower identified below.

"Debtor" and "Obligor" means any entity or individual who (i) is obligated to pay the Note or (ii) otherwise is or becomes obligated to pay the Loan (for example, as cosigner or guarantor) or (iii) has pledged any property as security for the Loan.

"Lender" means Texas Department of Housing and Community Affairs.

"Loan" means the loan by Lender which is to be evidenced by the promissory note ("Note") dated ■ _____, 2002, executed by Borrower, payable to the order of Lender, in the principal face amount of \$■.

"Loan Agreement" means one or more promises, promissory notes, agreements, undertakings, security agreements, deeds of trust or other documents, or commitments, or any combination of those actions or documents, relating to the Loan.

3. This Notice is given by Lender with respect to the Loan, pursuant to Section 26.02 of the Texas Business and Commerce Code. Each Borrower, Debtor, and Obligor who signs below acknowledges, represents, and warrants to Lender that Lender has given and such party has received and retained a copy of this Notice on the date stated above.

BORROWER:



By: _____
Name: _____
Title: _____

LENDER:

**TEXAS DEPARTMENT OF HOUSING AND
COMMUNITY AFFAIRS**, a public and official
department of the State of Texas

By: _____
Name: Edwina P. Carrington
Title: Executive Director

ARCHITECT AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF ■ §

WHEREAS, it is proposed that **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official department of the State of Texas ("Lender"), make a Construction Loan (herein so called) to ■ ("Borrower"), for, among other things, construction of improvements upon the Land (herein so called) situated in the county and state first herein mentioned, more particularly described in Exhibit "A" hereto (the Land, such improvements, and any and all personal property and fixtures now or hereafter affixed to, used in and about, or arising in connection with the Land and such improvements, called the "Project"), to be secured by, among other things, liens and security interests (the "Lender Liens") against the Project and the Architect Contract (hereinafter described); and

WHEREAS, the undersigned ("Architect") proposes to hereafter perform architectural services (collectively, the "Work") in connection with the construction of improvements on the Land pursuant to an Architect Contract (as hereafter amended, supplements, and/or restated from time to time, herein so called) dated as of ■, between Architect and Borrower.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Lender to make the Construction Loan to Borrower, Architect hereby agrees with Lender as follows:

1. Architect represents and warrants to Lender that as of the date hereof (a) Architect has not reached any agreement or entered into any contract, written or oral, with respect to the construction of the improvements on the Land, other than the Architect Contract, which has been duly executed and is in full force and effect, (b) no materials have been delivered to or stored upon the Land, and (c) no work of any kind has been performed on the Land in connection with the construction or repair of any improvements on the Land.

2. Architect consents and agrees in all respects to the creation in favor of Lender by Borrower of a security interest in Borrower's rights in the Architect Contract as security for the full and complete payment and performance of Borrower's indebtedness and obligations to Lender, and Architect further agrees with Lender that: (a) if a default occurs in connection with the Construction Loan, Architect will, upon Lender's request, complete the performance of the Work pursuant to the Architect Contract for the benefit of Lender (notwithstanding any previous default thereunder by Borrower, and Architect agrees that Lender shall have no liability to it whatsoever by reason of any such default by Borrower), provided that Architect is paid, in accordance with the Architect Contract, for all Work thereafter rendered by Architect for the benefit of Lender; (b) upon the occurrence of a default by Borrower under the Construction Contract, Architect will not exercise any remedies thereunder (other than the cessation of the Work for monetary defaults pending either the cure thereof or the request by Lender that, pursuant to (a) preceding, Architect complete the Work for the benefit of Lender) until it has notified Lender thereof in writing and granted Lender a period of 30 days (or a reasonable

amount of time if such default cannot be cured in 30 days) after receipt by Lender of such notice in which Lender shall be entitled, but not obligated, to cure such default; (c) in the event any of the proceeds of the Construction Loan are disbursed by Lender directly to Architect, Architect will receive all such disbursements, will hold the same as a trust fund for the purpose of paying the costs of the Work under the Architect Contract, and will apply the same only to the payment of such costs and for no other purposes; (d) upon request by Lender, Architect shall furnish to Lender a current list of all persons or firms with whom Architect has entered into subcontracts or other agreements relating to the Work in Connection with the Project, together with a statement as to the status of each such subcontract or agreement and the respective amounts, if any, owed by Architect thereunder; (e) Architect shall make timely payment or deposit of all amounts of tax required to be withheld and paid to or deposited with the United States pursuant to the provision of Subtitle C of the Internal Revenue Code of 1954, as from time to time amended, with respect to any and all wages paid to employees of Architect from funds paid to Architect by Borrower or Lender; and (f) after execution and delivery of the Architect Contract, Architect will not amend the Architect Contract without the prior written consent of Lender.

3. Architect hereby subordinates any and all "Architect Liens" (as hereinafter defined) to any and all Lender Liens with the same force and effect as though the deeds of trust and any other instrument creating or evidencing the Lender Liens had been executed, delivered, and recorded prior to the creation or inception of the Architect Liens. As used herein, the term "Architect Liens" means all constitutional, statutory, contractual, or other liens, rights to liens, claims, and/or demands, if any, of whatever kind and nature, and against any property or rights of whatever kind and nature, that may now or hereafter exist or be claimed or asserted by, through, or under Architect for any Work in connection with all or portions of any improvements on the Land, whether pursuant to the Architect Contract or otherwise.

4. Nothing herein shall be construed to impose upon Lender any duty to see to the application of the proceeds of the Construction Loan. Architect acknowledges that Lender is obligated with respect thereto only to Borrower and to no other person or entity.

5. This instrument shall be binding upon Architect and its heirs, personal representatives, successors and assigns and shall inure to the benefit of Lender and its successors and assigns.

EXECUTED on this ____ day of ■, 2001.

ARCHITECT:

■

By: _____
Name: _____
Title: _____

EXHIBIT "A"

LAND

DOCUMENT CORRECTION AGREEMENT

LENDER: **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official department of the State of Texas

BORROWER:*

PROPERTY: *

DATE: *

AGREEMENT TO CORRECT MISSTATED INFORMATION OR PROVIDE ADDITIONAL DOCUMENTATION OR FEES: In consideration of Lender disbursing funds for the closing of the Loan secured by the Property being encumbered, and regardless of the reason for any loss, misplacement, or inaccuracy in any Loan documentation, Borrower(s) agrees as follows: If any document is lost, misplaced, misstated or inaccurately reflects the true and correct terms and conditions of the Loan, upon request of the Lender, Borrower(s) will comply with Lender's request to execute, acknowledge, initial and deliver to Lender any documentation Lender deems necessary to replace or correct the lost, misplaced, misstated or inaccurate document(s). If the original promissory note is replaced, the Lender hereby indemnifies the Borrower(s) against any loss associated with a demand on the original note. All documents Lender requests of Borrower(s) shall be referred to as "Replacement Documents." Borrower(s) agrees to deliver the Replacement Documents within ten (10) days after receipt by Borrower(s) of a written request for such replacements. Borrower(s) also agrees that upon request Borrower(s) will supply additional amounts and/or pay to Lender any additional sum previously disclosed to Borrower(s) as a cost or fee associated with the Loan, which for whatever reason was not collected at closing.

REQUEST BY LENDER: Any request under this Agreement may be made by the Lender, (including assignees and persons acting on behalf of the Lender) or Settlement Agent, and shall be prima facie evidence of the necessity for same. A written statement addressed to Borrower(s) at the address indicated in the Loan documentation shall be considered conclusive evidence of the necessity for Replacement Documents.

BORROWER LIABILITY: If Borrower(s) fails or refuses to execute, acknowledge, initial and deliver the Replacement Documents or provide the Additional Documents or fees to Lender more than ten (10) days after being requested to do so by Lender, and understanding that Lender is relying on these representations, Borrower(s) agree(s) to be liable for any and all loss or damage which Lender reasonably sustains thereby, including but not limited to all reasonable attorney's fees and costs incurred by Lender.

FAILURE TO DELIVER REPLACEMENT DOCUMENTS CAN CONSTITUTE DEFAULT: Borrower's failure or refusal to comply with the terms of the correction request may constitute a default under the note and/or deed of trust, and may give Lender the option of declaring all sums secured by the loan documents immediately due and payable.

This Agreement shall survive the closing of the Loan, and inure to the benefit of Lender's successors and assigns and be binding upon the heirs, devisees, personal representatives, successors and assigns of Borrower(s).

BORROWER:

*

TO BE FILED IN THE REAL PROPERTY RECORDS OF * COUNTY, TEXAS

FINANCING STATEMENT

This is a financing statement to be filed with the County Clerk, * County, Texas, in order to perfect a security interest in the collateral hereinafter described which has been granted to the Secured Party as hereinafter named by the Debtor as hereinafter named:

NAME AND ADDRESS OF DEBTOR:

*

File/Charter No. *

NAME AND ADDRESS OF SECURED PARTY:

**TEXAS DEPARTMENT OF HOUSING
AND COMMUNITY AFFAIRS**

507 Sabine St.
P.O. Box 13491
Austin, Texas 78711-3941

DESCRIPTION OF COLLATERAL:

1. All furniture, equipment and other personal property now or hereafter owned by Debtor and used in connection with, located on or related in any way to the real property ("Property") described in Exhibit "A" hereto attached and made a part hereof, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached in any manner to the buildings and other improvements now or hereafter erected, constructed or developed on the Property ("Project");

2. All building materials and equipment now or hereafter delivered to the Property and all building and construction materials, equipment and parts intended to be installed in or on the Property or Project;

3. All plans and specifications for the Project;

4. All contracts and subcontracts relating to the Project;

5. All deposits (including tenants' security deposits, if any), funds, accounts, contract rights, instruments, documents, general intangibles (including trademarks, trade names and symbols used in connection therewith), and notes or chattel paper arising from or by virtue of any transactions related to the Property;

6. All permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Property;

7. All bank accounts in which rental income, if any, from the Property is deposited;

8. All proceeds arising from or by virtue of the sale, lease or other disposition of any of the real or personal property described herein;

9. All proceeds (including premium refunds) payable or to be payable under each policy of insurance relating to the Project;

10. All proceeds arising from the taking of all or a part of the Property or any rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, for any public or quasi-public use under any law or by rights of eminent domain, or by private or other purchase in lieu thereof; and

11. All other interest of every kind and character which Debtor now has or at any time hereafter acquires in and to the above-described personal property and all property which is used or useful in connection therewith.

SIGNATURE OF DEBTOR:

*

ARCHITECT AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF ■ §

WHEREAS, it is proposed that **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official department of the State of Texas ("Lender"), make a Construction Loan (herein so called) to ■ ("Borrower"), for, among other things, construction of improvements upon the Land (herein so called) situated in the county and state first herein mentioned, more particularly described in Exhibit "A" hereto (the Land, such improvements, and any and all personal property and fixtures now or hereafter affixed to, used in and about, or arising in connection with the Land and such improvements, called the "Project"), to be secured by, among other things, liens and security interests (the "Lender Liens") against the Project and the Architect Contract (hereinafter described); and

WHEREAS, the undersigned ("Architect") proposes to hereafter perform architectural services (collectively, the "Work") in connection with the construction of improvements on the Land pursuant to an Architect Contract (as hereafter amended, supplements, and/or restated from time to time, herein so called) dated as of ■, between Architect and Borrower.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Lender to make the Construction Loan to Borrower, Architect hereby agrees with Lender as follows:

1. Architect represents and warrants to Lender that as of the date hereof (a) Architect has not reached any agreement or entered into any contract, written or oral, with respect to the construction of the improvements on the Land, other than the Architect Contract, which has been duly executed and is in full force and effect, (b) no materials have been delivered to or stored upon the Land, and (c) no work of any kind has been performed on the Land in connection with the construction or repair of any improvements on the Land.

2. Architect consents and agrees in all respects to the creation in favor of Lender by Borrower of a security interest in Borrower's rights in the Architect Contract as security for the full and complete payment and performance of Borrower's indebtedness and obligations to Lender, and Architect further agrees with Lender that: (a) if a default occurs in connection with the Construction Loan, Architect will, upon Lender's request, complete the performance of the Work pursuant to the Architect Contract for the benefit of Lender (notwithstanding any previous default thereunder by Borrower, and Architect agrees that Lender shall have no liability to it whatsoever by reason of any such default by Borrower), provided that Architect is paid, in accordance with the Architect Contract, for all Work thereafter rendered by Architect for the benefit of Lender; (b) upon the occurrence of a default by Borrower under the Construction Contract, Architect will not exercise any remedies thereunder (other than the cessation of the Work for monetary defaults pending either the cure thereof or the request by Lender that, pursuant to subsection (a) preceding, Architect complete the Work for the benefit of Lender) until it has notified Lender thereof in writing and granted Lender a period of 30 days (or a

reasonable amount of time if such default cannot be cured in 30 days) after receipt by Lender of such notice in which Lender shall be entitled, but not obligated, to cure such default; (c) in the event any of the proceeds of the Construction Loan are disbursed by Lender directly to Architect, Architect will receive all such disbursements, will hold the same as a trust fund for the purpose of paying the costs of the Work under the Architect Contract, and will apply the same only to the payment of such costs and for no other purposes; (d) upon request by Lender, Architect shall furnish to Lender a current list of all persons or firms with whom Architect has entered into subcontracts or other agreements relating to the Work in Connection with the Project, together with a statement as to the status of each such subcontract or agreement and the respective amounts, if any, owed by Architect thereunder; (e) Architect shall make timely payment or deposit of all amounts of tax required to be withheld and paid to or deposited with the United States pursuant to the provision of Subtitle C of the Internal Revenue Code of 1954, as from time to time amended, with respect to any and all wages paid to employees of Architect from funds paid to Architect by Borrower or Lender; and (f) after execution and delivery of the Architect Contract, Architect will not amend the Architect Contract without the prior written consent of Lender.

3. Architect hereby subordinates any and all "Architect Liens" (as hereinafter defined) to any and all Lender Liens with the same force and effect as though the deeds of trust and any other instrument creating or evidencing the Lender Liens had been executed, delivered, and recorded prior to the creation or inception of the Architect Liens. As used herein, the term "Architect Liens" means all constitutional, statutory, contractual, or other liens, rights to liens, claims, and/or demands, if any, of whatever kind and nature, and against any property or rights of whatever kind and nature, that may now or hereafter exist or be claimed or asserted by, through, or under Architect for any Work in connection with all or portions of any improvements on the Land, whether pursuant to the Architect Contract or otherwise.

4. Nothing herein shall be construed to impose upon Lender any duty to see to the application of the proceeds of the Construction Loan. Architect acknowledges that Lender is obligated with respect thereto only to Borrower and to no other person or entity.

5. This instrument shall be binding upon Architect and its heirs, personal representatives, successors and assigns and shall inure to the benefit of Lender and its successors and assigns.

EXECUTED on this ____ day of ■, 2003.

ARCHITECT:

■

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §

§

COUNTY OF ■ §

This instrument was acknowledged before me on this ____ day of ■, 2003, by ■, ■ of ■,
a ■, on behalf of said ■.

Notary Public, State of Texas

EXHIBIT "A"

LAND

CONSTRUCTION LOAN AGREEMENT

This Construction Loan Agreement (this "Agreement") is entered into as of this _____ day of, ■ 2003, by and between **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official department of the State of Texas ("Lender"), and ■ ("Borrower").

ARTICLE 1 **DEFINITIONS**

1.1 Definitions. As used in this Agreement, the following terms shall have the meanings indicated:

Architect. ■

Completion. When all of the following have been delivered to Lender: (i) Certificate of Occupancy (or its equivalent) from the appropriate Governmental Authority having jurisdiction over the Mortgaged Property, (ii) Certificate of Substantial Completion from the Architect, and (iii) an Affidavit and Full Release of Liens in recordable form from the General Contractor and, upon request of Lender, any other contractors or subcontractors who have performed work on, or furnished materials for, the Improvements, or other documentation specified by Lender.

Completion Date: The date that the Improvements are constructed to Completion, but in no event later than ■.

Completion Deposit: An amount (if any) calculated by Lender to equal the difference between (i) the amount which Lender from time to time determines to be necessary to pay all costs to be incurred in connection with the completion of the development of the Mortgaged Property and the construction, marketing, ownership, management, maintenance, operation, sale or leasing of the Improvements in accordance with this Agreement; to pay all sums which may accrue under the Security Documents prior to repayment of the Indebtedness, including, without limitation, the generality of the foregoing, interest on the Indebtedness; and to enable Borrower to perform and satisfy all of the covenants of Borrower contained in the Security Documents, and (ii) the funds then unadvanced by Lender to Borrower on the Note.

Construction Contracts: Any and all contracts and agreements, written or oral, between Borrower and the General Contractor, between Borrower and any other original contractor, between any of the foregoing and any subcontractor and between any of the foregoing and any other person or entity relating in any way to the construction of the Improvements, including, without limitation, the performing of labor or the furnishing of standard or specially fabricated materials in connection therewith.

Deed of Trust: The Deed of Trust and Security Agreement of even date herewith executed by Borrower conveying the Mortgaged Property to a trustee for Lender to secure the repayment of the Indebtedness and performance of the Obligations and all amendments thereto.

Environmental Law: Any federal, state, or local law, statute, ordinance, or regulation pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the "Property" (as hereinafter defined) including, without limitation, (i) the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, as now or hereafter amended (RCRA) (42 U.S.C. §6901 et seq.); (ii) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.) ("CERCLA" or "SuperFund"), as amended from time to time, (iii) the Clean Water Act, as now or hereafter amended (CWA) (33 U.S.C. § 1251 et seq.); (iv) the Toxic Substances Control Act, as now or hereafter amended (TSCA) (15 U.S.C. § 2601 et seq.); (v) the Clean Air Act, as now or hereafter amended (CAA) (42 U.S.C. § 7401 et seq.); (vi) Texas Solid Waste Disposal Act (V.T.C.A. Health and Safety Code § 361.001 et seq.); and the Texas Water Code (V.T.C.A. Water Code §§ 26.001-25.407); (vii) all regulations promulgated under any of the foregoing; (viii) any local, state or federal law, statute, regulation or ordinance analogous to any of the foregoing; and (ix) any other federal, state, or local law (including any common law), statute, regulation, or ordinance regulating, prohibiting, or otherwise restricting the placement, discharge, release, threatened release, generation, treatment, or disposal upon or into any environmental media of any substance, pollutant, or waste which is now or hereafter classified or considered to be hazardous or toxic to human health or the environment.

Environmental Report: A report prepared by a reputable engineer or other party satisfactory to Lender in such detail as Lender may require, indicating that no part of the Mortgaged Property is contaminated with Hazardous Materials or is subject to undue risk of contamination by Hazardous Materials.

Event of Default: Any happening or occurrence described in Article 7 hereof.

General Contractor: ■, or any other general contractor engaged by Borrower and approved in writing by Lender to construct the Improvements or any part thereof.

Governmental Authority: Any and all courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

Guarantor (individually and/or collectively, as the context may require): ■

Guaranty (individually and/or collectively, as the context may require): That or those instruments of guaranty, if any, now or hereafter in effect, from Guarantor in favor of Lender guaranteeing the repayment of all or any part of the Indebtedness and/or satisfaction of, or continued compliance with, the Obligations.

Hazardous Materials: Any flammables, explosives, radioactive materials, asbestos, petroleum products, or other hazardous waste, including, without limitation, substances defined as "hazardous substances", "hazardous materials", or "toxic substances" in any Environment Law.

■ Improvements: The improvements described in the Plans, being generally described as

Indebtedness: The principal of, interest on and all other amounts, payments and premiums due under or secured by the Note, the Deed of Trust, the Guaranty and any and all other documents now or hereafter executed by Borrower, Guarantor or any other person or party in connection with the loan evidenced by the Note.

Independent Supervising Architect: The architect, engineer, agent, consultant or other inspector selected and retained by Lender, at Borrower's expense, to supervise construction of and inspect the Improvement on behalf of Lender.

Land: The real estate or interest therein described on Exhibit A attached hereto and made a part hereof for all purposes, all fixtures and improvements situated thereon and all rights, titles and interests appurtenant thereto.

Leases: Any and all leases, subleases, licenses, concessions or other agreements (written or oral, now or hereafter in effect) which grant a possessory interest in and to, or the right to use, all or any part of the Mortgaged Property, together with all security and other deposits made in connection therewith, and all other agreements, such as engineer's contracts, utility contracts, maintenance agreements and service contracts, which in any way relate to the design, use, occupancy, operation, maintenance, enjoyment or ownership of the Mortgaged Property, save and except any and all leases, subleases or other agreements pursuant to which Borrower is granted a possessory interest in the Land.

Legal Requirements: (i) Any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates or ordinances of any Governmental Authority in any way applicable to Borrower, any Guarantor or the Mortgaged Property, including, without limitation, the ownership, use, construction, occupancy, possession, operation, maintenance, alteration, repair or reconstruction thereof, (ii) any and all covenants, conditions, and restrictions contained in any deed or other form of conveyance or in any other instrument of any nature that relate in any way or are applicable to the Mortgaged Property or the ownership, use, construction, occupancy, possession, operation, maintenance, alteration, repair or reconstruction thereof, (iii) Borrower's or Guarantor's presently or subsequently effective bylaws and articles of incorporation or partnership, limited partnership, joint venture, trust or other form of business association agreement, (iv) any and all Leases, (v) any and all terms, provisions and conditions of any commitment which are to be performed or observed by Borrower, (vi) any and all leases, other than those described in (iv) above, and (vii) other contracts (written or oral) of any nature that relate in any way to the Mortgaged Property and to which Borrower or any Guarantor may be bound, including, without limitation, any lease or other contract pursuant to which Borrower is granted a possessory interest in the Land.

Mortgaged Property: The Land, Improvements and Leases, all other property (real, personal or mixed) which is conveyed by the Deed of Trust or in which a security interest is therein created and all other property (real, personal or mixed) on which a lien or security

interest is placed or granted to secure the repayment of the Indebtedness or the performance and discharge of the Obligations.

Note: The Promissory Note of even date herewith, executed by Borrower, payable to the order of Lender, in the amount of \$■ and any and all modifications, renewals, rearrangements, reinstatements, enlargements or extensions thereof or of any promissory note or notes given therefor.

Obligations: Any and all of the covenants, conditions, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Borrower, Guarantor or any other person or party to Lender or others as set forth in the Note, the Deed of Trust, the Guaranty, the Leases and all other documents now or hereafter executed by Borrower, Guarantor or any other person or party in connection with the loan evidenced by the Note and in any deed, lease, sublease or other form of conveyance or any other agreement pursuant to which Borrower is granted a possessory interest in the Land.

Plans: Any and all contracts and agreements, written or oral, between Architect and Borrower, together with the final plans, specifications, shop drawings and other technical descriptions prepared for the construction of the Improvements, and all amendments and modifications thereof.

Security Documents: This Agreement, the Note, Deed of Trust, the Guaranty and any and all other documents now or hereafter executed by Borrower, the Guarantor or any other person or party to evidence or secure the payment of the Indebtedness or the performance and discharge of the Obligations.

Title Company: The issuer of the Title Insurance.

Title Insurance: A mortgagee policy of title insurance, in form and substance satisfactory to Lender and containing no exceptions (printed or otherwise) which are unacceptable to Lender, issued by a title company (or, if Lender so requires, by several title companies on a co-insured or reinsured basis) acceptable to Lender in the face amount of the Note and insuring that Lender has a first and prior lien on the Land and Improvements, subject only to the permitted encumbrances described in the Deed of Trust.

ARTICLE 2

BORROWER'S WARRANTIES AND REPRESENTATIONS

Borrower hereby unconditionally warrants and represents unto Lender as follows:

2.1 Information. Any and all information, reports, papers and other data (including, without limitation, any and all balance sheets, statements of income or loss, reconciliation of surplus and financial data of any other kind) heretofore furnished, or to be furnished, Lender by or on behalf of Borrower are, or when delivered will be, true and correct in all material respects; all financial data has been, or when delivered will have been, prepared in accordance with generally accepted accounting principles consistently applied and fully and accurately present, or will present, the

financial condition of the subjects thereof as of the dates thereof; and, with respect to the financial data heretofore furnished, no materially adverse change has occurred in the financial condition reflected therein since the dates thereof.

2.2 Litigation. Except as may be otherwise set forth on any exhibit attached hereto, there are no actions, suits or proceedings of a material nature pending or, to the knowledge of Borrower, threatened against or affecting Borrower, any Guarantor or the Mortgaged Property, or involving the validity or enforceability of the Deed of Trust or the priority of the liens and security interests created therein; and no event has occurred (including specifically Borrower's and Guarantor's execution of the respective Security Documents and Borrower's consummation of the loan represented thereby) which will violate, be in conflict with, result in the breach of or constitute (with due notice or lapse of time, or both) a default under any Legal Requirement or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever on the Mortgaged Property other than the liens and security interests created by or expressly permitted under the Security Documents.

2.3 Compliance with Legal Requirements. Borrower has (or prior to commencement of the Improvements will have) (i) received all requisite building permits and approvals of the Plans, (ii) filed and/or recorded all requisite plats and other instruments and (iii) complied with all Legal Requirements required to be met prior to commencement of construction of the Improvements.

2.4 Streets, Easements, Utilities and Other Services. All streets, easements, utilities and related services necessary for the construction of the Improvements and the operation thereof for their intended purpose are (or within thirty (30) days after commencement of construction of the Improvements, will be) available to the boundaries of the Land, including, without limitation, potable water, storm and sanitary sewer, gas, electric and telephone facilities and garbage removal.

2.5 Contract and Commencement of Construction. Neither Borrower, any Guarantor nor anyone else on Borrower's behalf has (i) commenced construction of the Improvements, (ii) purchased, contracted for or otherwise brought upon the Land any materials, specially fabricated or otherwise, to be incorporated into the Improvements, (iii) entered into any Construction Contracts or (iv) made any oral or written contract or arrangement of any kind the performance of which by the other party thereto would or could give rise to a lien or claim on the Mortgaged Property, or any portion thereof.

2.6 Validity of Security Documents. All action on Borrower's part requisite for the due authorization, creation, issuance, execution and delivery of the Security Documents has been duly and effectively taken, and each such document constitutes a legal and binding obligation of, and is valid and enforceable against, Borrower and the Mortgaged Property (as the case may be) in accordance with the terms thereof.

2.7 Environmental Matters; Hazardous Substances. The Mortgaged Property has not been the site of any activity that would violate any past or present Legal Requirements, including, without limitation, any Environmental Law. Specifically, without limitation, (i) no solid waste,

as that term is defined in the Texas Solid Waste Disposal Act, and no petroleum or petroleum products have been handled on the Mortgaged Property such that they may have leaked or spilled on to the Mortgaged Property or contaminated the Mortgaged Property, (ii) there is no on-site contamination resulting from activities on the Mortgage Property or adjacent tracts, (iii) there is no off-site contamination resulting from activities on the Mortgaged Property, (iv) the Mortgaged Property contains no Hazardous Materials, and (v) there are no underground storage tanks located in, on or under the Mortgaged Property.

ARTICLE 3 **BORROWER'S COVENANTS**

Borrower hereby unconditionally covenants with Lender as follows:

3.1 Construction of Improvements. The construction of the Improvements will be commenced by Borrower forthwith, will be prosecuted by Borrower with diligence and continuity to Completion and will be completed by Borrower in a good and workmanlike manner in substantial accordance with the Plans and the other provisions of this Agreement, on or before the Completion Date and free and clear from all liens, or claims for liens, other than the liens and security interests created by the Security Documents. Borrower agrees that (i) construction of the Improvements shall not be commenced unless and until Borrower has furnished the Plans to Lender and afforded Lender the opportunity to accept them (which acceptance shall be evidenced, if at all, by the initials of an authorized representative of Lender thereon), (ii) when the Plans have been furnished to Lender, no changes of a material nature will be made to them by, or be permitted to be made to them by Borrower, Guarantor, Architect or any other person or entity without the prior written approval therefor of all requisite Governmental Authorities, prior compliance with all requisite Legal Requirements and prior acceptance by the Lender, (iii) in instances where Lender does accept the Plans (or any change therein), such acceptance shall be deemed to be strictly limited to an acknowledgement of Lender's consent to the Improvements being constructed in accordance therewith and shall not, in any way, be deemed to imply any warranty, representation or approval by Lender that such Improvements, if so constructed, will be structurally sound, will comply with all Legal Requirements, will be fit for any particular purpose or will have a market value of any particular magnitude, and (iv) within thirty (30) days after construction of the Improvements has commenced Borrower and General Contractor shall execute and file an Affidavit of Commencement in accordance with Section 53.124(c) of the Texas Property Code and provide a copy thereof to Lender.

3.2 Affirmative Covenants. At all times during construction of the Improvements, Borrower will (i) permit Lender, the Independent Supervising Architect and their representatives, to enter upon the Land and into the Improvements, to inspect the same and all materials to be used in the construction of the Improvements and to examine the Plans, (ii) comply strictly with all Legal Requirements, (iii) deliver to Lender, or its representatives, immediately upon demand, counterparts and/or conditional assignments of any and all Construction Contracts, bills of sale, statements, conveyances, receipted vouchers or agreements of any nature under which Borrower claims title to any materials or supplies used or to be used in the construction of the Improvements, (iv) either cause each Construction Contract to contain a provision specifically subordinating any lien right against the Mortgaged Property to the liens and security interests

created by the Security Documents or cause the other party thereto to execute any and all instruments, acceptable in form and substance to Lender, to accomplish the same, (v) if requested by Lender, furnish to Lender, immediately after the pouring of each concrete slab, street and curbstone within the Land, the completion of each foundation of a structure forming part of the Improvements and the completion of the Improvements, a survey certified to by a licensed engineer acceptable to Lender showing all of same and that the location thereof is entirely within the property lines of the Land and does not encroach upon, breach or violate any building line, easement or similar restriction, (vi) use all advances made to it by Lender for, and only for payment of the costs itemized in Section 6.2 hereof and under no circumstances use, directly or indirectly, any portion of such advances for any other purpose, (vii) obtain and maintain, in full force and effect, an owner's and contractor's liability insurance policy or policies (including worker's compensation insurance) and a hazard insurance policy or policies in builder's risk form with loss payable endorsements acceptable to Lender insuring the Improvements and all materials and supplies purchased with advances hereunder against all risks and losses, all such insurance policies to be issued by companies, in amounts and on terms approved by Lender, (viii) upon demand of Lender or the Independent Supervising Architect, furnish Lender with a current list of original contractors, subcontractors, materialmen, vendors, artisans and laborers performing work on the Improvements, and (ix) upon demand of Lender or the Independent Supervising Architect, correct any structural defect in the Improvements or any material departure from the Plans not accepted by Lender, it being understood and agreed that the advance of any loan proceeds shall not constitute a waiver of Lender's right to require compliance with this Section 3.2 with respect to any such defects or departures. Within ten (10) days after Completion, Borrower and General Contractor shall execute and file an Affidavit of Completion in accordance with Section 53.106 of the Texas Property Code and provide a copy thereof to Lender.

3.3 Negative Covenants. At no time shall Borrower (i) use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of, any part of the Mortgaged Property for any purpose which violates any Legal Requirement or in any manner which may be dangerous unless safeguarded as required by law or which may constitute a public or private nuisance or which may make void, voidable or cancelable or increase the premium of any insurance then in force with respect thereto, or (ii) other than the First Mortgage, create or place, permit to be created or placed or, through any act or failure to act, acquiesce in the creation or placing of, or allow to remain, any mortgage, lien (statutory, constitutional or contractual), pledge, security interest, encumbrance of charge or conditional sale or other title retention agreement on the Mortgaged Property (or any part thereof) other than those created by or expressly permitted under the Security Documents, regardless of whether same is expressly subordinate to the liens and security interests created in the Security Document. If any such mortgage, lien, pledge, security interest, encumbrance or charge is asserted against the Mortgaged Property (or any part thereof), Borrower shall promptly, at its own cost and expense, (a) pay the underlying claim in full or take any other action necessary to cause same to be released or, if permitted by Lender in Lender's sole discretion, bonded to the satisfaction of Lender and the Title Company and (b) within five (5) days from the date such mortgage, lien, pledge, security interest, encumbrance or charge is asserted, give Lender notice thereof. The notice shall specify who is asserting such mortgage, lien, pledge, security interest, encumbrance or charge and shall detail the origin and

nature of the underlying claim giving rise to the asserted mortgage, lien, pledge, security interest, encumbrance or charge.

3.4 Completion Deposit. If, in the judgment of Lender, it appears at any time or from time to time that the unadvanced loan proceeds will be insufficient to (i) pay all costs to be incurred in connection with the completion of the development of the Mortgaged Property and the construction, marketing, ownership, management, maintenance, operation, sale or leasing of the Improvements in accordance with this Agreement, (ii) pay all sums which may accrue under the Security Documents prior to repayment of the Indebtedness, including, without limitation, interest on the Indebtedness, and (iii) enable Borrower to perform and satisfy all of the covenants of Borrower contained in the Security Documents, Borrower shall immediately deposit, or shall make arrangements satisfactory to Lender to deposit with Lender, the Completion Deposit. The Completion Deposit may be retained by Lender in a non-interest bearing account, need not be segregated from any of Lender's other funds and may be disbursed in accordance with the provisions of the Security Documents by Lender before making any further advances on the Note.

ARTICLE 4 **INSPECTION**

4.1 Inspection. Lender, through its officers, agents or employees, shall have the right at all reasonable times at Borrower's expense:

(a) To enter upon the Mortgaged Property and inspect the construction to determine that it is in conformity with the Plans and all the requirements hereof; and

(b) To examine, copy and make extracts of, the books, records, accounting data and other documents of Borrower that relate in any way to the Mortgaged Property, including without limiting the generality of the foregoing, all permits, licenses, consents and approvals of all Governmental Authorities having jurisdiction over Borrower or the Mortgaged Property and all the relevant books and records of contractors and subcontractors supplying goods and/or services in connection with the construction of the Improvements. All such books, records and documents shall be made available to Lender promptly upon written demand therefor; and, at the request of Lender, Borrower shall furnish Lender with convenient facilities for the foregoing purpose. All contracts made or amended by Borrower or its contractors and subcontractors after the date hereof 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.

4.2 No Duty to Inspect. It is expressly understood and agreed that Lender shall have no duty to supervise or to inspect the construction of the Improvements or any books and records, and that any such inspection shall be for the sole purpose of determining whether or not the Obligations of Borrower are being properly discharged and or preserving Lender's rights hereunder. If Lender, or the Independent Supervising Architect acting on behalf of Lender, should inspect the construction of the Improvements or any books and records, Lender and the Independent Supervising Architect shall have no liability or obligation to Borrower or any third party arising out of such inspection. Inspection not followed by notice of default shall not

constitute a waiver of any default then existing; nor shall it constitute an acknowledgement or representation by Lender and the Independent Supervising Architect that there has been or will be compliance with the Plans and all Legal Requirements or that the construction is free from defective materials or workmanship or a waiver of Lender's right thereafter to insist that the Improvements be constructed in accordance with the Plans and Legal Requirements. Lender's failure to inspect the construction of the Improvements or any part thereof or any books and records shall not constitute a waiver of any of Lender's rights hereunder. Neither Borrower nor any third party shall be entitled to rely upon any such inspection or review. Lender and the Independent Supervising Architect owe no duty of care to Borrower or any third party person to protect against, or inform Borrower or any third person of the existence of negligent, faulty, inadequate or defective design or construction of the Improvements.

4.3 Borrower's Responsibilities. Borrower shall be solely responsible for all aspects of Borrower's business and conduct in connection with the Mortgaged Property, including without limitation:

- (a) the quality and suitability of the Plans;
- (b) supervision of construction of the Improvements;
- (c) the qualifications, financial condition and performance of all architects, engineers, contractors, subcontractors and material suppliers, consultants, and property managers;
- (d) conformance of construction of the Improvements to the Plans, to all Legal Requirements and to the requirements of this Agreement;
- (e) the quality and suitability of all materials and workmanship; and
- (f) the accuracy of all requests for the disbursement of loan proceeds and the proper application of disbursed loan proceeds.

4.4 Inspection Fee. In furtherance of Lender's rights hereunder, Lender may, at its option, require an inspection of the Mortgaged Property by the Independent Supervising Architect (i) prior to each advance, (ii) at least once each month during the course of construction even though no advance is to be made for that month, (iii) upon Completion of construction of the Improvements, and (iv) at least annually thereafter. Borrower shall pay all fees for all inspections of the Mortgaged Property. Furthermore, if Lender determines in connection with any such inspection that extra services will be required of the Independent Supervising Architect as a result of noncompliance with the Plans or any Legal Requirement, as a result of deviations from acceptable construction practices, or as a result of Borrower's failure to satisfy the requirements of any commitment or any other agreement, then Borrower shall pay, in addition to the fees for such inspections, the cost of all such extra services.

ARTICLE 5

ADDITIONAL SECURITY

5.1 Construction Contracts. As additional security for the payment of the Indebtedness, Borrower hereby transfers and assigns to Lender all of Borrower's rights, title and interests, but not its obligations, in, under and to the Construction Contracts upon the following terms and conditions:

(a) Borrower represents and warrants that each copy of any Construction Contract furnished to Lender is a true and complete copy thereof and that Borrower's interest therein is not subject to any claim, setoff or encumbrance.

(b) Neither this assignment nor any action by Lender shall constitute an assumption by Lender of any obligations under the Construction Contracts and Borrower shall continue to be liable for all obligations of Borrower thereunder, Borrower hereby agreeing to perform all of its obligations under the Construction Contracts. Borrower agrees to indemnify and hold Lender harmless against and from any loss, cost, liability or expense (including, without limiting the generality of the foregoing, reasonable attorneys' fees) incurred by Lender and resulting from any failure of Borrower to perform.

(c) Lender shall have the right at any time (but shall have no obligation) to take, in its name or in the name of Borrower, such action as Lender may at any time determine to be necessary or advisable to cure any default under the Construction Contracts or to protect the rights of Borrower or Lender thereunder. Lender shall incur no liability if any action so taken by it or in its behalf shall prove to be inadequate or invalid, and Borrower agrees to hold Lender free and harmless from any loss, cost, liability or expense (including, without limiting the generality of the foregoing, reasonable attorneys' fees) incurred in connection with any such action.

(d) Borrower hereby irrevocably constitutes and appoints Lender as Borrower's attorney-in-fact, in Borrower's name or in Lender's name, to enforce all rights of Borrower under the Construction Contracts; provided, however, that Lender shall have no obligation to enforce such rights.

(e) Prior to an Event of Default, Borrower shall have the right to exercise its rights as owner under the Construction Contracts; provided, however, that Borrower shall not cancel or amend the Construction Contracts or do, or suffer to be done, any act which would impair the security constituted by this assignment without the prior written consent of Lender.

(f) This assignment shall inure to the benefit of Lender, its successors and assigns, including, without limitation, any purchaser upon foreclosure of the Mortgaged Property or any grantee under a deed in lieu of foreclosure, any receiver in possession of the Mortgaged Property and any corporation formed by or on behalf of Lender which assumes Lender's rights and obligations under this Agreement.

5.2 Plans. As additional security for the payment of the Indebtedness, Borrower hereby transfers and assigns to Lender all of Borrower's rights, title and interest in and to the Plans, and hereby represents and warrants to and agrees with Lender as follows:

(a) The original counterparts of the Plans furnished to Lender are true and complete.

(b) The schedule of the Plans delivered to Lender is a complete and accurate description of the Plans.

(c) The Plans are complete and adequate for the construction of the Improvements, and there have been no modifications thereof except as described in such schedule. The Plans shall not be modified without the prior written consent of Lender, except for nonstructural changes which do not change the cost of construction by more than \$5,000.00.

(d) Lender may use the Plans for any purpose relating to the Improvements, including, without limitation, inspections of construction and the completion of the Improvements.

(e) Lender's acceptance of this assignment shall not constitute approval of the Plans by Lender. Lender has no liability or obligation whatsoever in connection with the Plans and no responsibility for the adequacy thereof or for the construction of the Improvements contemplated by the Plans.

(f) This assignment shall inure to the benefit of Lender, its successors and assigns, including, without limitation, any purchaser upon foreclosure of the Mortgaged Property or any grantee under a deed in lieu of foreclosure, any receiver in possession of the Mortgaged Property and any corporation formed by or on behalf of Lender which assumes Lender's rights and obligations under this Agreement.

ARTICLE 6

LENDER'S COMMITMENT

6.1 Loan. Subject to the terms, provisions and conditions of this Agreement, Lender will make and Borrower will accept, in installments, a loan in the aggregate amount of the principal sum of the Note, it being understood that interest as called for in the Note shall be calculated only on sums actually advanced and only from the dates of such advances.

6.2 Advances. Advances shall be made to Borrower on the principal amount of the Note at the times and otherwise in accordance with the procedures established by Lender. The advances on the Note shall be disbursed, at Lender's option, (i) by Lender's check drawn upon Lender's disbursement account and delivered to Borrower, (ii) by depositing the amount of the disbursement to Borrower's account in a bank approved by Lender, (iii) by direct or joint check payment to any or all persons entitled to payment for work performed on or materials delivered to or services performed in connection with the construction of the Improvements or the loan evidenced by the Note, or (iv) by any other method the Lender shall from time to time elect. The advance as to which the Borrower shall be entitled at any one time shall not exceed the cost of the materials, supplies and equipment purchased for the Improvements and stored on the Land in a manner acceptable to Lender, plus the cost of all materials, supplies, equipment and labor actually incorporated into the Improvement, plus any other costs and fees which have been approved for payment by Lender and which are then due or will become due within thirty (30) days thereafter minus the sum of all prior advances. Under no circumstances shall any portion of any advance be used for any purpose other than the payment of those costs and fees approved by Lender as legitimately relating to the purchase price for the Land, the cost of constructing the Improvements and the payment of the Indebtedness. For each advance made to Borrower hereunder Lender shall retain a sum equal to ten percent (10%) thereof (or a greater percentage,

if permitted or required by any Legal Requirement) so that, until a period of thirty (30) days after completion of the Improvements (or such longer period if permitted or required by any Legal Requirement or if, during such longer period, a lien or claim could lawfully be filed against the Mortgaged Property by anyone performing work or services, or furnishing materials or goods, during the construction of the Improvements) Lender shall have in its possession a fund equal to ten percent (10%) of the total cost of the Improvements. Notwithstanding anything to the contrary contained in or inferable from any other provisions hereof or in any other Security Documents, if the Title Insurance is initially a binder, Lender shall have the right, at any time, to cause the binder to be converted into a policy at Borrower's cost and to use any undisbursed proceeds on the Note, any portion of the Completion Deposit and, to the extent not prohibited by law, any other sum then in Lender's possession as payment for the cost thereof.

6.3 First Advance. Lender shall not be obligated to make the first advance to Borrower unless and until:

- (a) Lender has received true, legible and correct copies of the following:
 - (i) the Plans and the final draft of the Construction Contracts as approved by Lender;
 - (ii) a certificate from the Architect and, if Lender elects, the Independent Supervising Architect stating that the Plans have been approved by him or them and that the Construction Contracts are acceptable to him or them and satisfactorily proved for the construction of the Improvements;
 - (iii) all authorizations and permits which are then procurable and required by any Legal Requirement for the construction and proposed use of the Improvements;
 - (iv) an original current survey of the Land containing the certification of the surveyor in form and substance satisfactory to Lender and showing the perimeter of the Land by courses and distances, all easements and rights-of-way, the boundary lines of the streets abutting the Land and the width thereof, any encroachments and the extent thereof in feet and inches, the relation of the proposed Improvements by distances to the perimeter of the Land and the proposed building lines, all acceptable to the Title Company to modify the "area, boundaries and encroachments" exception of the Title Insurance to the maximum extent permitted by law;
 - (v) the policies of insurance required by the Security Documents accompanied by evidence of the payment of the premium thereof;
 - (vi) a payment and performance bond or bonds, if required by Lender, from such companies and in such amounts as are satisfactory to Lender, which bond or bonds shall name Lender as an additional obligee;
 - (vii) a soils investigation report from a soils engineer satisfactory to Lender;

(viii) evidence satisfactory to Lender that the Land is not located within the 100 year flood plain or identified as a special flood hazard area as defined by the Federal Flood Hazard Insurance Program.

(ix) a complete project budget in form and substance satisfactory to Lender;

(x) an ad valorem tax service contract covering the Mortgaged Property acceptable to Lender;

(xi) an opinion of counsel for Borrower satisfactory to Lender, if Lender elects;

(xii) a copy of the form of tenant lease satisfactory to Lender to be used by Borrower in connection with the Leases;

(xiii) the Environmental Report; and

(xiv) any other documents and information as Lender may reasonably require.

(b) The Security Documents have been duly authorized, executed and recorded or filed in accordance with applicable Legal Requirements and original counterparts thereof delivered to Lender, all prior to the commencement of construction of the Improvements, the placing of any materials or supplies on the Land, the execution or recording of any Construction Contracts (written or oral) for any of the same or the performance of any other act which could give rise to a lien claim equal or superior to the liens and security interests created by the Security Documents.

(c) The Title Company has issued the Title Insurance.

(d) Borrower, Architect and, if Lender requests, the Independent Supervising Architect have executed, or caused to be executed, and delivered to Lender the Disbursement Request Form, in such form as is acceptable to Lender, certifying in acceptable detail the expenditures made or expenses incurred by Borrower of the type described in Section 6.2 hereof, with such supporting data as Lender may require, and that the amount requested represents sums actually spent or indebtedness actually incurred.

(e) Borrower pays to Lender, or any other person or party entitled thereto, all fees and costs then due and payable in connection with this Agreement and the subject hereof.

6.4 Subsequent Advances. Lender shall not be obligated to make any subsequent advance to Borrower unless and until:

(a) Borrower shall have delivered to Lender a duplicate original of all Construction Contracts in the forms approved by Lender.

(b) Borrower, Architect and, if Lender requests, the Independent Supervising Architect shall have executed, or caused to be executed, and delivered to Lender a Disbursement Request Form as described in Section 6.3(d) hereof and the data referred to therein, or made request for disbursement on such other form acceptable to Lender.

(c) Lender shall have received (i) an endorsement (if permitted or required by virtue of the form thereof) to the Title Insurance increasing the coverage thereof to the full amount of the sum advanced and reflecting no changes in the status of title or the Title Insurance since the previous advance, or, if such endorsement cannot be obtained, an abstractor's certificate or other evidence satisfactory to Lender from the Title Company reflecting that there have been no such changes in the status of title or the Title Insurance, (ii) certification from the Architect and, if Lender elects, the Independent Supervising Architect that, in their opinion, the construction of the Improvements theretofore performed has been in substantial accordance with the Plans, (iii) the survey called for in Section 3.2(v) hereof and as may be required by the Title Company to issue the endorsement or other evidence referred to in Section 6.4(c)(i) hereof, (iv) at the request of Lender, lien waivers or releases (in recordable form) from all contractors, subcontractors, laborers and materialmen employed or furnishing materials in connection with the construction of the Improvements, (v) all amendments, modifications and revisions satisfactory to Lender in the form of tenant lease, (vi) at the request of Lender, a written certification signed by Borrower as to all Leases and the names of the tenants and rents payable thereunder, together with copies of all such Leases, and (vii) such other certifications or evidence of cost and Completion as Lender may request.

(d) Borrower shall have satisfied, if then applicable, the provisions of Section 3.4 hereof.

6.5 Any Advance. Notwithstanding anything to the contrary contained in or inferable from any of the above, Lender shall not be required to make any advance hereunder if, at any time of the requested advance, any of the following exists:

(a) Any Event of Default exists hereunder or under any other Security Document.

(b) The requested advance, plus the sum of the previous advances (including retained amounts deemed to have been advances pursuant to Section 6.2 hereof) or other sums disbursed by Lender under the Security Documents, exceed the face amount of the Note.

(c) In the judgment of Lender, the Improvements will not be completed in substantial accordance with the Plans and the other provisions of this Agreement on or before the Completion Date, regardless of the cause of such failure to complete.

(d) In the judgment of Lender, the sum of the unadvanced loan proceeds plus other sums being held by Lender in escrow for Borrower are insufficient to complete the Improvements in substantial accordance with the Plans and this Agreement, unless and until the provisions of Section 3.4 are satisfied.

(e) The Mortgaged Property (or any part thereof) is demolished or substantially destroyed or condemnation or similar type proceedings are commenced with reference thereto.

(f) Any change in the status of title to the Land or the Improvements has occurred subsequent to the date hereof without Lender's prior written consent.

(g) Borrower is unable to satisfy all of the conditions set forth in Sections 6.2, 6.3 or 6.4 hereof.

(h) Any event has occurred which has given or could give rise to a lien claim of equal or superior rank to the liens and security interests intended to be created by the Security Documents.

(i) An order or decree in any court of competent jurisdiction exists enjoining the construction of the Improvements or enjoining or prohibiting Borrower or Lender or either of them from performing their respective obligations under this Agreement.

(j) Any material deviation exists in the construction of the Improvements from the Plans without the prior written approval of Lender; or it appears to Lender or the Independent Supervising Architect that there are material defects in the workmanship or materials.

(k) Any encroachment exists which has occurred without the approval of Lender.

(l) Construction has ceased prior to Completion of the Improvements for a continuous period of ten (10) days or more for causes other than those beyond the control of Borrower or consented to in writing by Lender.

6.6 Third Party Beneficiaries. All conditions precedent to Lender's obligation to make advances hereunder are imposed solely and exclusively for Lender's benefit. No person or entity other than Lender shall have any standing to require satisfaction of such conditions or be entitled to assume that Lender will refuse to make advances absent strict compliance therewith, and any or all of such conditions may be freely waived (in whole or in part) by Lender at any time or times.

ARTICLE 7

EVENTS OF DEFAULT

Each of the following shall constitute an Event of Default hereunder:

7.1 Conditions to Advances. If, at any time, Borrower is unable to satisfy any condition or cure any circumstances specified in Article 6 hereof, including, without limitation the occurrence of any circumstance described in Section 6.5 hereof, the satisfaction or curing of which being precedent to its right to receive an advance hereunder, and such inability continues for a period in excess of thirty (30) days.

7.2 Voluntary Bankruptcy. If Borrower or any Guarantor or, if Borrower or any Guarantor is a partnership, joint venture, trust or other type of business association, if any of the parties comprising Borrower or any Guarantor, shall (i) voluntarily be adjudicated as bankrupt or insolvent, (ii) file any petition or commence any case or proceeding under any provision or chapter of the Federal Bankruptcy Code or any other federal or state law relating to its insolvency, bankruptcy, rehabilitation, liquidation or reorganization, (iii) make a general assignment for the benefit of its creditors, (iv) have an order for relief entered under the Federal Bankruptcy Code with respect to it, (v) convene a meeting of its creditors, or any class thereof, for the purpose of effecting a moratorium upon or extension or composition of its debts, (vi) fail to pay its debts as they mature, (vii) admit in writing that it is generally not able to pay its debts as they mature or generally not pay its debts as they mature, or (viii) become insolvent.

7.3 Involuntary Bankruptcy. If (i) a petition is filed or any case or proceeding described in Section 7.2 hereof is commenced against Borrower or any Guarantor or, if Borrower or any Guarantor is a partnership, joint venture, trust or other type of business association, against any of the parties comprising Borrower or any Guarantor, or against the assets of any such persons or entities, unless such petition and the case or proceeding initiated thereby is dismissed within sixty (60) days from the date of the filing, (ii) an answer is filed by Borrower or any Guarantor or, if Borrower or any Guarantor is a partnership, joint venture, trust or other type of business association, by any of the parties comprising Borrower or any Guarantor, admitting the allegations of any such petition, or (iii) a court of competent jurisdiction enters an order, judgment or decree appointing, without the consent of Borrower or any Guarantor, or, if Borrower or any Guarantor is a partnership, joint venture, trust or other type of business association, of any of the parties comprising Borrower or any Guarantor, a custodian, trustee, agent or receiver for it, or for all or any part of its property, or authorizing the taking possession by a custodian, trustee, agent or receiver of it, or all or any part of its property unless such appointment is vacated or dismissed or such possession is terminated within sixty (60) days from the date of such appointment or commencement of such possession, but not later than five (5) days before the proposed sale of any assets of Borrower or any Guarantor, or if Borrower or any Guarantor is a partnership, joint venture, trust or other business association, of any of the parties comprising Borrower or any Guarantor, by such custodian, trustee, agent or receiver, other than in the ordinary course of the business of Borrower or any Guarantor.

7.4 Payment of Indebtedness. If Borrower shall fail, refuse or neglect to pay, in full, any installment or portion of the Indebtedness as and when the same shall become due and payable, whether at the due date thereof stipulated in the Security Documents, or at a date fixed for prepayment or otherwise, and such failure, refusal or neglect continues for a period of ten (10) days thereafter; provided, however, that if such installment or portion of the Indebtedness becomes due and payable as a result of Lender's accelerating the maturity of the Indebtedness in accordance with the Security Documents, the ten (10) day grace period for payment set forth in this Section 7.4 shall not apply to the accelerated due date.

7.5 Performance of Obligations. If Borrower shall fail, refuse or neglect to perform and discharge fully and timely any of the Obligations as and when called for and such failure, refusal or neglect shall either be incurable or, if curable, shall remain uncured for a period of thirty (30) days after the earlier to occur of (i) the date Lender gives written notice thereof to Borrower or

(ii) the date upon which Borrower had actual knowledge of the Obligation to be performed; provided, however, that if such default is curable but requires work to be performed, acts to be done or conditions to be remedied which, by their nature, cannot be performed, done or remedied, as the case may be, within such thirty (30) day period, no Event of Default shall be deemed to have occurred if Borrower commences same within such thirty (30) day period and thereafter diligently and continuously prosecutes the same to completion within forty-five (45) days after such notice or date of actual knowledge.

7.6 False Representations. If any representation, statement or warranty made by Borrower, Guarantor or others in, under or pursuant to any of the Security Documents or any affidavit or other instrument executed in connection with the Security Documents shall be false or misleading in any material respect as of the date hereof or shall become so at any time prior to the repayment in full of the Indebtedness.

7.7 Destruction of Improvements. If the Mortgaged Property is demolished, destroyed or substantially damaged so that (in Lender's judgment) it cannot be restored or rebuilt with available funds to the condition existing immediately prior to such demolition, destruction or damage within a reasonable period of time.

7.8 Change in Financial Condition. If Lender reasonably determines that the likelihood of payment of the Indebtedness or performance of the Obligations secured by the Deed of Trust is threatened by reason of a material adverse change in the financial condition or credit standing of Borrower or any Guarantor or, if Borrower or any Guarantor is a partnership, joint venture, trust or other type of business association, of any of the parties comprising Borrower or any Guarantor, or if the estate held by Borrower in the Land is a leasehold estate, of the ground lessor.

7.9 Foreclosure of Other Liens. If the holder of any lien or security interest on the Mortgaged Property (without hereby implying Lender's consent to the existence, placing, creating or permitting of any such lien or security interest) institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.

ARTICLE 8 **REMEDIES**

8.1 Rights, Remedies and Recourses. Upon the happening of any Event of Default, Lender shall have, in addition to any and all other rights, remedies and recourses available to it under any of the Security Documents or otherwise available at law or in equity, including, without limitation, the right to declare immediately due and payable the unpaid advanced principal and unpaid accrued interest on the Note and to foreclose any and all liens and security interests securing the repayment of same, the right (i) to take exclusive possession of the Mortgaged Property, (ii) to use any funds of Borrower, including, without limitation, the Completion Deposit (if any) and any sums which may remain unadvanced hereunder, to complete the Improvements, (iii) to make such changes in and revisions to the Plans as Lender may deem desirable, (iv) to prosecute and defend all actions or proceedings relating to the construction of the Improvements, (v) to pay, settle or compromise all existing bills and claims which are or may

be liens against the Mortgaged Property, or may be necessary or desirable for the completion of the Improvements or the clearance of title, (vi) to execute in Borrower's name all applications, certificates and other instruments which may be required by any Construction Contracts, (vii) to do any and every act with respect to the construction of the Improvements which Borrower may do in its own behalf and (viii) to employ such contractors, subcontractors, agents, attorneys, architects, accountants, watchmen and inspectors as Lender may deem desirable to accomplish any of the above purposes. For these purposes, Borrower hereby constitutes and appoints Lender its true and lawful attorney-in-fact with full power of substitution to take any and all of the above described action, which power of attorney shall be deemed to be coupled with an interest and shall be irrevocable. All sums expended by Lender for any of the above purposes shall be deemed to be advances hereunder and shall be secured by the Security Documents.

8.2 Cessation of Lender's Obligations. Upon the happening of any Event of Default hereunder or under any other Security Document, all obligations (if any) of Lender hereunder, including, without limitation, any obligation to advance funds hereunder, shall immediately cease and terminate.

8.3 Acceleration. Notwithstanding anything to the contrary herein contained or inferable from any provision of this Agreement, upon the happening of an Event of Default as set forth in Sections 7.2, 7.3 or 7.9 hereof, the unpaid principal and unpaid accrued interest on the Note shall immediately become due and payable in full, without the necessity of any further action on the part of Lender, and Borrower expressly waives any requirement of notice of intent to accelerate, or of notice of such acceleration of, the maturity of the Indebtedness.

ARTICLE 9

GENERAL TERMS AND PROVISIONS

9.1 Performance at Borrower's Expense. Subject to the provisions of Section 9.5 hereof, Borrower shall (i) pay all legal fees incurred by Lender in connection with the preparation of this Agreement and any and all other Security Documents contemplated hereby (including any amendments hereto or thereto or consents, releases or waivers hereunder or thereunder), (ii) pay all out-of-pocket expenses of Lender in connection with the administration of this Agreement and the other Security Documents, (iii) reimburse Lender, promptly upon demand, for all amounts expended, advanced or incurred by Lender to satisfy any obligation of Borrower under this Agreement or any other Security Documents, which amounts shall include all court costs, attorneys' fees (including, without limitation, for trial, appeal or other proceedings), fees of auditors and accountants, and investigation expenses reasonably incurred by Lender in connection with any such matter, and (iv) pay any and all other costs and expenses required to satisfy any provision of this Agreement, including, without limitation, documentary taxes and recording, brokerage, attorneys', surveyors', accountants', engineers', architects' and inspectors' fees and Title Insurance premiums. Except to the extent that certain of these costs and expenses are included within the definition of "Indebtedness", the payment by Borrower of any of these costs and expenses shall not be credited, in any way or to any extent, against any portion of the Indebtedness.

9.2 Approval of Lender and Further Assurances. All instruments and policies of insurance to be executed and/or delivered to Lender, and all proceedings to be taken in connection with this Agreement and the loan provided for herein, and all persons or parties responsible in any way for the construction of the Improvements or any obligation to be performed hereunder or under the other Security Documents, shall be subject to the acceptance of Lender as to form, substance, coverage and identity. Immediately upon request of Lender, Borrower will execute, acknowledge and deliver to Lender such further instruments and do such further acts a Lender may deem necessary to carry out more effectively the purpose of this Agreement or to subject to the liens and security interests of the Security Documents any property intended by the terms thereof to be covered thereby, including, without limitation, any renewals, additions, substitutions, replacements, betterments or appurtenances to the Mortgaged Property.

9.3 No Waiver. Any failure by Lender to insist, or any election by Lender not to insist, upon Borrower's or any Guarantor's strict performance of any of the terms, provisions or conditions of the Security Documents shall not be deemed to be a waiver of same or of any other term, provision or condition thereof; and Lender shall have the right at any time thereafter to insist upon strict performance by Borrower of any and all of same. In specific, no advance by Lender of any loan proceeds hereunder absent Borrower's strict compliance with Article 6 hereof shall in any way preclude Lender from thereafter declaring such failure to comply to be an Event of Default hereunder.

9.4 Modification. This Agreement shall not be amended, waived, discharged or terminated orally but only by an instrument executed by the party against which enforcement of the amendment, waiver, discharge or termination is sought.

9.5 Applicable Law. This Agreement has been executed under, and shall be construed and enforced in accordance with, the laws of the State of Texas from time to time in effect except to the extent preempted by United States federal law. This Agreement and all of the Security Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with the applicable Texas law governing the maximum rate or amount of interest payable on the Indebtedness (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law). If the applicable law is ever judicially interpreted so as to render usurious any amount called for under the Security Documents or contracted for, charged, taken, reserved or received with respect to the Indebtedness, or if the acceleration of the maturity of the Indebtedness or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable law, then it is Borrower's and Lender's express intent that all excess amounts theretofore collected by Lender be credited on the principal balance of the Note (or, if the Note has been or would thereby be paid in full, refunded to Borrower), and the provisions of Security Documents immediately be deemed reformed and the amounts thereafter collectible thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder. All sums paid or agreed to be paid to Lender for the use, forbearance or detention of the Indebtedness shall, to the extent permitted by applicable law, be amortized, prorated, allocated

and spread throughout the full term of such Indebtedness until payment in full so that the rate or amount of interest on account of such Indebtedness does not exceed the usury ceiling from time to time in effect and applicable to the Indebtedness for so long as the Indebtedness is outstanding. To the extent that Lender is relying on Chapter 303 of the Texas Finance Code, as amended, of the Revised Civil Statutes of Texas to determine the maximum rate (the "Maximum Rate") payable on the Indebtedness, Lender will utilize the indicated (weekly) rate ceiling from time to time in effect as provided in Chapter 303 of the Texas Finance Code, as amended. To the extent United States federal law permits Lender to contract for, charge or receive a greater amount of interest, Lender will rely on United States federal law instead of Chapter 303 of the Texas Finance Code, as amended, for the purpose of determining the Maximum Rate. Additionally, to the extent permitted by applicable law now or hereafter in effect, Lender may, at its option and from time to time, implement any other method of computing the Maximum Rate under such Chapter 303 of the Texas Finance Code, as amended, or under other applicable law by giving notice, if required, to Borrower as provided by applicable law now or hereafter in effect. In no event shall the provisions of Chapter 346 of the Texas Finance Code of the Revised Civil Statutes of Texas (which regulates certain revolving credit loan accounts and revolving tri-party accounts) apply to the loan evidenced hereby. Notwithstanding anything to the contrary contained herein or in any of the other Security Documents, it is not Lender's intention to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

9.6 Severability. If any provision hereof or of any of the other Security Documents or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, neither the application of such provision to any other person or circumstance nor the remainder of the instrument in which such provision is contained shall be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

9.7 Rights, Remedies and Recourses Cumulative. All rights, remedies and recourses afforded Lender in the Security Documents or otherwise available at law or in equity, including specifically, but without limitation, those granted by the Uniform Commercial Code in effect in the State of Texas (i) shall be deemed cumulative and concurrent, (ii) may be pursued separately, successively or concurrently against Borrower, any Guarantor or anyone else obligated under any or all of the Security Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Lender, (iii) may be exercised as often as the occasion therefor shall arise, it being understood by Borrower that the exercise, failure to exercise or election not to exercise any of the same shall in no event be construed as a waiver of same or of any other right, remedy or recourse available to Lender, and (iv) are intended to be, and shall be, nonexclusive.

9.8 Successors and Assigns. Subject to the provisions of Section 7.9 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, legal representatives and assigns.

9.9 Notices. All notices or other communications required or permitted to be given pursuant to the provisions of this Agreement shall be in writing and shall be considered properly given if mailed by first class United States mail, postage prepaid, registered or certified with return

receipt requested, or by delivering same in person to the intended addressee, or by prepaid telegram, telex or teletype. Notice so mailed shall be effective upon its deposit in the custody of the U.S. Postal Service. Notice given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the addressee of the parties shall be as follows:

To Lender: Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711

To Borrower: ■

Either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days notice to the other party in the manner set forth herein.

9.10 Participations. Lender may, at any time, sell, transfer, assign or grant participations in any loan or in any loan documents that Borrower or the partners or joint venturers of Borrower have entered into, executed, or granted in favor of Lender; and Lender may forward to each participant and prospective participant all documents and information relating to any such loan, whether furnished by Borrower or otherwise, as Lender determines necessary or desirable.

9.11 Lender's Right to Perform the Obligations. If Borrower shall fail, refuse or neglect to make any payment or perform any act required by the Security Documents, then Lender at any time thereafter, without notice to or demand upon Borrower and without waiving or releasing any other right, remedy or recourse Lender may have because of same, may make such payment or perform such act for the account of and at the expense of Borrower, and shall have the right to enter the Land and Improvements for such purpose and to take all action with respect to the Mortgaged Property as it may deem desirable. If Lender shall elect to pay any statement, invoice or tax bill, Lender may do so in reliance on any bill, statement or assessment procured from the appropriate Governmental Authority or company without inquiring into the accuracy or validity thereof. Similarly, in making any payments to protect the security intended to be created by the Security Documents, Lender shall not be bound to inquire into the validity of any apparent or threatened adverse title, lien, encumbrance, claim or charge before making an advance for the purpose of preventing or removing the same. Borrower shall indemnify Lender for all losses, expenses, damages, claims and causes of action, including reasonable attorneys' fees, incurred or accruing by reason of any acts performed by Lender pursuant to the provisions of this Section 9.11 or by reason of any other provision in the Security Documents. All sums paid by Lender pursuant to this Section 9.11, and all sums expended by Lender to which it shall be entitled to be indemnified, together with interest thereon at the Default Interest Rate (as such term is defined in the Note) from the date of such payment or expenditure until paid, shall constitute advances on and additions to the Indebtedness, shall be secured by the Security Documents and shall be paid by Borrower to Lender upon demand. This indemnification shall survive the payment of all

amounts payable pursuant to and secured by, the Security Documents. Payment by Lender shall not be a condition precedent to the obligations of Borrower under this indemnity.

9.12 Headings. The Article, Paragraph and Subparagraph entitlements hereof are inserted for convenience of reference only and in no way shall alter, modify or define, or be used in construing, the text of such Articles, Paragraphs or Subparagraphs.

9.13 Supplement to Deed of Trust. The provisions of this Agreement are not intended to supersede the provisions of the Deed of Trust but shall be construed as supplemental thereto. In the event of any inconsistency between the provisions hereof and the Deed of Trust, the Deed of Trust shall be controlling. This Agreement shall remain in effect until the Indebtedness has been paid in full.

EXECUTED as of the date first above written.

BORROWER:



By: _____
Name: _____
Title: _____

LENDER:

**TEXAS DEPARTMENT OF HOUSING
AND COMMUNITY AFFAIRS**

By: _____
Name: Edwina P. Carrington
Title: Executive Director

EXHIBIT "A"

LEGAL DESCRIPTION OF THE LAND

CONTRACTOR AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF ■ §

WHEREAS, it is proposed that **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official department of the State of Texas ("Lender"), make a Construction Loan (herein so called) to ■ ("Borrower"), for, among other things, construction of improvements upon the Land (herein so called) situated in the county and state first herein mentioned, more particularly described in Exhibit "A" hereto (the Land, such improvements, and any and all personal property and fixtures now or hereafter affixed to, used in and about, or arising in connection with the Land and such improvements, called the "Project"), to be secured by, among other things, liens and security interests (the "Lender Liens") against the Project and the Construction Contract (hereinafter described); and

WHEREAS, the undersigned ("Contractor") proposes to hereafter perform labor, specially fabricate materials, furnish labor, and/or furnish materials (collectively, the "Work") for construction or repair of all or portions of improvements on the Land pursuant to a Construction Contract (as hereafter amended, supplemented, and/or restated from time to time, herein so called) dated as of ■ between Contractor and Borrower.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Lender to make the Construction Loan to Borrower, Contractor hereby agrees with Lender as follows:

1. Contractor represents and warrants to Lender that as of the date hereof (a) Contractor has not reached any agreement or entered into any contract, written or oral, with respect to the construction or repair of improvements on the Land, other than the Construction Contract, which has been duly executed and is in full force and effect, (b) no materials have been delivered to or stored upon the Land, and (c) no work of any kind has been performed on the Land in connection with the construction or repair of any improvements on the Land.

2. Contractor consents and agrees in all respects to the creation in favor of Lender by Borrower of a security interest in Borrower's rights in the Construction Contract as security for the full and complete payment and performance of Borrower's indebtedness and obligations to Lender, and Contractor further agrees with Lender that: (a) if a default occurs in connection with the Construction Loan, Contractor will, upon Lender's request, complete the performance of the Work pursuant to the Construction Contract for the benefit of Lender (notwithstanding any previous default thereunder by Borrower, and Contractor agrees that Lender shall have no liability to it whatsoever by reason of any such default by Borrower), provided that Contractor is paid, in accordance with the Construction Contract, for all Work thereafter rendered by Contractor for the benefit of Lender; (b) upon the occurrence of a default by Borrower under the Construction Contract, Contractor will not exercise any remedies thereunder (other than the cessation of the Work for monetary defaults pending either the cure thereof or the request by Lender that, pursuant to subsection (a) preceding, Contractor complete the Work for the benefit

of Lender) until it has notified Lender thereof in writing and granted Lender a period of 30 days (or a reasonable amount of time if such default cannot be cured in 30 days) after receipt by Lender of such notice in which Lender shall be entitled, but not obligated, to cure such default; (c) in the event any of the proceeds of the Construction Loan are disbursed by Lender directly to Contractor, Contractor will receive all such disbursements, will hold the same as a trust fund for the purpose of paying the costs of the Work under the Construction Contract, and will apply the same only to the payment of such costs and for no other purposes; (d) upon request by Lender, Contractor will furnish to Lender a current list of all persons or firms with whom Contractor has entered into subcontracts or other agreements relating to the Work in connection with the Project, together with a statement as to the status of each such subcontract or agreement and the respective amounts, if any, owed by Contractor thereunder; (e) Contractor shall make timely payment or deposit of all amounts of tax required to be withheld and paid to or deposited with the United States pursuant to the provision of Subtitle C of the Internal Revenue Code of 1954, as from time to time amended, with respect to any and all wages paid to employees of Contractor from funds paid to Contractor by Borrower or Lender; and (f) after execution and delivery of the Construction Contract, Contractor will not amend the Construction Contract without the prior written consent of Lender if such amendment would result in a "Material Change" (as hereinafter defined). As used herein, the term "Material Change" means a change in the Construction Contract or plans for the Project which: (a) increases or decreases (individually, solely as a result of any single change) the costs for or related to construction of the Project set forth in the original budget for the Project by an amount equal to more than \$10,000; or (b) increases or decreases (collectively, when added to all other such changes previously made) the costs for or related to construction of the Project set forth in the original budget for the Project by an amount equal to more than \$25,000; or (c) extends, or is likely to extend, the date of completion of the Project beyond ■; or (d) causes the plans for the Project not to comply with all applicable laws.

3. Contractor hereby subordinates any and all "Contractor Liens" (as hereinafter defined) to any and all Lender Liens with the same force and effect as though the deeds of trust and any other instrument creating or evidencing the Lender Liens had been executed, delivered, and recorded prior to the creation or inception of the Contractor Liens. As used herein, the term "Contractor Liens" means all constitutional, statutory, contractual, or other liens, rights to liens, claims, and/or demands, if any, of whatever kind and nature, and against any property or rights of whatever kind and nature, that may now or hereafter exist or be claimed or asserted by, through, or under Contractor for any Work in connection with all or portions of any improvements on the Land, whether pursuant to the Construction Contract or otherwise.

4. Nothing herein shall be construed to impose upon Lender any duty to see to the application of the proceeds of the Construction Loan. Contractor acknowledges that Lender is obligated with respect thereto only to Borrower and to no other person or entity.

5. This instrument shall be binding upon Contractor and its heirs, personal representatives, successors, and assigns and shall inure to the benefit of Lender and its successors and assigns.

EXECUTED on this ____ day of ■, 2003.

CONTRACTOR:

■

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS §

§

COUNTY OF ■ §

This instrument was acknowledged before me on this ____ day of ■, 2003, by ■, ■ of ■, a ■, on behalf of said ■.

Notary Public, State of Texas

EXHIBIT "A"

LAND

DEED OF TRUST
(WITH SECURITY AGREEMENT AND ASSIGNMENT OF RENTS)

THE STATE OF TEXAS §
 §
COUNTY OF ■ §

ARTICLE I
Definitions

The following terms shall have the respective meanings assigned to them when used herein.

1.01 Grantor: ■

1.02 Grantor's mailing address: ■

1.03 Beneficiary: TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official department of the State of Texas, and any lawful owner, holder, pledgee, or assignee of any indebtedness secured hereby

1.04 Beneficiary's mailing address: 507 Sabine St, P.O. Box 13491, Austin, Texas 78711-3941

1.05 Trustee: Edwina P. Carrington of Travis County, Texas

1.06 Mortgaged Property: The Real Property and the Personal Property.

1.07 Project: The buildings and other improvements now or hereafter erected, constructed or developed on the Real Property.

1.08 Real Property: The real property described in Exhibit "A" attached hereto and located in ■ County, Texas, together with (i) all improvements thereon, all rights, hereditaments and appurtenances belonging thereto including rights of ingress and egress, easements, licenses, and all reversionary rights or interests of Grantor; (ii) all fixtures and personal property now or hereafter attached to the Real Property; (iii) all renewals or replacements thereof or articles in substitution therefor, whether or not now or later attached to the Project in any manner; and (iv) all other interests of every kind which Grantor now has or at any time hereafter acquires in and to the Real Property.

1.09 Personal Property: (i) all furniture, equipment and other personal property now or hereafter owned by Grantor and used in connection with, located on or related in any way to the Mortgaged Property, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Project in any manner; (ii) all building materials and equipment now or hereafter delivered to the Mortgaged Property and all building

and construction materials, equipment and parts intended to be installed in or on the Real Property or Project; (iii) all plans and specifications for the Project; (iv) all contracts and subcontracts relating to the Project; (v) all deposits (including tenant's security deposits, if any), funds, accounts (including any accounts in which escrows are deposited as a reserve for the payment of taxes, assessments and insurance on the Mortgaged Property), contract rights, instruments, documents, general intangibles (including trademarks, trade names and symbols used in connection therewith), and notes or chattel paper arising from or by virtue of any transactions related to the Mortgaged Property; (vi) all permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Mortgaged Property; (vii) all bank accounts in which rental income from the Mortgaged Property is deposited; (viii) all proceeds arising from or by virtue of the sale, lease or other disposition of any of the Real or Personal Property; (ix) all proceeds (including premium refunds) payable or to be payable under each policy of insurance relating to the Project; (x) all proceeds arising from the taking of all or a part of the Real Property or any rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, for any public or quasi-public use under any law, or by rights of eminent domain, or by private or other purchase in lieu thereof; (xi) all other interests of every kind and character which Grantor now has or at any time hereafter acquires in and to the Personal Property and all property which is used or useful in connection therewith.

1.10 Construction Loan Agreement: The Construction Loan Agreement of even date herewith executed by and between Grantor (or the maker of the Note if different from Grantor) and Beneficiary, which agreement sets forth, among other things, the procedure and requirements for disbursing the loan proceeds to be evidenced by the Note.

1.11 LURA: The Land Use Restriction Agreement dated of even date herewith executed by Grantor (or the maker of the Note if different from Grantor) and Beneficiary, which agreement sets forth certain occupancy and rent restrictions for the Project.

1.12 Note: The promissory note of even date herewith executed by Grantor payable to the order of Beneficiary in the original principal sum of \$■ payable as therein provided and finally maturing on ■, and all modifications, extensions and renewals thereof.

1.13 Loan Documents: The Note, this Deed of Trust, the Construction Loan Agreement, the LURA, and any and all other document or instrument heretofore or hereafter executed by Grantor (or the maker of the Note if different from Grantor) securing, evidencing or in any way pertaining to the indebtedness evidenced by the Note.

(OPTIONAL DEFINITIONS)

1.14 First Note: The promissory note dated ■ in the original principal sum of \$■ executed by ■ payable to the order of ■.

1.15 First Mortgage: The deed of trust of even date with the First Note from ■ to ■, Trustee, which is of record at Volume ■, Page ■, ■Records of ■ County, Texas, and all other documents securing the First Note.

ARTICLE II
Conveyance in Trust

2.01 Grant. Grantor, for and in consideration of the debt evidenced by the Note, has granted, assigned, and conveyed, and by these presents does grant, assign and convey the Mortgaged Property, in trust unto the Trustee, his successors and assigns, to have and to hold the Mortgaged Property, unto Trustee, his successors and assigns, forever. To the extent permitted by law, the Personal Property shall be deemed to be a part of and affixed to the Real Property. In the event the estate of the Grantor in and to any of the Mortgaged Property is a leasehold estate, this conveyance shall include and the lien and security interest and assignment created hereby shall encumber and extend to all other, further or additional title, estates, interest or rights which may exist now or at any time be acquired by Grantor in or to the property demised under the lease creating such leasehold estate and including Grantor's rights, if any, to purchase the property demised under such lease and, if fee simple title to any of such property shall ever become vested in Grantor, such fee simple interest shall be encumbered by this Deed of Trust in the same manner as if Grantor had fee simple title to such property as of the date of execution hereof. Grantor hereby binds itself, its successors and assigns, to warrant and forever defend the Mortgaged Property unto Trustee, his successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

2.02 Security. This conveyance is made in trust, however, to secure and enforce the payment of the Note, the obligations of Grantor (and/or the maker of the Note, if different from Grantor) under the other Loan Documents and the Other Indebtedness as defined herein. If Grantor shall perform the covenants and agreements herein contained, then, and only then, this conveyance shall become null and void and shall be released at Grantor's expense; otherwise it shall remain in full force and effect. No release of this conveyance, or of the lien or security interest or assignment created and evidenced hereby, shall be valid unless executed by Beneficiary.

2.03 Other Indebtedness. This Deed of Trust shall secure, in addition to the Note, all funds hereafter advanced by Beneficiary to or for the benefit of Grantor as contemplated by any provision herein or for any other purpose, and all other indebtedness, of whatever kind or character, owing or which may hereafter become owing by Grantor to Beneficiary, whether such indebtedness is evidenced by note, open account, overdraft, endorsement, surety agreement, guaranty, or otherwise, it being contemplated that Grantor may hereafter become indebted to Beneficiary in further sum or sums ("Other Indebtedness"); provided, however, in no event shall this Deed of Trust secure payment of any installment loan or any open-end line of credit established under Chapter 342, Chapter 343, or Chapter 346 of the Texas Finance Code. This Deed of Trust shall also secure all renewals and extensions of any of the Other Indebtedness secured hereby. All indebtedness secured hereby shall be payable at Beneficiary's address as set forth in Section 1.04; and, unless otherwise provided in the instrument evidencing such indebtedness, shall bear interest at the highest rate which Grantor could lawfully contract to pay Beneficiary (or if there is no such highest rate, at the rate of one and one-half percent per month) from the date of accrual of such indebtedness until paid. If the Note or Other Indebtedness shall be collected by legal proceedings, whether through a probate or bankruptcy court or otherwise,

or shall be placed in the hands of an attorney for collection after maturity, whether matured by the expiration of time or by any option given to the Beneficiary to mature same, Grantor agrees to pay Beneficiary's attorney's and collection fees in the amount set forth in the Note, and such fees shall be a part of the indebtedness secured hereby.

ARTICLE III **Grantor's Covenants and Representations**

Grantor hereby covenants, warrants and represents to and agrees with Beneficiary and with Trustee as follows:

3.01 Payment and Performance. Grantor (i) will pay all of the indebtedness secured hereby, together with the interest thereon, when the same shall become due, in accordance with the terms of the Note or any other instrument evidencing, securing, or pertaining to such indebtedness or evidencing any renewal or extension of such indebtedness, or any part thereof, and (ii) will punctually and properly perform all of Grantor's covenants, obligations, and liabilities under any other security agreement, mortgage, deed of trust, collateral pledge agreement, contract, assignment, loan agreement or any other instrument or agreement of any kind now or hereafter existing as security for, executed in connection with, or related to the indebtedness or other obligations secured hereby, or any part thereof.

3.02 Title and Right to Convey. Grantor (i) has in its own right good and indefeasible title in fee simple, except as otherwise provided herein, to the Mortgaged Property which is free from encumbrance superior to the indebtedness hereby secured, except as otherwise provided herein, and (ii) has full right to make this conveyance.

3.03 Insurance. Grantor shall obtain and maintain at Grantor's sole expense: (1) all-risk insurance with respect to all insurable Mortgaged Property, against loss or damage by fire, lightning, windstorm, explosion, hail, tornado and such hazards as are presently included in so-called "all-risk" coverage and against such other insurable hazards as Beneficiary may reasonably require, in an amount not less than the unpaid balance of the Note, or if available and requested by Beneficiary 100% of the full replacement cost, including the cost of debris removal, without deduction for depreciation and sufficient to prevent Grantor and Beneficiary from becoming a coinsurer, such insurance to be in Builder's Risk (non-reporting) form during and with respect to any construction on the Real Property; (2) if and to the extent any portion of the Project is in a special flood hazard area, a flood insurance policy in an amount equal to the lesser of the principal face amount of the Note or the maximum amount available; (3) commercial general liability insurance, on an "occurrence" basis, against claims for bodily injury, death or property damage occurring on or about the Project, to afford protection in a "single limit" of not less than \$1,000,000 in the event of bodily injury to, or death of, any number of persons or of damage to property arising out of one occurrence, for the benefit of Grantor and Beneficiary as named insureds; and (4) such other insurance on the Mortgaged Property as may from time to time be reasonably required by Beneficiary, if available, (including but not limited to rent loss or boiler and machinery insurance) and 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, type, construction, location, use and occupancy of buildings and

improvements. All insurance policies shall be issued and maintained by insurers, in amounts, with deductibles, and in form reasonably satisfactory to Beneficiary, and shall require not less than thirty (30) days' prior written notice to Beneficiary of any cancellation or change of coverage. All insurance policies maintained, or caused to be maintained, by Grantor with respect to the Mortgaged Property, except for public liability insurance, shall provide that each such policy shall be primary without right of contribution from any other insurance that may be carried by Grantor or Beneficiary and that all of the provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured. If any insurer which has issued a policy of hazard, liability or other insurance required pursuant to this Deed of Trust becomes insolvent or the subject of any bankruptcy, receivership or similar proceeding or if in Beneficiary's reasonable opinion the financial responsibility of such insurer is or becomes inadequate, Grantor shall, in each instance promptly upon the request of Beneficiary and at Grantor's expense, obtain and deliver to Beneficiary a like policy (or, if and to the extent permitted by Beneficiary, a certificate of insurance) issued by another insurer, which insurer and policy meet the requirements of this Deed of Trust. All such policies for loss of or damage to the Mortgaged Property shall contain a standard mortgage clause (without contribution) naming Beneficiary as mortgagee with loss proceeds payable to Beneficiary notwithstanding (i) any act, failure to act or negligence of or violation of any warranty, declaration or condition contained in any such policy by any named insured; (ii) the occupation or use of the Mortgaged Property for purposes more hazardous than permitted by the terms of any such policy; (iii) any foreclosure or other action by Beneficiary under this Deed of Trust; or (iv) any change in title to or ownership of the Mortgaged Property or any portion thereof, such proceeds to be held for application as provided in this Deed of Trust. A copy of each initial insurance policy (or a satisfactory certificate of insurance) shall be delivered to Beneficiary at the time of execution of this Deed of Trust, with premiums fully paid, and each renewal or substitute policy (or certificate) shall be delivered to Beneficiary, with premiums fully paid, at least ten (10) days before the termination of the policy it renews or replaces. Grantor shall pay all premiums on policies required hereunder as they become due and payable and promptly deliver to Beneficiary evidence satisfactory to Beneficiary of the timely payment thereof. If any loss occurs at any time when Grantor has failed to perform Grantor's covenants and agreements in this section, Beneficiary shall nevertheless be entitled to the benefit of all insurance covering the loss and held by or for Grantor, to the same extent as if it had been made payable to Beneficiary. Upon any foreclosure hereof or transfer of title to the Mortgaged Property in extinguishment of the whole or any part of the secured indebtedness, all of Grantor's right, title and interest in and to the insurance policies referred to in this section (including unearned premiums) and all proceeds payable thereunder shall thereupon vest in the purchaser at foreclosure or other such transferee, to the extent permissible under such policies. Beneficiary shall have the right (but not the obligation) to receive the proceeds of, all insurance for loss of or damage to the Mortgaged Property. If Grantor fails to act reasonably and promptly in making proof of loss for, or settling or adjusting any claim under, any such insurance, then Beneficiary shall have the right to make such proof and settle and/or adjust, such claim; and the expenses incurred by Beneficiary in the adjustment and collection of insurance proceeds shall be a part of the secured indebtedness and shall be due and payable to Beneficiary on demand. Beneficiary shall not be, under any circumstances, liable or responsible for failure to collect or exercise diligence in the collection of any of such proceeds or for the obtaining, maintaining or adequacy of any insurance or for failure to see, to the proper application of any amount paid over to

Grantor. Any such proceeds received by Beneficiary shall, after deduction therefrom of all reasonable expenses actually incurred by Beneficiary, including attorneys' fees, at Beneficiary's option be (a) released to Grantor, or (b) applied (upon compliance with such reasonable terms and conditions as may be required by Beneficiary) to repair or restoration, either partly or entirely, of the Mortgaged Property so damaged, or (c) applied to the payment of the secured indebtedness in such order and manner as Beneficiary, in its sole discretion, may elect, whether or not due; provided, however, that Beneficiary shall make such proceeds available to Grantor to pay for restoration or repair of the Mortgaged Property, so damaged, if either (i) the amount of such proceeds is less than \$25,000.00, or (ii) Grantor agrees to reasonable, "construction-loan" provisions (primarily regarding advances of those proceeds and Beneficiary's "pricing" of its activities and expenses connected therewith) and amendments to the loan documents executed in connection with the Note, as then proposed by Beneficiary. In any event, the unpaid portion of the secured indebtedness shall remain in full force and effect and the payment thereof shall not be excused. Grantor shall at all times comply with the requirements of the insurance policies required hereunder and of the issuers of such policies and of any board of fire underwriters or similar body as applicable to or affecting the Mortgaged Property.

3.04 Taxes and Other Impositions. Grantor will pay all taxes and assessments against or affecting the Mortgaged Property as the same become due and payable, and, if Grantor fails to do so, Beneficiary may pay them, together with all costs and penalties thereon, at Grantor's expense. Grantor, however, may in good faith, in lieu of paying such taxes and assessments as they become due and payable, contest by appropriate proceedings the validity thereof, and pending such contest Grantor shall not be deemed in default hereunder because of such nonpayment, (i) if prior to delinquency of the asserted tax or assessment, Grantor furnishes Beneficiary an indemnity bond, conditioned that such tax or assessment with interest, cost and penalties be paid as herein stipulated, secured by a deposit in cash, or security or surety acceptable to Beneficiary, in the amount of the contested tax or assessment, and a reasonable additional sum to pay all possible costs, interest and penalties imposed or incurred in connection therewith, and (ii) if Grantor promptly pays any amount adjudged by a court of competent jurisdiction to be due, with all costs, penalties and interest thereon, before such judgment becomes final or before any writ or order is issued under which the Mortgaged Property may be sold pursuant to such judgment, whichever first occurs.

3.05 Tax and Insurance Escrow. Grantor will create a reserve for the payment of all insurance premiums, taxes, and assessments against or affecting the Mortgaged Property by depositing (and providing Beneficiary evidence monthly of such deposit in a form satisfactory to Beneficiary) in an account in a federally insured bank or savings and loan approved by Beneficiary, on the same day as regular payments are made under the Note until maturity of the Note, a sum equal to the premiums that will next become due and payable on the hazard insurance policies covering the Mortgaged Property, or any part thereof, plus taxes and assessments next due on the Mortgaged Property, or any part thereof, as estimated by Beneficiary, less all sums deposited therefor, divided by the number of months to elapse before one month prior to the date when such premiums, taxes and assessments will become delinquent. Grantor shall have the right to rely upon tax information furnished by applicable taxing authorities in the payment of such taxes or assessments and shall have no obligation to make any protest of any such taxes or assessments. Any excess over the amounts required for such

purposes shall be held in such account for future use as provided in this section. All such funds so deposited may not be mingled with the general funds of Grantor and shall be applied by Grantor toward the payment of such taxes, assessments, charges and premiums when statements therefor are presented to Grantor. Any interest accrued on such funds deposited shall be for the account of Grantor and may be withdrawn from the account by Grantor from time to time. The conveyance or transfer of Grantor's interest in the Mortgaged Property for any reason (including without limitation the foreclosure of a subordinate lien or security interest or a transfer by operation of law) shall constitute an assignment or transfer of Grantor's interest in and rights to such funds under this section but subject to the rights of Beneficiary hereunder.

3.06 Assignment of Awards. Grantor hereby assigns all judgments, decrees and awards for injury or damage to the Mortgaged Property, all awards or settlements pursuant to proceedings for condemnation thereof, in their entirety to Beneficiary, who may apply the same to the indebtedness secured hereby in such manner as it may elect. Grantor authorizes Beneficiary to execute and deliver valid acquittances for, and to appeal from, any such award, judgment or decree in the name of Grantor. In the event Beneficiary, as a result of any such judgment or decree of award, believes that the payment or performance of any obligation secured by this Deed of Trust is impaired, Grantor authorizes Beneficiary to declare, without notice, all of the indebtedness secured hereby immediately due and payable.

3.07 Trustee's Title and Future Laws. If, while this trust is in force, the title of Trustee to, or the interest of Beneficiary in, the Mortgaged Property or any part thereof, shall be endangered or shall be attacked directly or indirectly, Grantor authorizes Beneficiary, at Grantor's expense, to take all necessary and proper steps for the defense of such title or interest, including the employment of counsel, the prosecution or defense of litigation, and the compromise or discharge of claims made against such title or interest. If at any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Deed of Trust, or upon any rights, titles, liens, or security interests created hereby, or upon the Note, or any part thereof, Grantor shall immediately pay all such taxes. In the alternative, Grantor may, in the event of the enactment of such a law, and must, if it is unlawful for Grantor to pay such taxes, prepay the Note and the Other Indebtedness in full within sixty (60) days after demand therefor by Beneficiary. Grantor shall at any time and from time to time, furnish promptly, upon request, a written statement or affidavit, in such form as may be required by Beneficiary, stating the unpaid balance of the Note, and that there are no offsets or defenses against full payment of the Note and performance of the terms hereof, or if there are any such offsets and defenses, specifying them.

3.08 Repayment to Beneficiary. If, pursuant to any covenant contained herein or in any other instrument executed in connection with the loan evidenced by the Note or in connection with any other indebtedness secured hereby, Beneficiary shall expend any money chargeable to Grantor or subject to reimbursement by Grantor under the terms of such covenant or agreement, Grantor will repay the same to Beneficiary immediately at the place where the Note or other indebtedness secured hereby is payable, together with interest thereon at the rate of interest payable on account of the Note or such other indebtedness in the event of a default thereunder from and after the date of Beneficiary's making such payment. The sum of each such payment shall be added to the indebtedness hereby secured and thereafter shall form a part of the same,

and it shall be secured by this Deed of Trust and, by subrogation to all of the rights of the person or entity receiving such payment.

3.09 Condition of Property. Upon completion of certain renovations, additions and improvements to the Project, Grantor will keep every part of the Mortgaged Property in good condition and presenting a good appearance, making promptly all repairs, renewals and replacements necessary to such end, and doing promptly all else necessary to such end. Grantor will discharge all claims for labor performed and material furnished therefor, and will not suffer any lien of mechanics or materialmen to attach to any part of the Mortgaged Property. Grantor will guard every part of the Mortgaged Property from removal, destruction and damage, and will not do or suffer to be done any act whereby the value of any part of the Mortgaged Property may be lessened.

3.10 Successors. If the ownership, control or management of the Mortgaged Property or any part thereof becomes vested in a person other than Grantor, or in the event of a change of ownership of more than thirty percent interest in any Grantor other than an individual, Grantor agrees that Beneficiary may, without notice to Grantor, deal with such successor or successors in interest with reference to this Deed of Trust and to the indebtedness hereby secured in the same manner as with Grantor without in any way vitiating or discharging Grantor's liability hereunder or upon the indebtedness hereby secured. No sale of the Mortgaged Property, and no forbearance on the part of Beneficiary, and no extension of the time for the payment of the indebtedness hereby secured, given by Beneficiary, shall operate to release, discharge, modify, change or affect the original liability of Grantor or the liability of any guarantors or sureties of Grantor, either in whole or in part.

ARTICLE IV **Events of Default**

4.01 Events of Default. The following shall be events of default ("Events of Default") hereunder:

(a) The sale of the Mortgaged Property, or any part thereof.

(b) Grantor's agreement to or the granting of an easement, restrictive covenant or other encumbrance affecting the Mortgaged Property.

■ **Alternatives:**

(c) If Grantor is a corporation, partnership, or limited liability company, more than thirty percent (30%) of ownership of Grantor (determined by interest held and not by number of the shareholders, partners or members, as applicable) changes other than changes resulting from the transfer of shares or interest among the present owners of Grantor, such determination to be made by aggregating all ownership changes (other than those involving only the present owners of Grantor) occurring subsequent to the date hereof.

or

(c) In the event there shall occur any change in the legal or equitable ownership of a controlling interest in Grantor (or of the maker of the Note if different from the Grantor), or any change in the management of Grantor (or of the maker of the Note if different from Grantor), if in Beneficiary's sole judgment such a change materially and adversely effects the ability of Grantor to perform Grantor's obligations under this Deed of Trust [provided, however, Grantor may sell or transfer limited partnership interests without the consent of the Beneficiary and such sale or transfer shall not be considered an event of default hereunder].

(d) Grantor's failure to promptly pay when due the indebtedness secured hereby, or any part thereof and such failure continues for a period of ten (10) days after written notice of such failure is given by Beneficiary to Grantor; or Grantor's failure to keep and perform any of the covenants (other than the failure to pay the indebtedness) or agreements contained herein or in any other instrument executed by Grantor in connection with the indebtedness secured hereby within thirty (30) days after written notice of such failure is given by Beneficiary to Grantor.

(e) Beneficiary's discovery that any statement, representation, or warranty in the Note, this Deed of Trust or in any writing delivered to Beneficiary in connection with the indebtedness secured hereby is false, misleading or erroneous in any material respect.

(f) If Grantor, or any person liable for the indebtedness secured hereby, or any part thereof, including any guarantor or surety for the performance of any obligation hereunder, (i) files a voluntary petition in bankruptcy; (ii) makes an assignment for the benefit of any creditor; (iii) suffers an order for relief in bankruptcy to be entered against it; (iv) admits in writing its inability to pay its debts generally as they become due; (v) applies for or consents to the appointment of a receiver, trustee, or liquidator of Grantor or of any such guarantor or surety or of all or a substantial part of its assets; (vi) takes advantage of or seeks any relief under any bankruptcy, reorganization, debtor's relief or other insolvency law now or hereafter existing; (vii) files an answer admitting the material allegations of, or consenting to, or defaulting in, a petition against Grantor or any such guarantor or surety, in any bankruptcy, reorganization, or other insolvency proceedings; or (viii) institutes or voluntarily is or becomes a party to any other judicial proceedings intended to effect a discharge of the debts of Grantor or of any guarantor or surety, in whole or in part, or to effect a postponement of the maturity or the collection thereof, or to effect a suspension of any of the rights or powers of Beneficiary granted in the Note, this Deed of Trust or in any other instrument evidencing or securing the indebtedness secured hereby.

(g) If an order, judgment or decree shall be entered by any court of competent jurisdiction appointing a receiver, trustee or liquidator of Grantor or of any guarantor or surety or of all or any substantial part of the assets of Grantor or of any such guarantor or surety; or if Grantor or any guarantor or surety shall fail to pay any money judgment against it within thirty (30) days after any such judgment becomes final and non-appealable.

(h) If Grantor or any such guarantor or surety shall fail to have discharged any attachments, sequestration, or similar proceedings against any assets of Grantor or of any guarantor or surety which remains undischarged and unstayed for a period of thirty (30)

consecutive days; or if the Mortgaged Property is placed under control or in the custody of any court, or if Grantor abandons any of the Mortgaged Property.

(i) Grantor's execution or delivery of any pledge, security agreement, mortgage or deed of trust covering all or any portion of the Mortgaged Property ("Subordinate Mortgage") without the prior written consent of Beneficiary (which consent may be withheld). In the event of consent by Beneficiary to the foregoing or in the event the foregoing prohibition is determined by a court of competent jurisdiction to be unenforceable by the provisions of any applicable law, Grantor will not execute or deliver any Subordinate Mortgage unless there shall have been delivered to Beneficiary not less than ten (10) days prior to the date thereof a copy thereof which shall contain express covenants to the effect:

(i) That the Subordinate Mortgage is in all respects unconditionally subject and subordinate to the lien, security interest and assignment evidenced by this Deed of Trust and each term and provision hereof;

(ii) That if any action or proceeding shall be instituted to foreclose the Subordinate Mortgage (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), no tenant of any portion of the Mortgaged Property will be named as a party defendant, nor will any action be taken with respect to the Mortgaged Property which would terminate any occupancy or tenancy of the Mortgaged Property without the prior written consent of Beneficiary;

(iii) That all of the rents, royalties (including, but not limited to, royalties arising out of the sale of oil, gas, and any other minerals produced from the Mortgaged Property, or any properties pooled with the Mortgaged Property), issues, profits, revenue, income and other benefits derived from the Mortgaged Property or arising from the use or enjoyment of any portion thereof or from any lease or agreement pertaining thereto, if collected through a receiver or by the holder of the Subordinate Mortgage, shall be applied first to the obligations secured by this Deed of Trust, including principal and interest due and owing on or to become due and owing on the Note and the other indebtedness secured hereby and then to the payment of maintenance, operating charges, taxes, assessments, and disbursements incurred in connection with the ownership, operating and maintenance of the Mortgaged Property; and

(iv) That if any action or proceeding shall be brought to foreclose the Subordinate Mortgage, written notice of the commencement thereof will be given to Beneficiary contemporaneously with the commencement of such action or proceeding.

(j) The liquidation, termination, dissolution, merger, consolidation or failure to maintain good standing in the State of Texas (or in the case of an individual, the death or legal incapacity) of the owner of the Mortgaged Property or any person obligated to pay any part of the secured indebtedness.

(k) The liens, mortgages or security interests of Beneficiary in any of the Mortgaged Property become unenforceable in whole or in part, or cease to be of the priority

herein required, or the validity or enforceability thereof, in whole or in part, shall be challenged or denied by Grantor or any person obligated to pay any part of the secured indebtedness.

(l) If the ownership of any of the Mortgage Property is forfeited or otherwise transferred to any governmental agency under a federal or state law for which forfeiture of property is a potential penalty or remedy.

(m) A default or event of default occurs under any other documents executed as security for or in connection with the Note or under any other documents evidencing a loan or indebtedness owed by Grantor to Beneficiary or any other agency of the State of Texas, and the same is not remedied within the applicable period for curing such default (if any).

(n) A default or event of default occurs under the LURA executed by Grantor of even date herewith and filed in the Real Property Records of ■ County, Texas, and same is not remedied within the applicable period for curing such default.

4.02 Remedies. Upon the occurrence of any Event of Default, Beneficiary, at its sole option, may declare the Note and all other indebtedness secured hereby immediately due and payable and/or may pursue any rights and remedies it may have hereunder or at law or in equity.

ARTICLE V **Nonjudicial Foreclosure and Sale**

5.01 Trustee's Sale. If Grantor shall default hereunder, Grantor authorizes and empowers the Trustee, at the request of Beneficiary, at any time during the continuance of any default, to sell all or any portion of the Mortgaged Property, at public auction, to the highest bidder, for cash or for credit against the indebtedness secured hereby if Beneficiary is the highest bidder, at the county court house of the county in Texas in which such Mortgaged Property or any part thereof is situated, as herein described, in the area designated by the commissioners court for such purpose pursuant to a recordation of such designation in the real property records of such county, or if no such recorded designation by the commissioners court has been made, in the area at the county court house designated in the notice of proposed sale posted, filed and served in accordance with the further provisions of this paragraph, between the hours of 10:00 o'clock A.M. and 4:00 o'clock P.M. on the first Tuesday of any month. The Trustee shall give notice of the time, place and terms of said sale, and of the property to be sold, as follows:

Notice of such proposed sale shall be given by posting written notice thereof at least twenty-one days preceding the date of the sale at the court house door, and by filing a copy of the Notice in the office of the county clerk of the county in which the sale is to be made, and if the property to be sold is situated in more than one county, one notice shall be posted at the court house door and filed with the county clerk of each county in which the property to be sold is situated. In addition, Beneficiary shall, at least twenty-one days preceding the date of sale, serve written notice of the proposed sale by certified mail on each debtor obligated to pay the debt secured hereby according to the records of Beneficiary. Service of such notice shall be completed upon deposit of the notice, enclosed in

a postpaid wrapper, properly addressed to such debtor at the most recent address as shown by the records of Beneficiary, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of service.

Any notice that is required or permitted to be given to Grantor may be addressed to Grantor at Grantor's mailing address. Any notice that is to be given by certified mail to any other debtor may, if no address for such other debtor is shown by the records of Beneficiary, be addressed to such other debtor at Grantor's mailing address. Notwithstanding the foregoing provisions of this paragraph, notice of such sale given in accordance with the requirements of the applicable law of the State of Texas in effect at the time of such sale shall constitute sufficient notice of such sale. Grantor hereby authorizes and empowers the Trustee to sell all or any portion of the Mortgaged Property, together or in lots or parcels, as the Trustee may deem expedient, and to execute and deliver to the purchaser or purchasers of such property, good and sufficient deeds of conveyance of fee simple title with covenants of general warranty made on behalf of the Grantor. In no event shall the Trustee be required to exhibit, present or display at any such sale, any of the personalty described herein to be sold at such sale. The Trustee making such sale shall receive the proceeds thereof and shall apply the same as follows: (i) first, he shall pay the reasonable expense of executing this trust including a reasonable Trustee's fee or commission; (ii) second, he shall pay, so far as may be possible, the indebtedness secured hereby, discharging first that portion of the indebtedness arising under the covenants or agreements herein contained and not evidenced by the Note; (iii) third, he shall pay the residue, if any, to the person or persons legally entitled thereto. Payment of the purchase price to the Trustee shall satisfy the obligation of the purchaser at such sale therefor, and such purchaser shall not be bound to look after the application thereof. The sale or sales by the Trustee of less than the whole of the Mortgaged Property shall not exhaust the power of sale herein granted, and the Trustee is specifically empowered to make successive sale or sales under such power until the whole of the Mortgaged Property shall be sold; and if the proceeds of such sale or sales of less than the whole of such Mortgaged Property shall be less than the aggregate of the indebtedness secured hereby and the expense of executing this trust, this Deed of Trust and the lien, security interest and assignment hereof shall remain in full force and effect as to the unsold portion of the Mortgaged Property just as though no sale or sales had been made; provided, however, that Grantor shall never have any right to require the sale or sales of less than the whole of the Mortgaged Property, but Beneficiary shall have the right, at its sole election, to request the Trustee to sell less than the whole of the Mortgaged Property. If default is made hereunder, the holder of the indebtedness or any part thereof on which the payment is delinquent shall have the option to proceed with foreclosure in satisfaction of such item either through judicial proceedings or by directing the Trustee to proceed as if under a full foreclosure, conducting the sale as herein provided without declaring the entire indebtedness secured hereby due, and if sale is made because of default of an installment, or a part of an installment, such sale may be made subject to the unmaturing part of the Note and other indebtedness secured by this Deed of Trust; and it is agreed that such sale, if so made, shall not in any manner affect the unmaturing part of the indebtedness secured by this Deed of Trust, but as to such unmaturing part, this Deed of Trust shall remain in full force and effect as though no sale had been made under

the provisions of this paragraph. Several sales may be made hereunder without exhausting the right of sale for any unmatured part of the indebtedness secured hereby.

5.02 Successor Trustee. If the Trustee shall die or become disqualified from acting in the execution of this trust, or shall fail or refuse to execute the same when requested by Beneficiary to do so; or if, for any reason, Beneficiary shall prefer to appoint a substitute Trustee to act instead of the Trustee named herein, Beneficiary shall have full power to appoint, by written instrument, a substitute Trustee, and, if necessary, several substitute Trustees in succession, who shall succeed to all the estate, rights, powers, and duties of the original Trustee named herein. Such appointment may be executed by any authorized agent of Beneficiary; and if Beneficiary is a corporation and such appointment is executed in its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. In the event of an assignment of the interests of Beneficiary under this Deed of Trust, all rights and remedies granted to Beneficiary in this Deed of Trust shall inure to the benefit of, and may be exercised by, the assignee.

5.03 Acts and Statements of Trustee. Grantor hereby agrees, in its behalf and in behalf of its heirs, executors, administrators, successors, personal representatives and assigns, that any and all statements of fact or other recitals made in any deed of conveyance given by the Trustee, with respect to the identity of Beneficiary, or with respect to the occurrence or existence of any default, or with respect to the acceleration of the maturity of any indebtedness secured hereby, or with respect to the request to sell, the notice of sale, the giving of notice to all debtors legally entitled thereto, the time, place, terms, and manner of sale, and receipt, distribution, and application of the money realized therefrom, or with respect to the due and proper appointment of a substitute Trustee, and, without being limited by the foregoing, with respect to any other act or thing having been duly done by the Beneficiary or by the Trustee hereunder, shall be taken by all courts of law and equity as prima facie evidence that the statements or recitals state facts and are without further question to be so accepted, and Grantor hereby ratifies and confirms every act that Trustee or any substitute Trustee hereunder may lawfully do in the premises by virtue hereof.

5.04 Disaffirmance by Purchaser. The purchaser at any trustee's or foreclosure sale hereunder may disaffirm any easement granted, or rental, lease or other contract made, in violation of any provision of this Deed of Trust, and may take immediate possession of the Mortgaged Property free from, and despite the terms of, such grant of easement and rental or lease contract.

5.05 Beneficiary May Bid. Beneficiary shall have the right to become the purchaser at all sales to enforce this trust, being the highest bidder, and to have the amount of which such property is sold credited on the indebtedness secured hereby which is then owing.

ARTICLE VI **Hazardous Materials**

6.01 Definitions. For the purpose of this Deed of Trust, Grantor, Beneficiary and Trustee agree that, unless the context otherwise specifies or requires, the following terms shall have the meaning herein specified:

(a) Hazardous Materials: Any substance the presence of which on the Mortgaged Property is regulated by any Governmental Requirements (as hereinafter defined), including but not limited to: (i) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), as amended from time to time, and regulations promulgated thereunder; (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.) ("CERCLA" or "SuperFund"), as amended from time to time, and regulations promulgated thereunder; (iii) asbestos; (iv) polychlorinated biphenyls; (v) any petroleum-based products; and (vi) underground storage tanks, whether empty, filled or partially filled with any substance.

(b) Governmental Requirements: All laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the city, or any other political subdivision in which the Mortgaged Property is located, and any other political subdivision, agency or instrumentality exercising jurisdiction over Grantor or the Mortgaged Property.

(c) Hazardous Materials Contamination: The contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on, over or under the Mortgaged Property by Hazardous Materials, or the contamination of the improvements, facilities, soil, ground-water, air or other elements on, over or under any other property as a result of Hazardous Materials at any time (whether before or after the date of this Deed of Trust) emanating from the Mortgaged Property.

6.02 Representations and Warranties. Grantor hereby represents and warrants that:

(a) No Hazardous Materials are located on the Mortgaged Property or have been released into the environment, or deposited, discharged, placed or disposed of at, on, under or near the Mortgaged Property, or transported to or from the Mortgaged Property. No portion of the Mortgaged Property is being used or, to the best of Grantor's knowledge, has been used at any previous time, for the disposal, storage, treatment, processing, manufacturing or other handling of Hazardous Materials nor is any part of the Mortgaged Property affected by any Hazardous Materials Contamination.

(b) To the best of Grantor's knowledge (i) no Hazardous Materials are located on property adjoining the Mortgaged Property; (ii) no property adjoining the Mortgaged Property has ever been used at any previous time for the disposal, storage, treatment, processing, manufacturing or other handling of Hazardous Materials; and (iii) no property adjoining the Mortgaged Property is affected by Hazardous Materials Contamination.

(c) No asbestos or asbestos-containing materials have been installed, used, incorporated into, or disposed of on the Mortgaged Property.

(d) No polychlorinated biphenyls or materials containing polychlorinated biphenyls are located on or in the Mortgaged Property, in the form of electrical transformers, fluorescent light fixtures with ballasts, cooling oils, or any other device or form.

(e) No underground storage tanks are located on the Mortgaged Property or, to the best of Grantor's knowledge, were previously located on the Mortgaged Property and subsequently removed or filled.

(f) No investigation, administrative order, consent order, agreement, litigation or settlement with respect to Hazardous Materials or Hazardous Materials Contamination is proposed, threatened, anticipated or in existence with respect to the Mortgaged Property. The Mortgaged Property and its existing and prior uses comply and at all times have complied with any applicable Governmental Requirements relating to environmental matters or Hazardous Materials. There is no condition on the Mortgaged Property which is in violation of any applicable Governmental Requirements relating to Hazardous Materials, and Grantor has received no communication from or on behalf of any Governmental Authority that any such condition exists. The Mortgaged Property is not currently on, and to the best of Grantor's knowledge, has never been on, any federal, state or local "Superfund" or "Superlien" list.

(g) Except for studies, audits, and reports pertaining to the Mortgaged Property which have been made available to Beneficiary, there have been no environmental investigations, studies, audits, tests, reviews or other analyses conducted by or which are in the possession of or available to Grantor in relation to the Mortgaged Property.

(h) All representations and warranties contained in this Section 6.02 shall survive the consummation of the transactions contemplated by this Deed of Trust.

6.03 Covenants. Grantor agrees: (a) that Grantor shall not receive, store, dispose or release any Hazardous Materials on or to the Mortgaged Property or transport any Hazardous Materials to or from the Mortgaged Property or permit the existence of any Hazardous Materials Contamination; (b) to give written notice to Beneficiary immediately upon Grantor's acquiring knowledge of the presence of any Hazardous Materials on the Mortgaged Property or of the transport of any Hazardous Materials to or from the Mortgaged Property or of the existence of any Hazardous Materials Contamination, with a full description thereof; (c) promptly, at Grantor's sole cost and expense, to comply with any Governmental Requirements requiring the removal, treatment or disposal of such Hazardous Materials or Hazardous Materials Contamination and provide Beneficiary with satisfactory evidence of such compliance; (d) to provide Beneficiary, within thirty (30) days after demand by Beneficiary, with financial assurance evidencing to Beneficiary's satisfaction that the necessary funds are available to pay the cost of removing, treating and disposing of such Hazardous Materials or Hazardous Materials Contamination and discharging any assessments which may be established on the Mortgaged Property as a result thereof; and (e) to insure that all leases, licenses, and agreements of any kind now or hereafter executed which permit any party to occupy, possess, or use in any way the Mortgaged Property or any part thereof, whether written or oral, include an express prohibition on the disposal or discharge of any Hazardous Materials at or affecting the Mortgaged Property,

and a provision that failure to comply with such prohibition shall expressly constitute a default under any such agreement.

6.04 Liens. Grantor shall not cause or suffer any liens to be recorded against the Mortgaged Property as a consequence of, or in any way related to, the presence, remediation or disposal of Hazardous Materials in or about the Mortgaged Property, including any so-called state, federal or local "Superfund" lien relating to such matters.

6.05 Site Assessments. Beneficiary (by its officers, employees and agents) at any time and from time to time, either prior to or after the occurrence of an Event of Default, may contract for the services of persons (the "Site Reviewers") to perform environmental site assessments ("Site Assessments") on the Mortgaged Property for the purpose of determining whether there exists on the Mortgaged Property any environmental condition which could result in any liability, cost or expense to the owner, occupier or operator of such Mortgaged Property arising under any Governmental Requirements relating to Hazardous Materials. The Site Assessments may be performed at any time or times, upon reasonable notice, and under reasonable conditions established by Grantor which do not impede the performance of the Site Assessment. The Site Reviewers are hereby authorized to enter upon the Mortgaged Property for such purposes. The Site Reviewers are further authorized to perform both above and below-ground testing for environmental damage or the presence of Hazardous Materials or Hazardous Materials Contamination on the Mortgaged Property and such other tests on the Mortgaged Property as may be necessary to conduct the Site Assessments in the reasonable opinion of the Site Reviewers. Grantor will supply to the Site Reviewers such historical and operational information regarding the Mortgaged Property as may be reasonably requested by the Site Reviewers to facilitate the Site Assessments and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. On request, Beneficiary shall make the results of such Site Assessments fully available to Grantor, which (prior to an Event of Default) may at its election participate under reasonable procedures in the direction of such Site Assessments and the description of tasks of the Site Reviewers. The cost of performing such Site Assessments shall be paid by Grantor upon demand of Beneficiary and any such obligations shall be indebtedness secured by this Deed of Trust.

6.06 INDEMNIFICATION. GRANTOR SHALL AT ALL TIMES RETAIN ANY AND ALL LIABILITIES ARISING FROM THE PRESENCE, HANDLING, TREATMENT, STORAGE, TRANSPORTATION, REMOVAL OR DISPOSAL OF HAZARDOUS MATERIALS ON THE MORTGAGED PROPERTY. REGARDLESS OF WHETHER ANY SITE ASSESSMENTS ARE CONDUCTED HEREUNDER, AND REGARDLESS OF WHETHER ANY EVENT OF DEFAULT (AS DEFINED IN SECTION 4.01 OF THIS DEED OF TRUST) SHALL HAVE OCCURRED AND BE CONTINUING OR ANY REMEDIES IN RESPECT TO THE MORTGAGED PROPERTY ARE EXERCISED BY BENEFICIARY, GRANTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS BENEFICIARY AND TRUSTEE (AND ANY SUCCESSOR TO THE TRUSTEE) FROM AND AGAINST ANY AND ALL LIABILITIES (INCLUDING STRICT LIABILITY), SUITS, ACTIONS, CLAIMS, DEMANDS, PENALTIES, DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, CONSEQUENTIAL DAMAGES, INTEREST, PENALTIES, FINES AND MONETARY SANCTIONS), LOSSES, COSTS AND EXPENSES (INCLUDING, WITHOUT

LIMITATION, REASONABLE ATTORNEYS' FEES AND REMEDIAL COSTS) (THE FOREGOING ARE HEREINAFTER COLLECTIVELY REFERRED TO AS "LIABILITIES") WHICH MAY NOW OR IN THE FUTURE (WHETHER BEFORE OR AFTER THE CULMINATION OF THE TRANSACTIONS CONTEMPLATED BY THIS DEED OF TRUST) BE INCURRED OR SUFFERED BY BENEFICIARY OR TRUSTEE (OR ANY SUCCESSOR TO THE TRUSTEE) BY REASON OF, RESULTING FROM, IN CONNECTION WITH, OR ARISING IN ANY MANNER WHATSOEVER OUT OF THE BREACH OF ANY WARRANTY OR COVENANT OR THE INACCURACY OF ANY REPRESENTATION OF GRANTOR CONTAINED OR REFERRED TO IN THIS ARTICLE VI OR IN ANY LOAN AGREEMENT MADE AND ENTERED INTO BETWEEN GRANTOR AND BENEFICIARY RELATING TO THE MORTGAGED PROPERTY OR WHICH MAY BE ASSERTED AS A DIRECT OR INDIRECT RESULT OF THE PRESENCE ON OR UNDER, OR ESCAPE, SEEPAGE, LEAKAGE, SPILLAGE, DISCHARGE, EMISSION OR RELEASE FROM THE MORTGAGED PROPERTY OF ANY HAZARDOUS MATERIALS OR ANY HAZARDOUS MATERIALS CONTAMINATION OR ARISE OUT OF OR RESULT FROM THE ENVIRONMENTAL CONDITION OF THE MORTGAGED PROPERTY OR THE APPLICABILITY OF ANY GOVERNMENTAL REQUIREMENTS RELATING TO HAZARDOUS MATERIALS, REGARDLESS OF WHETHER OR NOT CAUSED BY OR WITHIN THE CONTROL OF GRANTOR, BENEFICIARY OR TRUSTEE (OR ANY SUCCESSOR TO THE TRUSTEE).

SUCH LIABILITIES SHALL INCLUDE, WITHOUT LIMITATION: (I) INJURY OR DEATH TO ANY PERSON; (II) DAMAGE TO OR LOSS OF THE USE OF ANY PROPERTY; (III) THE COST OF ANY DEMOLITION AND REBUILDING OF ANY IMPROVEMENTS NOW OR HEREAFTER SITUATED ON THE MORTGAGED PROPERTY OR ELSEWHERE, AND THE COST OF ANY REPAIR OR REMEDIATION OF ANY SUCH IMPROVEMENTS; (IV) THE COST OF ANY ACTIVITY REQUIRED BY ANY GOVERNMENTAL AUTHORITY; (V) ANY LAWSUIT BROUGHT OR THREATENED, GOOD FAITH SETTLEMENT REACHED, OR GOVERNMENTAL ORDER RELATING TO THE PRESENCE, DISPOSAL, RELEASE OR THREATENED RELEASE OF ANY HAZARDOUS MATERIALS, ON, FROM OR UNDER THE MORTGAGED PROPERTY; AND (VI) THE IMPOSITION OF ANY LIENS ON THE MORTGAGED PROPERTY ARISING FROM THE ACTIVITY OF GRANTOR OR GRANTOR'S PREDECESSORS IN INTEREST ON THE MORTGAGED PROPERTY OR FROM THE EXISTENCE OF HAZARDOUS MATERIALS UPON THE MORTGAGED PROPERTY OR HAZARDOUS MATERIALS CONTAMINATION. THE COVENANTS, WARRANTIES, AGREEMENTS AND INDEMNIFICATIONS CONTAINED IN THIS ARTICLE VI SHALL SURVIVE THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS DEED OF TRUST.

6.07 Right of Entry. Beneficiary shall have the right but not the obligation, without in any way limiting Beneficiary's other rights and remedies under this Deed of Trust, to enter onto the Mortgaged Property or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Materials or Hazardous Materials Contamination on or under the Mortgaged Property following receipt of any notice from any person or entity asserting the existence of any Hazardous Materials or

Hazardous Materials Contamination pertaining to the Mortgaged Property, or any part thereof which, if true, could result in an order, notice, suit, imposition of a lien on the Mortgaged Property, or other action, and/or which, in Beneficiary's sole opinion, could jeopardize Beneficiary's security upon this Deed of Trust. All costs and expenses paid or incurred by Beneficiary in the exercise of any such rights shall be indebtedness secured by this Deed of Trust and shall be payable by Grantor upon demand.

ARTICLE VII **Additional Provisions**

7.01 Rights of Beneficiary. If any of the indebtedness hereby secured shall become due and payable, Trustee or Beneficiary shall have the right and power to proceed by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure hereunder or for the sale of the Mortgaged Property under the judgment or decree of any court or courts of competent jurisdiction or for the appointment of a receiver pending any foreclosure hereunder or the sale of the Mortgaged Property under the order of a court or courts of competent jurisdiction or under executory or other legal process, or for the enforcement of any other appropriate legal or equitable remedy. Grantor agrees, to the full extent that it lawfully may, that in case one or more of the defaults hereunder shall have occurred and shall not have been remedied, then, and in every such case, the Beneficiary shall have the right and power to enter into and upon and take possession of all or any part of the Mortgaged Property in the possession of the Grantor, its successors or assigns, or its or their agents or servants, and may exclude Grantor, its successors or assigns, and all persons claiming under Grantor, and its or their agents or servants, wholly or partly therefrom; and, holding the same, the Beneficiary may use, administer, manage, operate and control the Mortgaged Property and conduct the business thereof to the same extent as Grantor, its successors or assigns, might at the time do and may exercise all rights and powers of Grantor, in the name, place and stead of Grantor, or otherwise as the Beneficiary shall deem best; and in the exercise of any of the foregoing rights and powers Beneficiary shall not be liable to Grantor for any loss or damage thereby sustained.

7.02 The Lien. Any part of the Mortgaged Property may be released by the Beneficiary without affecting the lien, security interest and assignment hereof against the remainder. The lien, security interest and other rights granted hereby shall not affect or be affected by any other security taken for the same indebtedness or any part thereof. The taking of additional security, or the extension or renewal of the indebtedness secured hereby or any part thereof, shall not release or impair the lien, security interest and other rights granted hereby, or affect the liability of any endorser, guarantor or surety, or improve the right of any permitted junior lienholder; and this Deed of Trust, as well as any instrument given to secure any renewal or extension of the indebtedness secured hereby, or any part thereof, shall be and remain a first and prior lien, except as otherwise provided herein on all of the Mortgaged Property not expressly released until the indebtedness secured hereby is completely paid.

7.03 Waiver. To the extent that Grantor may lawfully do so, Grantor agrees that Grantor shall not assert and hereby expressly waives, any right under any statute or rule of law pertaining to the marshalling of assets, the exemption of homestead, the administration of estates of decedents,

or other matter whatever to defeat, reduce or affect the right of Beneficiary, under the terms of this Deed of Trust, to sell the Mortgaged Property for the collection of the indebtedness secured hereby (without any prior or different resort for collection) or the right of Beneficiary, under the terms of this Deed of Trust, to the payment of such indebtedness out of the proceeds of sale of the Mortgaged Property in preference to every other person and claimant whatever (only reasonable expenses of such sale being first deducted). No provision of this Deed of Trust or any other document securing or pertaining to the Note shall be construed to impose on Beneficiary any duty to sell the Mortgaged Property or any other collateral for the Note for collection of the indebtedness secured by this Deed of Trust or to pursue any other remedy in Beneficiary's power whatsoever. Grantor expressly waives and relinquishes any right or remedy which it may have or be able to assert by reason of the provisions of Chapter 34 of the Business and Commerce Code of the State of Texas, pertaining to the rights and remedies of sureties. To the full extent permitted by applicable law, Grantor waives any right to require Beneficiary to use diligence in collection of any indebtedness secured by this Deed of Trust, to proceed against or exhaust any security or collateral for the loan evidenced by the Note, to mitigate Beneficiary's damages in connection with the loan evidenced by the Note, or to pursue any other remedy in Beneficiary's power whatsoever.

7.04 Subrogation. To the extent that proceeds of the Note are used to pay an outstanding lien, charge or encumbrance against or affecting the Mortgaged Property, such proceeds have been advanced by Beneficiary at Grantor's request, and Beneficiary shall be subrogated to all rights, interests and liens owned or held by any owner or holder of such outstanding liens, charges and encumbrances, irrespective of whether such liens, charges or encumbrances are released of record.

7.05 Limitation on Interest. All agreements between Grantor and Beneficiary, whether now existing or hereafter arising and whether written or oral, are expressly limited so that in no contingency or event whatsoever shall the amount paid, or agreed to be paid, to Beneficiary for the use, forbearance, or detention of the money to be loaned pursuant to the Note or otherwise, or for the performance or payment of any covenant or obligation contained herein, exceed the maximum amount permissible under applicable law. If from any circumstance whatsoever fulfillment of any provision hereof at the time performance of such provision shall be due shall involve transcending the limit of validity prescribed by law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any such circumstance Beneficiary shall ever receive as interest under such Note or this Deed of Trust or otherwise an amount that would exceed the highest lawful rate, such amount that would be excessive interest shall be applied to the reduction of the principal amount owing under the Note or on account of the other indebtedness secured hereby and not to the payment of interest or if such excessive interest exceeds the unpaid balance of principal of the Note and such other indebtedness, such excess shall be refunded to Grantor, or to the maker of the Note or other evidence of indebtedness if other than Grantor. All sums paid or agreed to be paid to Beneficiary for the use, forbearance, or detention of the indebtedness secured hereby shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the actual rate of interest on account of such indebtedness is uniform throughout the term thereof. The terms and provisions of this Section

shall control and supersede every other provision of all agreements between Grantor, the maker of the Note or other evidence of indebtedness if other than Grantor, and Beneficiary.

7.06 Waiver and Invalidity. No waiver of any default on the part of Grantor or breach of any of the provisions of this Deed of Trust or of any other instrument executed in connection with the indebtedness secured hereby shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers herein granted shall be construed as a waiver of such rights and powers, and likewise no exercise or enforcement of any rights or powers hereunder shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. If any provision of this Deed of Trust is held to be illegal, invalid, or unenforceable under present or future laws effective while this Deed of Trust is in effect, the legality, validity, and enforceability of the remaining provisions of this Deed of Trust shall not be affected thereby, and in lieu of each such illegal, invalid, or unenforceable provision there shall be added automatically as a part of this Deed of Trust a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. If any of the liens, security interest or assignment of rents created by this Deed of Trust shall be invalid or unenforceable, the unsecured portion of the indebtedness secured hereby shall be completely paid prior to the payment of the remaining and secured portion of such indebtedness and all payments made on account of such indebtedness shall be considered to have been paid on and applied first to the complete payment of the unsecured portion of such indebtedness.

7.07 Tenancy at Will. In the event of a trustee's sale hereunder and if at the time of such sale the Grantor occupies the portion of the Mortgaged Property so sold, or any part thereof, Grantor shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either tenant or landlord, at a reasonable rental per day based upon the value of the portion of the Mortgaged Property so occupied, such rental to be due and payable daily to the purchaser. An action of forcible detainer shall lie if the tenant holds over after a demand in writing for possession of such Mortgaged Property and premises; and this agreement and any trustee's deed shall constitute a lease and agreement under which the tenant's possession, each and all, arose and continued.

7.08 Security Agreement. With respect to any portion of the Mortgaged Property which constitutes personal property or fixtures governed by the Uniform Commercial Code of the State of Texas (hereinafter called the "Code"), this Deed of Trust shall constitute a security agreement between Grantor as the Debtor and Beneficiary as the Secured Party, and Grantor hereby grants to Beneficiary a security interest in such portion of the Mortgaged Property. Cumulative of all other rights of Beneficiary hereunder, Beneficiary shall have all of the rights conferred upon secured parties by the Code. Grantor will execute and deliver to Beneficiary all financing statements that may from time to time be required by Beneficiary to establish and maintain the validity and priority of the security interest of Beneficiary, or any modification thereof, and all costs and expenses of any searches reasonably required by Beneficiary. Beneficiary may exercise any or all of the remedies of a secured party available to it under the Code with respect to such property, and it is expressly agreed that if upon default Beneficiary should proceed to dispose of such property in accordance with the provisions of the Code, then (10) days' notice by Beneficiary to Grantor shall be deemed to be reasonable notice under any provision of the Code

requiring such notice; provided, however, that Beneficiary may at its option dispose of such property in accordance with Beneficiary's rights and remedies with respect to the real property pursuant to the provisions of this Deed of Trust, in lieu of proceeding under the Code.

7.09 Changes in Grantor's Identity. Grantor shall give advance notice in writing to Beneficiary of any proposed change in Grantor's name, address, identity, or corporate structure and will execute and deliver to Beneficiary, prior to or concurrently with the occurrence of any such change, all additional financing statements that Beneficiary may require to establish and maintain the validity and priority of Beneficiary's security interest with respect to any Mortgaged Property described or referred to herein.

7.10 Fixtures. Some of the items of Mortgaged Property described herein are goods that are or are to become fixtures related to the real estate described herein, and it is intended that as to those goods, this Deed of Trust shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the county in which the Mortgaged Property is situated. Information concerning the security interest created by this instrument may be obtained from Beneficiary, as secured party, at the address of Beneficiary stated above. The mailing address of the Grantor, as debtor, is as stated in Section 1.02.

7.11 Annual Statements. Grantor shall deliver to Beneficiary, (i) within ninety (90) days after the end of each of Grantor's fiscal years, then current audited annual statements, in form and content satisfactory to Beneficiary, itemizing the income and expenses of the Mortgaged Property and financial statements of Grantor (and each of them) all in detail satisfactory to Beneficiary, (ii) a copy of Grantor's federal income tax return for each tax year during the term of the Note and all amendments thereto within thirty (30) days after Grantor's filing of same with the Internal Revenue Service, and (iii) certified monthly operating statements for the Project in form and content satisfactory to Beneficiary.

7.12 Applicable Law. All references in this Deed of Trust to the "law" or to "lawful rate" shall be construed to be the laws of the State of Texas and the United States, whichever is applicable. "Applicable law" as used herein means (a) the law pertaining to maximum rates of interest that is now in effect, and (b) any law that comes into effect at any time in the future allowing a higher maximum rate than the law now in effect.

7.13 Binding Effect. The covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, personal representatives, successors and assigns of the parties hereto, and to any substitute Trustee. Whenever used, the singular number shall include the plural and the singular, and the use of any gender shall be applicable to all genders. The duties, covenants, conditions, obligations and warranties of Grantor in this Deed of Trust shall be joint and several obligations of Grantor and each Grantor if more than one, and Grantor's heirs, personal representatives, successors and assigns. Each party who executes this Deed of Trust (other than Beneficiary), and each subsequent owner of the Mortgaged Property, or any part thereof, covenants and agrees that it will perform, or cause to be performed, each condition, term, provision, and covenant of this Deed of Trust.

7.14 Right to Inspect. Beneficiary shall have at all times a right of access to and upon the Mortgaged Property for purposes of inspection and, at Beneficiary's option, for purposes of performing any obligations required of Grantor hereunder.

7.15 Notices. All notices, requests, consents, demands and other communications required or which any part desires to give hereunder shall be in writing. Notice will be deemed effective upon deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed to the party to whom directed at the addresses specified in Article I of this Deed of Trust (unless changed by notice in writing given by the particular party whose address is to be changed). Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. Provided, however, service of a notice required by Texas Property Code Section 51.002, as amended, shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon receipt. This section shall not be construed in any way to affect or impair any waiver of notice or demand provided in the Note or any other instrument securing the Note or to require giving of notice or demand to or upon any person in any situation or for any reason.

7.16 Assignment of Rents. All of the rents, royalties (including, but not limited to, royalties arising out of the sale of oil, gas, and any other minerals produced from the Mortgaged Property, or any properties pooled with the Mortgaged Property), issues, profits, revenue, income and other benefits derived from the Mortgaged Property or arising from the use or enjoyment of any portion thereof or from any lease or agreement pertaining thereto (hereinafter called the "Rents and Profits") are hereby assigned, transferred, conveyed and set over to Beneficiary as security for (i) payment of the principal and interest and all other sums payable on the Note, (ii) payment of any other indebtedness secured hereby and (iii) the performance and discharge of each and every obligation, covenant and agreement of Grantor set forth herein or in the Note or in any other instrument securing payment of the Note. Prior to the occurrence of any default hereunder, Grantor shall collect and receive all Rents and Profits, and Grantor shall apply the funds so collected first to the payment of the principal and interest and all other sums payable on the Note and in payment of all other indebtedness secured hereby and thereafter, so long as no default hereunder has occurred, the balance shall be distributed to the account of Grantor. Grantor will not (i) execute an assignment of any of its right, title or interest in the Rents and Profits, or (ii) except in the ordinary course of business, including but not limited to where the lessee is in default thereunder, terminate or consent to the cancellation or surrender of any lease of the Mortgaged Property or any part thereof, now or hereafter existing having an unexpired term of one year or more except that any lease may be canceled, provided that promptly after the cancellation or surrender thereof a new lease is entered into with a new lessee having a credit standing, in the judgment of Beneficiary, at least equivalent to that of the lessee whose lease was canceled, on substantially the same terms as the terminated or canceled lease, or (iii) except in the ordinary course of business, modify any lease of the Mortgaged Property or any part thereof so as to shorten the unexpired term thereof or so as to decrease any amount of the rent payable thereunder, or (iv) accept prepayments of any installments of rent to become due under any of such leases in excess of one month, except prepayments in the nature of security for the performance of the lessee thereunder, or (v) in any other manner impair the value of the Mortgaged Property or the security of this Deed of Trust. Upon default in the payment of the Note or any other indebtedness secured hereby, Beneficiary may, at its option, and without

notice to Grantor receive and collect all Rents and Profits. Effective upon such default and for the foregoing purpose Grantor has irrevocably made, constituted and appointed, and by these presents does irrevocably make, constitute and appoint Beneficiary as its true and lawful attorney for it and in its name, place and stead to receive and collect the Rents and Profits, compromise and settle all claims therefor, and execute, deliver, cancel, modify and to release any and all leases and lessees, giving and granting unto Beneficiary full power and authority to do and perform all and every act and thing whatsoever, requisite and necessary to be done in connection therewith, as fully, to all intents and purposes, as Grantor might or could do if personally present and also giving and granting unto Beneficiary full power to substitute one or more attorney or attorneys under it, concerning such matters. Default shall be presumed upon Beneficiary's filing with the County Clerk of the County in which the Mortgaged Property is located of an affidavit to the effect that default has occurred hereunder and all persons dealing with Beneficiary may rely upon such affidavit. Grantor agrees that all persons dealing with Beneficiary and its substitutes that this power of attorney shall remain effective for so long as there is default under the terms hereof. Grantor agrees to indemnify and hold Beneficiary and its substitutes harmless from any and all liability arising out of Beneficiary's or its substitutes' acts pursuant to the authority herein granted to the extent allowed by law. This power of attorney is one coupled with an interest.

7.17 Construction Mortgage. This Deed of Trust constitutes a "construction mortgage" as defined in the Texas Business and Commerce Code and secures an obligation incurred for the construction of improvements on the real property described herein.

7.18 Construction Loan Agreement. It is understood and agreed that all or a portion of the funds to be advanced under the Note are to be used in the ■[rehabilitation] [construction] of the Project in accordance with a certain Construction Loan Agreement ("Loan Agreement") made by and between Grantor or the maker of the Note or other evidence of the indebtedness secured hereby and Beneficiary, dated of even date herewith, which Loan Agreement is incorporated herein by reference to the same extent and effect as if fully set forth herein and made a part hereof. This Deed of Trust secures the payment of all sums and the performance of all covenants required by Grantor under the Loan Agreement, and upon the failure of Grantor to keep and perform all the covenants, conditions and agreements of the Loan Agreement, the indebtedness secured hereby shall, at the option of Beneficiary, become due and payable, anything herein contained to the contrary notwithstanding.

7.19 Attorney in Fact. Grantor has irrevocably made, constituted and appointed, and by these presents does irrevocably make, constitute and appoint Beneficiary its true and lawful attorney, for it and in its name, place and stead to contract for the sale of and convey all or any part of the Mortgaged Property, giving and granting unto Beneficiary full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in connection therewith, as fully, to all intents and purposes, as Grantor might or could do if personally present and also giving and granting unto Beneficiary full power to substitute one or more attorneys under it, in or concerning such matters. Grantor agrees that this power of attorney shall be effective upon default in the payment of the Note or under any instrument executed as security therefor, and Grantor agrees and represents to those dealing with Beneficiary, and its substitute or substitutes, that this power of attorney shall be effective upon

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared ■, known to me to be the ■ of ■, a ■ corporation, general partner of ■, the limited partnership that executed the foregoing instrument, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said limited partnership, and that he executed the same as the act of such limited partnership for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of ■, 2003.

Notary Public, State of Texas

VENDOR'S LIEN CLAUSE (Optional)

7. **Secured by Vendor's Lien.** The Note is primarily secured by the vendor's lien and superior title retained in deed of even date herewith from _____ to Grantor conveying the Mortgaged Property. The acceptance of this Deed of Trust with power of sale shall not be construed as a waiver of said vendor's lien and superior title retained in said deed which have been transferred to Beneficiary.

SECOND LIEN CLAUSE (Optional)

7. **Second Lien.** Notwithstanding any provision of this Deed of Trust to the contrary, the lien and security interest created hereby are expressly subordinate and inferior to the lien created by the First Mortgage which secures the First Note. Any default under the terms of the First Note or pursuant to any instruments securing same shall constitute default hereunder, the terms of the Note and all instruments securing same. In the event of such default, Beneficiary shall have the right (but not the obligation) to cure same in which event all monies advanced and costs expended for such purpose shall be an obligation of Grantor secured hereby and payable on demand, together with interest thereon at the highest lawful rate Grantor could contract to pay to Beneficiary at the time of Beneficiary's advance or expenditure, or if there is no such highest lawful rate at the rate of 18% per annum. Beneficiary's curing of such default shall not cure the default hereunder. Grantor shall: (i) not agree to allow any renewal, extension, modification or rearrangement of the First Note or the First Mortgage without Beneficiary's prior written consent; (ii) not increase the indebtedness secured by the liens and security interest created by the First Mortgage; (iii) timely perform all of the covenants contained in the First Note and the First Mortgage; and (iv) promptly deliver to Beneficiary copies of all notices received by Grantor from the holder of the First Note and the First Mortgage.

HOMESTEAD CLAUSE (Optional)

7. **Homestead Claims.** Grantor represents and warrants to Beneficiary that no part of the Mortgaged Property constitutes a part of its homestead, either business or personal. Grantor claims the property described in Sections ____ and ____ as its only homestead. Grantor acknowledges that Beneficiary is relying upon the representation and warranty set forth in this Section in the funding of the loan evidenced by the Note.

RENEWAL AND EXTENSION (Optional)

7. **Renewal and Extension.** This Deed of Trust and the liens, rights and interest herein created and granted are in renewal and extension, but not in extinguishment, of the liens, rights, and interest originally created in or arising out of the Prior Deed of Trust. All liens, rights and interest granted in or arising out of the Prior Deed of Trust are hereby ratified, renewed and brought forward for the benefit of Beneficiary, and Beneficiary is subrogated into and entitled to the benefits of said prior deed of trust, and it is agreed that none of the rights of Beneficiary,

including, but not limited to, the priority of Beneficiary's lien, shall be in any way adversely affected hereby.

PREPARED BY:

Texas Department of Housing
and Community Affairs
Legal Services
507 Sabine St.
Austin, Texas 78701
(512) 475-3902

AFTER RECORDING RETURN TO:

Texas Department of Housing
and Community Affairs
Legal Services
P.O. Box 13941
Austin, Texas 78711-3941

LAND USE RESTRICTION AGREEMENT
(Multifamily Properties)

THE STATE OF TEXAS §
 §
COUNTY OF ■ §

THIS LAND USE RESTRICTION AGREEMENT ("Agreement") is made and entered into to be effective this ____ day of ■, 2003, by and between ■, a ■ ("Owner"), and **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS** ("Department"), a public and official department of the State of Texas.

R E C I T A L S :

The Owner is the owner of certain improvements ("Improvements"), known as ■ (the "Project") situated on real property ("Land") located in the City of ■, County of ■, State of Texas, more fully described in Exhibit "A" attached hereto and incorporated herein by reference. The Land and Improvements are hereinafter collectively referred to as the "Property".

Of even date herewith, the Department has agreed to loan certain funds (the "Loan") to Owner in accordance with that certain Construction Loan Agreement executed by and between Owner and the Department, which funds shall be used by Owner for the ■[rehabilitation] [construction] of the Project or [acquisition of the Property].

As a condition to the Department's making the Loan, Owner must agree to comply with certain occupancy, rent and other restrictions, and the parties have entered into this Agreement to evidence Owner's agreement to comply with such restrictions during the Term (hereinafter defined).

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE I
Definitions

Section 1.1. General. Capitalized terms used in this Agreement shall have, unless the context clearly requires otherwise, the meanings specified in this Article I. Certain additional terms may be defined elsewhere in this Agreement.

(a) **"Act"** means TEX. GOV'T CODE Chap. 2306, as amended from time to time.

(b) **"Agreement"** means this Land Use Restriction Agreement, as it may from time to time be amended.

(c) **"Annual Income"** means "annual income" as defined in 24 CFR part 5.609.

- (d) **"Board"** means the governing Board of the Department.
- (e) **"Department Compliance Monitoring Procedures"** means procedures and requirements adopted or imposed by the Department for the purpose of monitoring the Property for compliance with this Agreement, Title VI of the Civil Rights Act of 1964, The Fair Housing Act, Executive Order 11063 and HUD regulations issued pursuant thereto, including those inspections and examinations allowed pursuant to Section 2306.231 of the Act.
- (f) **"Extremely Low Income Families"** means families and individuals whose Annual Incomes do not exceed thirty percent (30%) of the area median income in the area in which the Property is located, as determined by the Department in accordance with the Act.
- (g) **"Low Income Families"** means families and individuals whose Annual Incomes do not exceed eighty percent (80%) of the area median income in the area in which the Property is located, as determined by the Department in accordance with the Act.
- (h) **"Metropolitan Areas" and "Metro-Areas"** means areas as designated by the Bureau of the Census as metropolitan statistical areas (MSA) in the most recent decennial census.
- (i) **"Non-metropolitan Areas" and "Non-metro Areas"** means all areas outside those areas designated as MSAs by the Bureau of the Census in the most recent decennial census.
- (j) **"Owner"** means ■ as set forth at the beginning of this Agreement, or any successor in title to the Property.
- (k) **"Project"** means Owner's activities concerning the ownership and operation of the Property. The general reference name for the Project is ■.
- (l) **"Qualified Tenant"** means a family or individual tenant of a Qualifying Unit who satisfies the requirements of Section 2.2(a) of this Agreement with respect to such Qualifying Unit.
- (m) **"Qualifying Unit"** means a Unit that (i) is rented to either a Low Income Family, Very Low Income Family, or Extremely Low Income Family and (ii) is used in complying with the low income occupancy requirements of Section 2.2(a) of this Agreement.
- (n) **"Regulations"** means the Housing Trust Fund Rules set forth in 10 TEX. ADMIN. CODE § 51.1, et seq. and all amendments thereto.
- (o) **"Special Needs Individual" or "Special Needs Family"** means an individual or family of Low Income, Very Low Income or Extremely Low Income who is considered disabled or handicapped under a state or federal law, or who is elderly (60 years or more), or as otherwise

designated by Owner in its loan application and approved by the Department or as otherwise designated by the Department.

(p) **"Term"** means the period commencing on the date hereof and ending on the date which is the earlier to occur of the following:

(1) the date upon which there is a change in state or federal law which prevents the Department from enforcing this Agreement; or

(2) the date which is ■ (■) ■[must be at least 20 years]■ years from the effective date of this Agreement.

(q) **"Unit"** means a residential accommodation constituting a part of the Property and containing separate and complete living facilities.

(r) **"Very Low Income Families"** means families and individuals whose Annual Incomes do not exceed sixty percent (60%) of area median income in the area in which the Property is located, as determined by the Department in accordance with the Act.

Section 1.2. Generic Terms. Unless the context clearly indicates otherwise, where appropriate the singular shall include the plural and the masculine shall include the feminine or neuter, and vice versa, to the extent necessary to give the terms defined in this Article I and/or the terms otherwise used in this Agreement their proper meanings.

ARTICLE II

Use and Occupancy of the Property

Section 2.1. Use of the Property. During the Term, Owner will maintain the Property as multifamily rental housing and will rent or hold available for rental each Unit on a continuous basis.

Section 2.2. Occupancy Requirements.

(a) Subject to subsection (c), during the Term, Owner will set aside ■ Units of the ■ Unit development to be made continuously available as follows:

A minimum of ■ Units of the ■ Qualifying Units must be set aside for Low Income Individuals and Families;

A minimum of ■ Units of the ■ Qualifying Units must be set aside for Very Low Income Individuals and Families

A minimum of ■ Units of the ■ Qualifying Units must be set aside for Extremely Low Income Individuals and Families;

In addition, at least ■ (■) Units of all ■ Qualifying Units shall be made available for occupancy by Special Needs Individuals or Special Needs Families to include as follows:

Homeless a minimum of ■ Units;
Persons with HIV a minimum of ■ Units;
Wheelchair Accessible Housing a minimum of ■ Units;
Sight or Hearing Impaired a minimum of ■ Unit;
Housing for Person with other Disabilities a minimum of ■ Units; and
Housing for Persons with other non-disabling Special Needs a Minimum of ■ Units.

(b) (i) The determination of whether the Annual Income of a family or individual occupying or seeking to occupy a Qualifying Unit exceeds the applicable income limit shall be made prior to admission of such family or individual to occupancy in a Qualifying Unit (or to designation of a Unit occupied by such family or individual as a Qualifying Unit). Thereafter such determinations shall be made at least annually on the basis of an examination or reexamination of the anticipated Annual Income of the family or individual.

(ii) If the Annual Income of a Qualified Tenant which is an Extremely Low Income Family shall be determined upon reexamination to exceed the applicable income limit for Very Low Income Families, but does not exceed the applicable income limit for Low Income Families, the Unit shall be counted as occupied by a Qualified Tenant which is a Low Income Family other than a Very Low Income Family during such family's or individual's continuing occupancy of such Unit in accordance with Subsection (b) (iii) below and Owner shall be required to make the next available Qualifying Unit available for occupancy in accordance with Subsection (b) (iv) below.

(iii) If the Annual Income of a Qualified Tenant shall be determined upon reexamination to exceed the applicable income limit for Low Income Families, the Unit occupied by such family or individual shall be counted as occupied by a Qualified Tenant [and such family or individual shall be considered, for purposes of Subsection (a) and Article III, a Qualified Tenant which is a Low Income Family (other than a Very Low Income Family)] so long as (A) the Annual Income of such family or individual shall not be determined to exceed 140 percent (140%) of the applicable income limit for Low Income Families, or (B) if the Annual Income of such family or individual shall be determined to exceed 140 percent (140%) of the applicable income limit for Low Income Families, so long as each Unit of comparable or smaller size in the Property which is or becomes available is occupied or held available for occupancy by a new resident whose Annual Income does not exceed the applicable income limit for Low Income Families (or a Unit other than a Qualifying Unit occupied by a family or individual whose Annual Income is determined to not exceed the applicable income limit for Low Income Families is designated a Qualifying Unit) until the occupancy requirements of Subsection (a) are met without counting such over-income family or individual.

(iv) If the required occupancy by Very Low Income Families is not met at any time but the required occupancy by Low Income Families is met, Owner shall not be required to make the next available Unit in the Property available to a Very Low Income Family but shall be required to make each Qualifying Unit vacated by a Low Income Family available for occupancy by a Very Low Income Family until the required occupancy by Very Low Income Families is met.

(v) If neither the required occupancy by Extremely Low Income Families or Very Low Income Families nor the required occupancy by Very Low Income Families, if applicable [including families or individuals counted as Low Income Families in accordance with Subsection (b) (iii)] is met at any time, preference (as between potential tenants on a waiting list or simultaneous applicants) must be given to Extremely Low Income Families and then to Very Low Income Families in the renting of each Unit in the Property which becomes available until the required occupancy by the Very Low Income Families is met, after which the rule of Subsection (b) (iv) will apply, if necessary.

(c) Anything to the contrary in the foregoing notwithstanding, Owner will not terminate the occupancy of any tenants in occupancy on the effective date hereof that are not Low Income Families, Very Low Income Families or Extremely Low Income for purposes of meeting the requirements of this section. In the event that Owner is unable to comply with the occupancy requirements of this Section because of the occupancy as of the effective date hereof of any Units by tenants who are not Low Income Families, Very Low Income Families, or Extremely Low Income Families, or who have not been determined to be Qualified Tenants, Owner will be in compliance with this section if each Unit which thereafter becomes vacant is occupied or held available for occupancy by Low Income Families, Very Low Income Families, or Very Low Income Families as the case may be, in accordance with the requirements of Subsection (b) until the low income occupancy requirements of this Section 2.2 are met.

ARTICLE III

Rent

Section 3.1. Rent Limitations for Qualified Tenants.

(a) (i) The gross rent charged by Owner for Qualifying Units designated as Extremely Low Income Families shall not exceed the maximum rent for Extremely Low Income Families for Units of the applicable size in the area, as established by the Department. Such maximum rent shall not be greater than thirty percent (30%) of the income of a family whose income equals thirty percent (30%) of area median income, with adjustment for family size based upon Unit type (or number of bedrooms in the Unit).

(ii) The gross rent charged by Owner for Qualifying Units designated as Very Low Income Families shall not exceed the maximum rent for Very Low Income Families for Units of the applicable size in the area, as established by the Department. Such maximum rent shall not be greater than thirty percent (30%) of the income of a family whose income equals sixty percent (60%) of area median income, with adjustment for family size based upon Unit type (or number of bedrooms in the Unit).

(iii) The gross rent charged by Owner for Qualifying Units designated as Low Income Families other than Very Low Income Families shall not exceed the maximum rent for Low Income Families for Units of the applicable size in the area, as established by the Department. Such maximum rent shall be not greater than thirty percent (30%) of the income of

a family whose income equals sixty-five percent (65%) of area median income, with adjustment for family size based upon Unit type (or number of bedrooms in the Unit).

For purposes of this Section 3.1(a), "gross rent" (i) does not include any payment under Section 8 of the United States Housing Act of 1937 or any comparable rental assistance program (with respect to such Unit or occupants thereof), (ii) includes any utility allowance determined by the Secretary of HUD (as hereinafter defined) after taking into account such determinations under Section 8 of the United States Housing Act of 1937, (iii) does not include any fee for a supportive service which is paid to the owner of the Unit (on the basis of the low-income status of the tenant of the Unit) by any governmental program of assistance (or by an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") and exempt from tax under Section 501(a) of the Code if such program (or organization) provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services, and (iv) does not include any rental payment to the owner of the Unit to the extent such owner pays an equivalent amount to the Farmers' Home Administration under Section 515 of the Housing Act of 1949. For purposes of clause (iii), the term "supportive service" means any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped.

For purposes of this Section 3.1(a), the adjustment for family size based upon Unit type is the income limitation which would apply to individuals occupying the Unit if the number of individuals occupying the Unit were as follows: (i) in the case of a Unit which does not have a separate bedroom, 1 individual and (ii) in the case of a Unit which has one or more separate bedrooms, 1.5 individuals for each separate bedroom.

(b) Such rents shall be subject to annual adjustments upon publication by the U.S. Department of Housing and Urban Development ("HUD") of revised income limits for all Low Income and Very Low Income Families and Individuals, which adjustments shall be based upon changes in the applicable area median income limits.

(c) If a Qualified Tenant ceases to be considered a Qualified Tenant in accordance with Section 2.2(b), Owner shall, subject to the terms of such tenant's lease, be free to condition such tenant's continued occupancy in the Property upon its payment of a rental charge not subject to the limitations in this Article III.

ARTICLE IV **Administration**

Section 4.1. Lease Provisions. All tenant leases entered into with Qualified Tenants during the Term shall contain provisions wherein each individual tenant (i) certifies the accuracy of the information provided in connection with the examination or reexamination of Annual Income of the household of such lessee, and (ii) agrees that the Annual Income and other eligibility requirements shall be deemed substantial and material obligations of his or her tenancy, that he or she will comply promptly with all requests for information with respect

thereto from Owner or the Department, and that his or her failure to timely provide accurate information regarding such requirements (regardless of whether such inaccuracy is intentional or unintentional) or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of his or her tenancy and constitute cause for immediate termination thereof.

Section 4.2. Examination and Reexamination of Incomes.

(a) Owner shall be responsible for the collection, verification and certification of the Annual Income and family composition of Qualified Tenants, and for reexamination of Annual Income and family composition of Qualified Tenants at least annually, in accordance with procedures prescribed by the Department.

(b) As a condition of admission to occupancy of a Qualifying Unit, Owner shall require the household head and other such household members as it designates to execute a Department-approved release and consent authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to Owner and to the Department such information as Owner or Department determines to be necessary. Owner shall also require the household to submit directly to owner documentation determined to be necessary. Information or documentation shall be determined to be necessary if it is required for purposes of determining or auditing a household's eligibility as a Qualified Tenant, or for verifying related information. The use or disclosure of information obtained from a household or from another source pursuant to this release and consent shall be limited to purposes directly connected with administration of this Agreement.

(c) Owner shall not be deemed to be in violation of Articles II and III of this Agreement if, in determining Annual Income and family composition of a Qualified Tenant, (i) Owner has relied in good faith upon information which is supplied to Owner by the tenant, (ii) Owner has no reason to believe such information is false, and (iii) Owner shall have complied with all requirements of the Department with respect to verification of household income and family composition.

Section 4.3. Certification by Owner. During the term of this Agreement, Owner, at least monthly or as the Department may otherwise approve, submit to the Department in a form prescribed by the Department, a certificate of continuing compliance with all occupancy standards, terms and provisions of this Agreement. The certification will also include statistical data relating to race, ethnicity, income and fair housing opportunities.

Section 4.4. Maintenance of Documents. All tenant lists, utility allowance documents, applications, leases, lease addenda, tenant and owner certifications, advertising records, waiting lists, rental calculations and rent records, income examinations and reexaminations relating to the Property shall at all times be kept separate and identifiable from any other business of Owner which is unrelated to the Property, and shall be maintained, in compliance with Department requirements, in a reasonable condition for proper audit and subject to examination and photocopying during business hours by representatives of the Department.

Section 4.5. Compliance Review. During the Term of this Agreement, Owner agrees to permit Department, or its designated representative, access to the Property, including all parts thereof, for the purpose of performing Department Compliance Monitoring Procedures. The Department periodically will monitor Owner's compliance with the requirements of this Agreement, Title VI of the Civil Rights Act of 1964, the Fair Housing Act, Executive Order 11063 and HUD regulations issued pursuant thereto, in accordance with Department Compliance Monitoring Procedures. In conducting its compliance review, the Department will rely primarily on information obtained from Owner's records and reports, findings from on-site monitoring, and audit reports. The Department may also consider relevant information gained from other sources, including litigation and citizen complaints. Pursuant to Section 2306.231 of the Act, Owner shall reimburse the Department, on demand, for its costs incurred in connection with monitoring, auditing, inspecting and examining the Owner's compliance with the requirements of this Agreement.

Section 4.6. Releases. The Department shall execute such documents as may be required to evidence release of the Property from the covenants and restrictions set forth in this Agreement upon the expiration of the Term as provided in Section 1.1 hereof.

Section 4.7 Nondiscrimination. Owner shall select Qualified Tenants for available Units from a written waiting list in chronological order of their application, insofar as it is practical, and without regard as to race, color, family composition, national origin or sex or whether such Qualified Tenants are holders of a certificate of family participation under 24 C.F.R. Part 882 (Rental Certificate Program) or a rental voucher under 24 C.F.R. Part 887 (Rental Voucher Program) or holders of a comparable document evidencing participation in a HOME tenant-based assistance program and without regard as to whether such Qualified Tenants receive or rely on any other rent-based assistance from any state or federal program.

ARTICLE V

Representations and Warranties of Owner

Section 5.1. Representations and Warranties. Owner represents and warrants to the Department that:

(a) **Valid Execution.** Owner has validly executed this Agreement and the same constitutes the binding obligation of Owner. Owner has full power, authority and capacity (i) to enter into this Agreement, (ii) to carry out Owner's obligations as described in this Agreement and (iii) to assume responsibility for compliance with all applicable State and Federal rules and regulations including, without limitation, the Regulations.

(b) **No Conflict or Contractual Violation.** To the best of Owner's knowledge, the making of this Agreement and Owner's obligations hereunder:

- (i) will not violate any contractual covenants or restrictions (A) between Owner or any third party or (B) affecting the Property;

- (ii) will not conflict with any of the instruments that create or establish Owner's authority;
- (iii) will not conflict with any applicable public or private restrictions;
- (iv) do not require any consent or approval of any public or private authority which has not already been obtained; and
- (v) are not threatened with invalidity or unenforceability by any action, proceeding or investigation pending or threatened, by or against (A) Owner, without regard to capacity, (B) any person with whom Owner may be jointly or severally liable, or (C) the Property or any part thereof.

(c) No Litigation. No litigation or proceedings are pending or, to the best of Owner's knowledge, threatened against Owner which, if adversely determined, could individually or in the aggregate have an adverse effect on title to or the use and enjoyment or value of the Property, or any portion thereof, or which could in any way interfere with the consummation of this Agreement.

(d) No Bankruptcy. There is not pending or, to Owner's best knowledge, threatened against Owner any case or proceeding or other action in bankruptcy, whether voluntary or otherwise, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for Owner under any federal, state or other statute, law, regulation relating to bankruptcy, insolvency or relief for debtors.

(e) Conflicting Agreements. Owner has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof. In any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

(f) Consideration. Owner has freely and without reservation placed itself under the obligations of this Agreement and acknowledges that the receipt of financial assistance from the Department is an essential part of the consideration for this Agreement.

Section 5.2. INDEMNIFICATION. OWNER AGREES TO INDEMNIFY AND HOLD HARMLESS THE DEPARTMENT FROM AND AGAINST ALL LIABILITIES, LOSSES, CLAIMS, DAMAGES, JUDGMENTS, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES) INCURRED BY THE DEPARTMENT AS A RESULT OF ANY MATERIAL INACCURACY OR MATERIAL BREACH IN ANY OF THE REPRESENTATIONS AND WARRANTIES CONTAINED IN SECTION 5.1 HEREOF.

ARTICLE VI **Enforcement and Remedies**

Section 6.1. Remedies of the Department.

(a) If Owner defaults in the performance of any of its obligations under this Agreement or breaches any covenant, agreement or restriction set forth herein, and if such default remains uncured for a period of thirty (30) days after written notice thereof shall have been given by the Department (or for an extended period approved by the Department if the default or breach stated in such notice can be corrected, but not within such 30-day period, unless Owner does not commence such correction or commences such correction within such 30-day period but thereafter does not diligently pursue the same to completion within such extended period), the Department in its sole discretion may (i) apply to any court having jurisdiction of the subject matter for specific performance of this Agreement, for an injunction against any violation of this Agreement, for the appointment of a receiver to take over and operate the Property in accordance with the terms of this Agreement, or (ii) take any and all other action at law, in equity or otherwise for such other relief as may be appropriate, it being acknowledged that the beneficiaries of Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of Owner's default. The Department shall be entitled to its reasonable attorneys' fees in any such judicial action in which the Department shall prevail. The Department shall also be compensated for fees associated with additional compliance monitoring during corrective periods of non-compliance upon default by Owner hereunder.

(b) Each right, power and remedy of the Department provided for in this Agreement now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the Department of any one or more of the rights, powers or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the Department of any or all such other rights, powers or remedies.

Section 6.2. Remedies of Other Parties. The occupancy and maximum rent requirements set forth in Section 2.2 and Section 3.1, respectively, and Section 4.7 of this Agreement also shall inure to the benefit of, and may be judicially enforced against Owner by, affected Extremely Low Income Families, Very Low Income Families and Low Income Families or affected Special Needs Individuals or Families. As used herein, the term "affected Extremely Low Income Families, Very Low Income Families, and Low Income Families or affected Special Needs Individuals or Families" shall mean families or individuals who are renting a Qualifying Unit or who are eligible to rent a Qualifying Unit in the Project. Any of the persons or entities described above shall be entitled to judicially enforce Section 2.2, Section 3.1, or Section 4.7 of this Agreement in the same manner that the Department may seek judicial enforcement in accordance with Section 6.1, and any such party that prevails in any such judicial action shall be entitled to its reasonable attorneys' fees

Section 6.3. Reliance Upon Information In carrying out its obligations hereunder, Owner shall be entitled to rely upon information provided by the Department with respect to (i) income limits applicable to Extremely Low Income Families, Very Low Income Families, and Low Income Families (ii) the method for calculating the incomes of such individuals and

families, and (iii) the maximum rents which may be charged to such families pursuant to Section 3.1 hereof.

ARTICLE VII
Miscellaneous

Section 7.1. Amendments. This Agreement may not be amended or modified except by written instrument signed by Owner and the Department, or their respective heirs, successors or assigns, which instrument shall not be effective until it is recorded in the Real Property Records of the county in which the Property is located. Owner agrees to enter into such amendments to this Agreement as Department may reasonably request from time to time.

Section 7.2. Notices. All notices required or permitted to be given under this Agreement must be in writing. Notice will be deemed effective three (3) days after deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, and properly addressed to the party to be notified. Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

Department: 507 Sabine, Suite 400
 P.O. Box 13941
 Austin, Texas 78711-3941
 Attention: Housing Trust Fund Program Manager

with copy to: Texas Department of Housing and
 Community Affairs
 507 Sabine, Suite 400
 P.O. Box 13941
 Austin, Texas 78711-3941
 Attention: Director of Compliance

Owner: ■
 Attention: ■

Any party may change its address for notice purposes by giving notice to the other parties in accordance with this Section 7.2.

Section 7.3. Entire Agreement. This Agreement contains the entire understanding between the parties hereto with respect to the subject matter hereof. There are no representations, oral or otherwise, other than those expressly set forth herein. Time is of the essence of this Agreement.

Section 7.4. Cooperation. Should any claims, demands, suits or other legal proceedings be made or instituted by any person against the Department which arise out of any of the matters relating to this Agreement, Owner shall cooperate fully by giving Department all pertinent information and reasonable assistance in the defense or other disposition thereof.

Section 7.5. Confidence. To the extent permitted by law, Owner agrees to maintain in confidence the dealings, negotiations and agreements of the parties with respect to the Property and Project, this Agreement, and any affidavits, and will not make public release of information regarding those matters unless the Department approves such disclosure.

Section 7.6. Choice of Law. In the event the enforceability or validity of any provision of this Agreement is challenged or questioned, such provision shall be governed by, and shall be construed in accordance with, the laws of the State of Texas or the federal laws, whichever may be applicable.

Section 7.7. Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

Section 7.8. Binding Effect; Covenants Running with the Land. During the Term, this Agreement and the covenants, reservations and restrictions contained herein shall be deemed covenants running with the land for the benefit of the Department and its successors, and shall pass to and be binding on Owner's heirs, assigns and successors in title to the Property, or if the Property shall not include title to land, but shall include a leasehold interest in land, this Agreement and the covenants, restrictions and reservations shall bind the leasehold interest as well as the Property and shall pass to and be binding upon all heirs, assigns and successors to such interests; provided, however, that upon expiration of the Term in accordance with the terms hereof said covenants, reservations and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. If a portion or portions of the Property are conveyed, all of such covenants, reservations and restrictions shall run to each portion of the Property. Owner, at its cost and expense, shall cause this Agreement to be duly recorded or filed and re-recorded or refiled in such places, and shall pay or cause to be paid all recording, filing, or other taxes, fees and charges, and shall comply with all such statutes and regulations as may be required by law, in the opinion of qualified counsel, in order to establish, preserve and protect the ability of the Department to enforce this Agreement.

Section 7.09. Counterparts. This Agreement and any amendments hereto may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

Section 7.10. Section Titles. Section titles and the table of contents are for descriptive purposes only and shall not control or limit the meaning of this Agreement as set forth in the text.

Section 7.11 Other Statutes. In addition to the requirements of this Agreement and the Act, Owner shall comply with the requirements of Title VI of the Civil Rights Act of 1964, the Fair Housing Act, Executive Order 11063 and HUD regulations issued pursuant thereto, and all other federal, state and local statutes, regulations, rules and ordinances pertaining to the use and occupancy of the Property.

Section 7.12. Change in Neighborhood. A substantial or radical change in the character of the neighborhood surrounding the Property will not extinguish the restrictive covenants of this Agreement. The restrictive covenants shall survive any and all changed circumstances, including but not limited to the following: housing pattern changes; zoning amendments; the issuance of variances affecting the immediate or surrounding area; increased traffic or road conditions; enhancement of the value of the Land or Property; growing industrial activity; encroachment of business areas; development of natural resources; financial downturn of the Owner; or commercialization of the neighborhood in question.

EXECUTED to be effective this ____ day of ■, 2003.

■

By: _____
Name:
Title:

**TEXAS DEPARTMENT OF HOUSING AND
COMMUNITY AFFAIRS**

By: _____
Name: Edwina P. Carrington
Title: Executive Director

THE STATE OF TEXAS §
 §
COUNTY OF ■ §

This instrument was acknowledged before me on this _____ day of ■, 2003, by ■, ■ of ■, a ■ corporation, on behalf of said corporation.

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Edwina P. Carrington, Executive Director of the Texas Department of Housing and Community Affairs, a public and official department of the State of Texas, on behalf of such department.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of *, 2003.

Notary Public in and for Travis County, Texas

PREPARED BY:

Texas Department of Housing
and Community Affairs
Legal Division
507 Sabine St.
Austin, Texas 78701

AFTER RECORDING RETURN TO:

Texas Department of Housing
and Community Affairs
Multifamily Finance Production Division
P.O. Box 13941
Austin, Texas 78711-3941
Attention: Carolyn Kelly

EXHIBIT "A"

LAND

PROMISSORY NOTE

U.S. \$■

■, 2003

For value received, ■ ("Maker") promises to pay to the order of **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS** ("Payee") at 507 Sabine St., P.O. Box 13941 in the City of Austin, Travis County, Texas 78711-3941 (or at such other place in Austin, Travis County, Texas, as Payee may from time to time designate by written notice to Maker), the sum \$■ or so much thereof as may be advanced and outstanding, together with interest thereon as hereinafter provided. ■

No interest shall accrue on this Note for ■ (■) years from the date of this Note, unless the maturity of this Note has been accelerated as hereinafter provided. Beginning ■ (■) years after the date of this Note until maturity, interest shall accrue on the outstanding principal balance hereunder at the rate of ■ percent (■%) per annum.

The principal and interest of this Note shall be due and payable in legal tender of the United States of America as follows: one installment of \$■ shall be due and payable on the ■ day of ■, 2003, and an installment in the same amount shall be due and payable on the same day of each succeeding month until the ■ day of ■, 2003 on which date the entire balance of principal plus accrued interest shall be due and payable ("maturity"). Each installment shall be applied first to the payment of interest accrued to the date the installment is paid and the remainder shall be applied to principal.

Computations of interest on the unpaid principal balance of this Note shall be made on the basis of 365 or 366 days in a year, as applicable.

After maturity (by acceleration or otherwise) and until paid, the unpaid principal balance and accrued interest then due shall bear interest at the lesser of (i) ten percent (10%) per annum or (ii) the highest interest rate allowed by Applicable Law ("Default Interest Rate"). Notwithstanding any other provision of this Note, the daily Default Interest Rate shall be calculated by dividing the Default Interest Rate per annum applicable for such day by the actual number of days in the calendar year (whether 365 or 366).

This Note may be prepaid in part or in its entirety at any time, without notice or penalty but any amounts prepaid may not be reborrowed. Partial prepayment shall be applied first to accrued and unpaid interest with the balance to the principal installments in reverse order of maturity. Any payment received more than thirty (30) days before it is due shall be considered a prepayment, unless Maker otherwise designates in writing at the time such payment is made.

All amounts owing on this Note shall be payable at the address of Payee stated above (or at such other place in Austin, Travis County, Texas designated by Payee in writing delivered to Maker at the address of Maker set forth below) in lawful money of the United States of America that is legal tender for public and private debts at the time of payment. The making of any payment in other than immediately available funds, which Payee, at its option, elects to accept

shall be subject to collection, and interest shall continue to accrue until the funds by which such payment is made are available to Payee for its use.

If any payment required under this Note is not paid when it becomes due and payable, then Maker shall pay to Payee, subject to the provisions of this Note limiting the amount of interest, the payment of a late charge (the "Late Charge") to compensate Payee for the loss of use of funds and for the administrative expenses and costs of handling such delinquent payment equal to a one-time charge of ten percent (10%) of the amount of such payment that was not timely paid (but such Late Charge together with all interest payable hereon shall not exceed the maximum lawful rate under Applicable Law). The term "Applicable Law" as used herein means (1) the law pertaining to maximum rates of interest that is now in effect and (2) any law that comes into effect at any time in the future allowing a higher maximum interest rate than the law now in effect. Payee is not obligated to accept any past due payment that is not accompanied by a Late Charge, but may accept such payment without waiving its rights to collect the Late Charge. In no event shall a Late Charge be payable by reason of the acceleration of the indebtedness evidenced by this Note; therefore, a Late Charge would only be due and payable with respect to payments under this Note which became delinquent prior to the acceleration of the indebtedness evidenced hereby.

Except as provided in this Note, Maker and each endorser and guarantor of this Note jointly and severally waive grace, presentment for payment, notice of renewals and extensions, notice of nonpayment, notice of protest, notice of and demand for payment of installments or other amounts coming due under this Note that are not paid when due, notice of intent or election to accelerate maturity or the actual acceleration of maturity of the indebtedness evidenced by this Note, and diligence in the collection of this Note or in filing suit on this Note and in seizing or foreclosing on any collateral securing this Note and agree to one or more extensions of maturity and partial payments before or after maturity without prejudice to rights of the holder of this Note.

If this Note is placed in the hands of an attorney for collection or is collected by legal proceedings of any kind, Maker agrees to pay all costs of collection, including reasonable attorneys' fee and costs.

All obligations of this Note are the joint and several obligations of each signer.

This Note is secured by the liens and security interests granted in the Deed of Trust (with security agreement and assignment of rents) of even date herewith from Maker to Edwina P. Carrington, Trustee for Payee.

The proceeds of this Note will be advanced to Maker at its special instance and request in accordance with the terms of that certain Construction Loan Agreement (the "Loan Agreement") executed effective of even date herewith between Maker and Payee.

In the event of default in the payment of any part of the principal or interest on this Note and Maker's failure to cure the default within ten (10) days after Payee's delivery of written notice of default to Maker, or in the event of default in the performance of any agreement

contained in the Loan Agreement or any document securing the payment of this Note or otherwise executed in connection herewith, and Maker's failure to cure the default within thirty (30) days after Payee's delivery of written notice of the default to Maker, then the holder of this Note shall have the unconditional right, without demand, notice, or other action, to declare the unpaid principal balance of this Note, together with interest accrued on the unpaid principal balance, at once due and payable and to foreclose each lien and security interest securing the payment of this Note, either under any power of sale contained in any documents creating such lien or security interest or by court proceedings, as the holder may elect. Notice shall be deemed to have been delivered upon actual receipt or upon deposit, if deposited in an official depository of the United States Postal Service, properly addressed to the party entitled to the notice, marked certified mail, return receipt requested, and containing sufficient postage. For the purpose of notice, Maker's address is ■. Maker shall have the right to change its address and specify any other address within the United States of America by at least five (5) days' written notice to Payee.

All agreements and transactions between Maker and Payee, whether now existing or hereafter arising, whether contained herein or in any other instrument, and whether written or oral, are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of the maturity hereof, prepayment, demand for payment or otherwise, shall the amount contracted for, charged or received by Payee from Maker for the use, forbearance, or detention of the principal indebtedness or interest hereof, which remains unpaid from time to time, exceed the maximum amount permissible under Applicable Law, it particularly being the intention of the parties hereto to conform strictly to the law of the State of Texas and of the United States of America, whichever is applicable. Any interest payable hereunder or under any other instrument relating to the loan evidenced hereby that is in excess of the legal maximum under Applicable Law, shall, in the event of acceleration of maturity, prepayment, demand for payment or otherwise, be automatically, as of the date of such acceleration, prepayment, demand or otherwise, applied to a reduction of the principal indebtedness hereof and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of such principal, such excess shall be refunded to Maker. To the extent permitted by Applicable Law, determination of the legal maximum amount of interest shall at all times be made by amortizing, prorating, allocating and spreading in equal parts during the period of the full stated term of the loan, all interest at any time contracted for, charged or received from Maker in connection with the loan, so that the actual rate of interest on account of such indebtedness is uniform throughout the term thereof.

This Note shall be governed by and construed in accordance with the laws of the State of Texas and the United States of America from time to time in effect.

Maker warrants and represents to Payee and to each present and future owner and holder of this Note that all loans evidenced by this Note are for business, commercial, investment, agricultural or other similar purpose and not primarily for personal, family or household use, as such terms are used in the Texas Finance Code.

■ This Note is guaranteed jointly and severally by ■.

■ Upon maturity or prepayment of this Note in its entirety, Payee agrees to waive repayment of principal in the amount of ■ Dollars (\$■), but only in the event Maker has not at any time been in default under any terms of this Note or any document securing payment of this Note, including without limitation, the Loan Agreement, the Deed of Trust and the Land Use Restriction Agreement.

■ Notwithstanding anything herein to the contrary, Payee shall have no recourse against Maker, nor against any guarantor, if any, for payment and performance of all of the obligations, covenants and agreements of Maker under this Note and the documents securing same including, but not limited to the Deed of Trust (said documents hereafter collectively called “Security Documents”), except to the full extent of all of the Property which constitutes security for this Note. If default occurs in the timely and proper payment of any portion of such indebtedness or in the timely performance of any of such obligations, agreement or covenants, any judicial proceedings brought by Payee against Maker or any guarantor shall be limited to the protection and preservation of the Property, the preservation, enforcement and foreclosure of the liens, mortgages, assignments, rights and security interests now or at any time hereafter securing the payment of the Note, and enforcement and collection of obligations, covenants and indebtedness for which Maker and any guarantors remain liable as provided in this paragraph. If there is a foreclosure of any such liens, mortgages, assignments, rights, and security interests securing the payment of this Note, by power of sale or otherwise, no judgment for any deficiency upon such indebtedness shall be sought or obtained by Payee against Maker. Notwithstanding the foregoing provisions of this paragraph or any other agreement, Payee shall have full recourse against Maker and all guarantors, if any, for: (a) for fraud or misrepresentation by Maker or any guarantor in connection with the transactions herein contemplated; (b) for failure to pay taxes, assessments, charges for labor or materials or other charges that can create liens on any portion of the Property ; (c) for the misapplication of (i) proceeds of insurance covering any portion of the Property, or (ii) proceeds of the sale or condemnation of any portion of the Property, or (iii) rentals received by or on behalf of Maker subsequent to the date on which Payee gives written notice of the posting of foreclosure notices, (d) for failure to prevent waste to the Property unless Payee is compensated therefor by insurance proceeds collected by Maker; (e) for the return to Payee of all unearned advance rentals and security deposits paid by tenants of the Property and not refunded to or forfeited by such tenants, (f) for the return of, or reimbursement for, all personalty taken from the Property by or on behalf of Maker, (g) for all court costs and for all attorneys’ fees provided for in any instrument governing, securing or pertaining to the payment of the Note; and (h) for failure to comply with any indemnification provision or covenants pertaining to environmental matters contained in the Security Documents.

THIS WRITTEN AGREEMENT AND THE OTHER WRITTEN AGREEMENTS, INCLUDING THE COLLATERAL AGREEMENTS, SIGNED CONTEMPORANEOUSLY WITH THE SIGNING HEREOF REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

■

By: _____
Name: _____
Title: _____

NOTICE OF INVALIDITY OF ORAL AGREEMENTS

TO: Borrower and all other Debtors and Obligors with respect to the Loan which is identified below.

1. **THE WRITTEN LOAN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.**

THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

2. As used in this Notice:

"Borrower" means the Borrower identified below.

"Debtor" and "Obligor" means any entity or individual who (i) is obligated to pay the Note or (ii) otherwise is or becomes obligated to pay the Loan (for example, as cosigner or guarantor) or (iii) has pledged any property as security for the Loan.

"Lender" means Texas Department of Housing and Community Affairs.

"Loan" means the loan by Lender which is to be evidenced by the promissory note ("Note") dated *, executed by Borrower, payable to the order of Lender, in the principal face amount of \$*.

"Loan Agreement" means one or more promises, promissory notes, agreements, undertakings, security agreements, deeds of trust or other documents, or commitments, or any combination of those actions or documents, relating to the Loan.

3. This Notice is given by Lender with respect to the Loan, pursuant to Section 26.02 of the Texas Business and Commerce Code. Each Borrower, Debtor, and Obligor who signs below acknowledges, represents, and warrants to Lender that Lender has given and such party has received and retained a copy of this Notice on the date stated above.

BORROWER:

*

By: _____
Name: _____
Title: _____

LENDER:

**TEXAS DEPARTMENT OF HOUSING AND
COMMUNITY AFFAIRS**, a public and official
department of the State of Texas

By: _____
Name: Edwina P. Carrington
Title: Executive Director

TO BE FILED IN THE UCC RECORDS OF THE SECRETARY OF STATE OF TEXAS

FINANCING STATEMENT

This is a financing statement to be filed with the Secretary of State, State of Texas, in order to perfect a security interest in the collateral hereinafter described which has been granted to the Secured Party as hereinafter named by the Debtor as hereinafter named:

NAME AND ADDRESS OF DEBTOR:

Organization Name: *

Mailing Address: *

Type of Organization: *

Jurisdiction: *

Organization ID: *

NAME AND ADDRESS OF SECURED PARTY:

**TEXAS DEPARTMENT OF HOUSING AND
COMMUNITY AFFAIRS**

507 Sabine St.

P.O. Box 13941

Austin, Texas 78711-3941

DESCRIPTION OF COLLATERAL:

1. All furniture, equipment and other personal property now or hereafter owned by Debtor and used in connection with, located on or related in any way to the real property ("Property") described in Exhibit "A" hereto attached and made a part hereof, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached in any manner to the buildings and other improvements now or hereafter erected, constructed or developed on the Property ("Project");

2. All building materials and equipment now or hereafter delivered to the Property and all building and construction materials, equipment and parts intended to be installed in or on the Property or Project;

3. All plans and specifications for the Project;

4. All contracts and subcontracts relating to the Project;

5. All deposits (including tenants' security deposits, if any), funds, accounts, contract rights, instruments, documents, general intangibles (including trademarks, trade names

and symbols used in connection therewith), and notes or chattel paper arising from or by virtue of any transactions related to the Property;

6. All permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Property;

7. All bank accounts in which rental income, if any, from the Property is deposited;

8. All proceeds arising from or by virtue of the sale, lease or other disposition of any of the real or personal property described herein;

9. All proceeds (including premium refunds) payable or to be payable under each policy of insurance relating to the Project;

10. All proceeds arising from the taking of all or a part of the Property or any rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, for any public or quasi-public use under any law or by rights of eminent domain, or by private or other purchase in lieu thereof; and

11. All other interest of every kind and character which Debtor now has or at any time hereafter acquires in and to the above-described personal property and all property which is used or useful in connection therewith.

SIGNATURE OF DEBTOR:

■

LAND USE RESTRICTION AGREEMENT
(Multifamily Properties)

THE STATE OF TEXAS §
 §
COUNTY OF * §

THIS LAND USE RESTRICTION AGREEMENT ("Agreement") is made and entered into to be effective the ____ day of *, 2003, by and between *, a * ("Owner"), and **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS** ("Department"), a public and official department of the State of Texas.

R E C I T A L S :

The Owner is the owner of certain improvements ("Improvements"), a * multifamily unit housing development known as * (the "Project") situated on real property ("Land") located in *, County of *, State of *, more fully described in Exhibit "A" attached hereto and incorporated herein by reference. The Land and Improvements are hereinafter collectively referred to as the "Property".

On *, the Department agreed to award certain funds (the "Grant") to Owner in accordance with that certain HTF/SECO Grant Agreement #* executed by and between Owner and the Department, which funds shall be used by Owner for the installation of program approved energy efficient measures on the Property.

As a condition to the Department's making the Grant, Owner must agree to comply with certain occupancy, rent and other restrictions, and the parties have entered into this Agreement to evidence Owner's agreement to comply with such restrictions during the Term (hereinafter defined).

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE I
Definitions

Section 1.1. General. Capitalized terms used in this Agreement shall have, unless the context clearly requires otherwise, the meanings specified in this Article I. Certain additional terms may be defined elsewhere in this Agreement.

(a) **"Act"** means TEX. GOV'T CODE Chap. 2306, as amended from time to time.

(b) **"Agreement"** means this Land Use Restriction Agreement, as it may from time to time be amended.

- (c) **"Annual Income"** means "annual income" as defined in 24 CFR part 5.609.
- (d) **"Board"** means the governing Board of the Department.
- (e) **"Department Compliance Monitoring Procedures"** means procedures and requirements adopted or imposed by the Department for the purpose of monitoring the Property for compliance with this Agreement, Title VI of the Civil Rights Act of 1964, The Fair Housing Act, E.O. 11063 and HUD regulations issued pursuant thereto, including those inspections and examinations allowed pursuant to Section 2306.231 of the Act.
- (f) **"Extremely Low Income Families"** means families and individuals whose Annual Incomes do not exceed thirty percent (30%) of the area median income in the area in which the Property is located, as determined by the Department in accordance with the Act.
- (g) **"Low Income Families"** means families and individuals whose Annual Incomes do not exceed eighty percent (80%) of the area median income in the area in which the Property is located, as determined by the Department in accordance with the Act.
- (h) **"Metropolitan Areas" and "Metro-Areas"** means areas as designated by the Bureau of the Census as metropolitan statistical areas (MSA) in the most recent decennial census.
- (i) **"Non-metropolitan Areas" and "Non-metro Areas"** means all areas outside those areas designated as MSAs by the Bureau of the Census in the most recent decennial census.
- (j) **"Owner"** means * as set forth at the beginning of this Agreement, or any successor in title to the Property.
- (k) **"Project"** means Owner's activities concerning the ownership and operation of the Property, a * multifamily unit housing development. The general reference name for the Project is *.
- (l) **"Qualified Tenant"** means a family or individual tenant of a Qualifying Unit who satisfies the requirements of Section 2.2(a) of this Agreement with respect to such Qualifying Unit.
- (m) **"Qualifying Unit"** means a unit that (i) is rented to either a Low Income Family or Very Low Income Family and (ii) is used in complying with the low income occupancy requirements of Section 2.2(a) of this Agreement.
- (n) **"Regulations"** means the Housing Trust Fund Rules set forth in 10 TEX. ADMIN. CODE § 51.1, et seq. and all amendments thereto.
- (o) **"Special Needs Individual" or "Special Needs Family"** means an individual or family of Low Income, Very Low Income or Extremely Low Income who is considered disabled

or handicapped under a state or federal law, or who is elderly (60 years or more), or as otherwise designated by Owner in its application and approved by the Department or as otherwise designated by the Department.

(p) **"Term"** means the period commencing on the date hereof and ending on the date which is the earlier to occur of the following:

(1) the date upon which there is a change in state or federal law which prevents the Department from enforcing this Agreement; or

(2) the date which is * (*) years from the effective date of this Agreement.

(q) **"Unit"** means a residential accommodation constituting a part of the Property and containing separate and complete living facilities.

(r) **"Very Low Income Families"** means families and individuals whose Annual Incomes do not exceed sixty percent (60%) of area median income in the area in which the Property is located, as determined by the Department in accordance with the Act.

Section 1.2. Generic Terms. Unless the context clearly indicates otherwise, where appropriate the singular shall include the plural and the masculine shall include the feminine or neuter, and vice versa, to the extent necessary to give the terms defined in this Article I and/or the terms otherwise used in this Agreement their proper meanings.

ARTICLE II

Use and Occupancy of the Property

Section 2.1. Use of the Property. During the Term, Owner will maintain the Property as multifamily rental housing and will rent or hold available for rental each Unit on a continuous basis.

Section 2.2. Occupancy Requirements.

(a) Subject to subsection (c), during the Term, Owner will set aside all * (*) Qualifying Units out of the * Units to be made continuously available as follows:

(i) * (*) Units shall be made available for occupancy by Very Low Income Families;

(ii) * (*) Units shall be made available for occupancy by Extremely Low Income Families.

In addition, * (*) Units of all * (*) Qualifying Units shall be made available for occupancy by Special Needs Individuals or Special Needs Families to include;

*

(b) (i) The determination of whether the Annual Income of a family or individual occupying or seeking to occupy a Qualifying Unit exceeds the applicable income limit shall be made prior to admission of such family or individual to occupancy in a Qualifying Unit (or to designation of a Unit occupied by such family or individual as a Qualifying Unit). Thereafter such determinations shall be made at least annually on the basis of an examination or reexamination of the anticipated Annual Income of the family or individual.

(ii) If the Annual Income of a Qualified Tenant which is a Very Low Income Family shall be determined upon reexamination to exceed the applicable income limit for Very Low Income Families, but does not exceed the applicable income limit for Low Income Families, the Unit shall be counted as occupied by a Qualified Tenant which is a Low Income Family other than a Very Low Income Family during such family's or individual's continuing occupancy of such Unit in accordance with Subsection (b) (iii) below and Owner shall be required to make the next available Qualifying Unit available for occupancy in accordance with Subsection (b) (iv) below.

(iii) If the Annual Income of a Qualified Tenant shall be determined upon reexamination to exceed the applicable income limit for Low Income Families, the Unit occupied by such family or individual shall be counted as occupied by a Qualified Tenant [and such family or individual shall be considered, for purposes of Subsection (a) and Article III, a Qualified Tenant which is a Low Income Family (other than a Very Low Income Family)] so long as (A) the Annual Income of such family or individual shall not be determined to exceed 140 percent (140%) of the applicable income limit for Low Income Families, or (B) if the Annual Income of such family or individual shall be determined to exceed 140 percent (140%) of the applicable income limit for Low Income Families, so long as each Unit of comparable or smaller size in the Property which is or becomes available is occupied or held available for occupancy by a new resident whose Annual Income does not exceed the applicable income limit for Low Income Families (or a Unit other than a Qualifying Unit occupied by a family or individual whose Annual Income is determined to not exceed the applicable income limit for Low Income Families is designated a Qualifying Unit) until the occupancy requirements of Subsection (a) are met without counting such over-income family or individual.

(iv) If the required occupancy by Very Low Income Families is not met at any time but the required occupancy by Low Income Families is met, Owner shall not be required to make the next available Unit in the Property available to a Very Low Income Family but shall be required to make each Qualifying Unit vacated by a Low Income Family available for occupancy by a Very Low Income Family until the required occupancy by Very Low Income Families is met.

(v) If neither the required occupancy by Very Low Income Families nor the required occupancy by Low Income Families [including families or individuals counted as Low Income Families in accordance with Subsection (b) (iii)] is met at any time, preference (as between potential tenants on a waiting list or simultaneous applicants) must be given to Very

Low Income Families in the renting of each Unit in the Property which becomes available until the required occupancy by the Low Income Families is met, after which the rule of Subsection (b) (iv) will apply, if necessary.

(c) Anything to the contrary in the foregoing notwithstanding, Owner will not terminate the occupancy of any tenants in occupancy on the effective date hereof that are not Low Income Families or Very Low Income Families for purposes of meeting the requirements of this section. In the event that Owner is unable to comply with the occupancy requirements of this Section because of the occupancy as of the effective date hereof of any Units by tenants who are not Low Income Families or Very Low Income Families, or who have not been determined to be Qualified Tenants, Owner will be in compliance with this section if each Unit which thereafter becomes vacant is occupied or held available for occupancy by Low Income Families or Very Low Income Families, as the case may be, in accordance with the requirements of Subsection (b) until the low income occupancy requirements of this Section 2.2 are met.

ARTICLE III

Rent

Section 3.1. Rent Limitations for Qualified Tenants.

(a) (i) The gross rent charged by Owner for Qualifying Units designated as Very Low Income Families shall not exceed the maximum rent for Very Low Income Families for units of the applicable size in the area, as established by the Department. Such maximum rent shall not be greater than thirty percent (30%) of the income of a family whose income equals sixty percent (60%) of area median income, with adjustment for family size based upon unit type (or number of bedrooms in the unit).

(ii) The gross rent charged by Owner for Qualifying Units designated as Low Income Families other than Very Low Income Families shall not exceed the maximum rent for Low Income Families for units of the applicable size in the area, as established by the Department. Such maximum rent shall be not greater than thirty percent (30%) of the income of a family whose income equals sixty-five percent (65%) of area median income, with adjustment for family size based upon unit type (or number of bedrooms in the unit).

For purposes of this Section 3.1(a), "gross rent" (i) does not include any payment under Section 8 of the United States Housing Act of 1937 or any comparable rental assistance program (with respect to such unit or occupants thereof), (ii) includes any utility allowance determined by the Secretary of HUD (as hereinafter defined) after taking into account such determinations under Section 8 of the United States Housing Act of 1937, (iii) does not include any fee for a supportive service which is paid to the owner of the unit (on the basis of the low-income status of the tenant of the unit) by any governmental program of assistance (or by an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") and exempt from tax under Section 501(a) of the Code if such program (or organization) provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services, and (iv) does not include any rental payment to the owner of the unit to the extent such owner pays an equivalent

amount to the Farmers' Home Administration under Section 515 of the Housing Act of 1949. For purposes of clause (iii), the term "supportive service" means any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped.

For purposes of this Section 3.1(a), the adjustment for family size based upon unit type is the income limitation which would apply to individuals occupying the unit if the number of individuals occupying the unit were as follows: (i) in the case of a unit which does not have a separate bedroom, 1 individual and (ii) in the case of a unit which has one or more separate bedrooms, 1.5 individuals for each separate bedroom.

(b) Such rents shall be subject to annual adjustments upon publication by the U.S. Department of Housing and Urban Development ("HUD") of revised income limits for all Low Income and Very Low Income Families and Individuals, which adjustments shall be based upon changes in the applicable area median income limits.

(c) If a Qualified Tenant ceases to be considered a Qualified Tenant in accordance with Section 2.2(b), Owner shall, subject to the terms of such tenant's lease, be free to condition such tenant's continued occupancy in the Property upon its payment of a rental charge not subject to the limitations in this Article III.

ARTICLE IV **Administration**

Section 4.1. Lease Provisions. All tenant leases entered into with Qualified Tenants during the Term shall contain provisions wherein each individual tenant (i) certifies the accuracy of the information provided in connection with the examination or reexamination of Annual Income of the household of such lessee, and (ii) agrees that the Annual Income and other eligibility requirements shall be deemed substantial and material obligations of his or her tenancy, that he or she will comply promptly with all requests for information with respect thereto from Owner or the Department, and that his or her failure to timely provide accurate information regarding such requirements (regardless of whether such inaccuracy is intentional or unintentional) or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of his or her tenancy and constitute cause for immediate termination thereof.

Section 4.2. Examination and Reexamination of Incomes.

(a) Owner shall be responsible for the collection, verification and certification of the Annual Income and family composition of Qualified Tenants, and for reexamination of Annual Income and family composition of Qualified Tenants at least annually, in accordance with procedures prescribed by the Department.

(b) As a condition of admission to occupancy of a Qualifying Unit, Owner shall require the household head and other such household members as it designates to execute a Department-approved release and consent authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to Owner and to the Department such information as Owner or Department determines to be necessary. Owner shall also require the household to submit directly documentation determined to be necessary. Information or documentation shall be determined to be necessary if it is required for purposes of determining or auditing a household's eligibility as a Qualified Tenant, or for verifying related information. The use or disclosure of information obtained from a household or from another source pursuant to this release and consent shall be limited to purposes directly connected with administration of this Agreement.

(c) Owner shall not be deemed to be in violation of Articles II and III of this Agreement if, in determining Annual Income and family composition of a Qualified Tenant, (i) Owner has relied in good faith upon information which is supplied to Owner by the tenant, (ii) Owner has no reason to believe such information is false, and (iii) Owner shall have complied with all requirements of the Department with respect to verification of household income and family composition.

Section 4.3. Certification by Owner. During the term of this Agreement, Owner, at least monthly or as the Department may otherwise approve, submit to the Department in a form prescribed by the Department, a certificate of continuing compliance with all occupancy standards, terms and provisions of this Agreement. The certification will also include statistical data relating to race, ethnicity, income and fair housing opportunities.

Section 4.4. Maintenance of Documents. All tenant lists, utility allowance documents, applications, leases, lease addenda, tenant and owner certifications, advertising records, waiting lists, rental calculations and rent records, income examinations and reexaminations relating to the Property shall at all times be kept separate and identifiable from any other business of Owner which is unrelated to the Property, and shall be maintained, as required by the Department, in a reasonable condition for proper audit and subject to examination and photocopying during business hours by representatives of the Department.

Section 4.5. Compliance Review. During the Term of this Agreement, Owner agrees to permit Department, or its designated representative, access to the Property, including all parts thereof, for the purpose of performing Department Compliance Monitoring Procedures. The Department periodically will monitor Owner's compliance with the requirements of this Agreement, Title VI of the Civil Rights Act of 1964, the Fair Housing Act, E.O. 11063 and HUD regulations issued pursuant thereto, in accordance with Department Compliance Monitoring

Procedures. In conducting its compliance review, the Department will rely primarily on information obtained from Owner's records and reports, findings from on-site monitoring, and audit reports. The Department may also consider relevant information gained from other sources, including litigation and citizen complaints. Pursuant to Section 2306.231 of the Act, Owner shall reimburse the Department on demand, for its costs incurred in connection with monitoring, auditing, inspecting and examining the Owner's compliance with the requirements of this Agreement.

Section 4.6. Releases. The Department shall execute such documents as may be required to evidence release of the Property from the covenants and restrictions set forth in this Agreement upon the expiration of the Term as provided in Section 1.1 hereof.

Section 4.7 Nondiscrimination. Owner shall select Qualified Tenants for available Units from a written waiting list in chronological order of their application, insofar as it is practical, and without regard as to race, color, family composition, national origin or sex or whether such Qualified Tenants are holders of a certificate of family participation under 24 C.F.R. Part 882 (Rental Certificate Program) or a rental voucher under 24 C.F.R. Part 887 (Rental Voucher Program) or holders of a comparable document evidencing participation in a HOME tenant-based assistance program and without regard as to whether such Qualified Tenants receive or rely on any other rent-based assistance from any state or federal program.

ARTICLE V

Representations and Warranties of Owner

Section 5.1. Representations and Warranties. Owner represents and warrants to the Department that:

(a) **Valid Execution.** Owner has validly executed this Agreement and the same constitutes the binding obligation of Owner. Owner has full power, authority and capacity (i) to enter into this Agreement, (ii) to carry out Owner's obligations as described in this Agreement and (iii) to assume responsibility for compliance with all applicable State and Federal rules and regulations including, without limitation, the Regulations.

(b) **No Conflict or Contractual Violation.** To the best of Owner's knowledge, the making of this Agreement and Owner's obligations hereunder:

(i) will not violate any contractual covenants or restrictions (A) between Owner or any third party or (B) affecting the Property;

(ii) will not conflict with any of the instruments that create or establish Owner's authority;

(iii) will not conflict with any applicable public or private restrictions;

(iv) do not require any consent or approval of any public or private authority which has not already been obtained; and

(v) are not threatened with invalidity or unenforceability by any action, proceeding or investigation pending or threatened, by or against (A) Owner, without regard to capacity, (B) any person with whom Owner may be jointly or severally liable, or (C) the Property or any part thereof.

(c) No Litigation. No litigation or proceedings are pending or, to the best of Owner's knowledge, threatened against Owner which, if adversely determined, could individually or in the aggregate have an adverse effect on title to or the use and enjoyment or value of the Property, or any portion thereof, or which could in any way interfere with the consummation of this Agreement.

(d) No Bankruptcy. There is not pending or, to Owner's best knowledge, threatened against Owner any case or proceeding or other action in bankruptcy, whether voluntary or otherwise, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for Owner under any federal, state or other statute, law, regulation relating to bankruptcy, insolvency or relief for debtors.

(e) Conflicting Agreements. Owner has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof. In any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

(f) Consideration. Owner has freely and without reservation placed itself under the obligations of this Agreement and acknowledges that the receipt of financial assistance from the Department is an essential part of the consideration for this Agreement.

Section 5.2. INDEMNIFICATION. OWNER AGREES TO INDEMNIFY AND HOLD HARMLESS THE DEPARTMENT FROM AND AGAINST ALL LIABILITIES, LOSSES, CLAIMS, DAMAGES, JUDGMENTS, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES) INCURRED BY THE DEPARTMENT AS A RESULT OF ANY MATERIAL INACCURACY OR BREACH IN ANY OF THE REPRESENTATIONS AND WARRANTIES CONTAINED IN SECTION 5.1 HEREOF.

ARTICLE VI **Enforcement and Remedies**

Section 6.1. Remedies of the Department.

(a) If Owner defaults in the performance of any of its obligations under this Agreement or breaches any covenant, agreement or restriction set forth herein, and if such default remains uncured for a period of thirty (30) days after notice thereof shall have been given by the Department (or for an extended period approved by the Department if the default or breach stated in such notice can be corrected, but not within such 30-day period, unless Owner does not commence such correction or commences such correction within such 30-day period

but thereafter does not diligently pursue the same to completion within such extended period), the Department in its sole discretion may (i) apply to any court having jurisdiction of the subject matter for specific performance of this Agreement, for an injunction against any violation of this Agreement, for the appointment of a receiver to take over and operate the Property in accordance with the terms of this Agreement, or (ii) take any and all other action at law, in equity or otherwise for such other relief as may be appropriate, it being acknowledged that the beneficiaries of Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of Owner's default. The Department shall be entitled to its reasonable attorneys' fees in any such judicial action in which the Department shall prevail. The Department shall also be compensated for fees associated with additional compliance monitoring during corrective periods of non-compliance upon default by Owner hereunder.

(b) Each right, power and remedy of the Department provided for in this Agreement now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the Department of any one or more of the rights, powers or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the Department of any or all such other rights, powers or remedies.

Section 6.2. Remedies of Other Parties. The occupancy and maximum rent requirements set forth in Section 2.2 and Section 3.1, respectively, and Section 4.7 of this Agreement also shall inure to the benefit of, and may be judicially enforced against Owner by, affected Low Income Families and Very Low Income Families or affected Special Needs Individuals or Families. As used herein, the term "affected Low Income Families and Very Low Income Families or affected Special Needs Individuals or Families" shall mean families or individuals who are renting a Qualifying Unit or who are eligible to rent a Qualifying Unit in the Project. Any of the persons or entities described above shall be entitled to judicially enforce Section 2.2, Section 3.1 or Section 4.7 of this Agreement in the same manner that the Department may seek judicial enforcement in accordance with Section 6.1, and any such party that prevails in any such judicial action shall be entitled to its reasonable attorneys' fees.

Section 6.3. Reliance Upon Information. In carrying out its obligations hereunder, Owner shall be entitled to rely upon information provided by the Department with respect to (i) income limits applicable to Low Income Families and Very Low Income Families, (ii) the method for calculating the incomes of such individuals and families, and (iii) the maximum rents which may be charged to such families pursuant to Section 3.1 hereof.

ARTICLE VII
Miscellaneous

Section 7.1. Amendments. This Agreement may not be amended or modified except by written instrument signed by Owner and the Department, or their respective heirs, successors or assigns, which instrument shall not be effective until it is recorded in the Real Property Records of the county in which the Property is located. Owner agrees to enter into such amendments to this Agreement as Department may reasonably request from time to time.

Section 7.2. Notices. All notices required or permitted to be given under this Agreement must be in writing. Notice will be deemed effective upon deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, and properly addressed to the party to be notified. Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

Department: 507 Sabine, Suite 400
 P.O. Box 13941
 Austin, Texas 78711-3941
 Attention: Director, Multifamily Finance Production

with copy to: Texas Department of Housing and
 Community Affairs
 507 Sabine, Suite 400
 P.O. Box 13941
 Austin, Texas 78711-3941
 Attention: Director of Portfolio Management & Compliance

Owner: *
 *

Any party may change its address for notice purposes by giving notice to the other parties in accordance with this Section 7.2.

Section 7.3. Entire Agreement. This Agreement contains the entire understanding between the parties hereto with respect to the subject matter hereof. There are no representations, oral or otherwise, other than those expressly set forth herein. Time is of the essence of this Agreement.

Section 7.4. Cooperation. Should any claims, demands, suits or other legal proceedings be made or instituted by any person against the Department which arise out of any of the matters relating to this Agreement, Owner shall cooperate fully by giving Department all pertinent information and reasonable assistance in the defense or other disposition thereof.

Section 7.5. Confidence. To the extent permitted by law, Owner agrees to maintain in confidence the dealings, negotiations and agreements of the parties with respect to the Property and Project, this Agreement, and any affidavits, and will not make public release of information regarding those matters unless the Department approves such disclosure.

Section 7.6. Choice of Law. In the event the enforceability or validity of any provision of this Agreement is challenged or questioned, such provision shall be governed by, and shall be construed in accordance with, the laws of the State of Texas or the federal laws, whichever may be applicable.

Section 7.7. Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

Section 7.8. Binding Effect; Covenants Running with the Land. During the Term, this Agreement and the covenants, reservations and restrictions contained herein shall be deemed covenants running with the land for the benefit of the Department and its successors, and shall pass to and be binding on Owner's heirs, assigns and successors in title to the Property, or if the Property shall not include title to land, but shall include a leasehold interest in land, this Agreement and the covenants, restrictions and reservations shall bind the leasehold interest as well as the Property and shall pass to and be binding upon all heirs, assigns and successors to such interests; provided, however, that upon expiration of the Term in accordance with the terms hereof said covenants, reservations and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. If a portion or portions of the Property are conveyed, all of such covenants, reservations and restrictions shall run to each portion of the Property. Owner, at its cost and expense, shall cause this Agreement to be duly recorded or filed and re-recorded or refiled in such places, and shall pay or cause to be paid all recording, filing, or other taxes, fees and charges, and shall comply with all such statutes and regulations as may be required by law, in the opinion of qualified counsel, in order to establish, preserve and protect the ability of the Department to enforce this Agreement.

Section 7.09. Counterparts. This Agreement and any amendments hereto may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

Section 7.10. Section Titles. Section titles and the table of contents are for descriptive purposes only and shall not control or limit the meaning of this Agreement as set forth in the text.

Section 7.11 Other Statutes. In addition to the requirements of this Agreement and the Act, Owner shall comply with the requirements of Title VI of the Civil Rights Act of 1964, the Fair Housing Act, E.O. 11063 and HUD regulations issued pursuant thereto, and all other federal, state and local statutes, regulations, rules and ordinances pertaining to the use and occupancy of the Property.

Section 7.12. Change in Neighborhood. A substantial or radical change in the character of the neighborhood surrounding the Property will not extinguish the restrictive covenants of this Agreement. The restrictive covenants shall survive any and all changed circumstances, including but not limited to the following: housing pattern changes; zoning amendments; the issuance of variances affecting the immediate or surrounding area; increased traffic or road conditions; enhancement of the value of the Land or Property; growing industrial activity; encroachment of business areas; development of natural resources; financial downturn of the Owner; or commercialization of the neighborhood in question.

EXECUTED to be effective this ___ day of *, 2003.

*

By: _____
Name: _____
Title: _____

**TEXAS DEPARTMENT OF HOUSING AND
COMMUNITY AFFAIRS**

By: _____
Name: Edwina P. Carrington
Title: Executive Director

THE STATE OF * §
 §
COUNTY OF * §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared *, known to me to be the * of *, a * corporation, general partner of *, the limited partnership that executed the foregoing instrument, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said limited partnership, and that he executed the same as the act of such limited partnership for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of *, 2003.

Notary Public in and for the State of Texas.

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the ____ day of *, 2003 by Edwina P. Carrington, Executive Director of the Texas Department of Housing and Community Affairs, a public and official department of the State of Texas, on behalf of said department.

Notary Public, State of Texas

EXHIBIT "A"

LAND

ARCHITECT AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF ■ §

WHEREAS, it is proposed that **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official department of the State of Texas ("Lender"), make a Construction Loan (herein so called) to ■ ("Borrower"), for, among other things, construction of improvements upon the Land (herein so called) situated in the county and state first herein mentioned, more particularly described in Exhibit "A" hereto (the Land, such improvements, and any and all personal property and fixtures now or hereafter affixed to, used in and about, or arising in connection with the Land and such improvements, called the "Project"), to be secured by, among other things, liens and security interests (the "Lender Liens") against the Project and the Architect Contract (hereinafter described); and

WHEREAS, the undersigned ("Architect") proposes to hereafter perform architectural services (collectively, the "Work") in connection with the construction of improvements on the Land pursuant to an Architect Contract (as hereafter amended, supplements, and/or restated from time to time, herein so called) dated as of ■, between Architect and Borrower.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Lender to make the Construction Loan to Borrower, Architect hereby agrees with Lender as follows:

1. Architect represents and warrants to Lender that as of the date hereof (a) Architect has not reached any agreement or entered into any contract, written or oral, with respect to the construction of the improvements on the Land, other than the Architect Contract, which has been duly executed and is in full force and effect, (b) no materials have been delivered to or stored upon the Land, and (c) no work of any kind has been performed on the Land in connection with the construction or repair of any improvements on the Land.

2. Architect consents and agrees in all respects to the creation in favor of Lender by Borrower of a security interest in Borrower's rights in the Architect Contract as security for the full and complete payment and performance of Borrower's indebtedness and obligations to Lender, and Architect further agrees with Lender that: (a) if a default occurs in connection with the Construction Loan, Architect will, upon Lender's request, complete the performance of the Work pursuant to the Architect Contract for the benefit of Lender (notwithstanding any previous default thereunder by Borrower, and Architect agrees that Lender shall have no liability to it whatsoever by reason of any such default by Borrower), provided that Architect is paid, in accordance with the Architect Contract, for all Work thereafter rendered by Architect for the benefit of Lender; (b) upon the occurrence of a default by Borrower under the Construction Contract, Architect will not exercise any remedies thereunder (other than the cessation of the Work for monetary defaults pending either the cure thereof or the request by Lender that, pursuant to (a) preceding, Architect complete the Work for the benefit of Lender) until it has notified Lender thereof in writing and granted Lender a period of 30 days (or a reasonable

amount of time if such default cannot be cured in 30 days) after receipt by Lender of such notice in which Lender shall be entitled, but not obligated, to cure such default; (c) in the event any of the proceeds of the Construction Loan are disbursed by Lender directly to Architect, Architect will receive all such disbursements, will hold the same as a trust fund for the purpose of paying the costs of the Work under the Architect Contract, and will apply the same only to the payment of such costs and for no other purposes; (d) upon request by Lender, Architect shall furnish to Lender a current list of all persons or firms with whom Architect has entered into subcontracts or other agreements relating to the Work in Connection with the Project, together with a statement as to the status of each such subcontract or agreement and the respective amounts, if any, owed by Architect thereunder; (e) Architect shall make timely payment or deposit of all amounts of tax required to be withheld and paid to or deposited with the United States pursuant to the provision of Subtitle C of the Internal Revenue Code of 1954, as from time to time amended, with respect to any and all wages paid to employees of Architect from funds paid to Architect by Borrower or Lender; and (f) after execution and delivery of the Architect Contract, Architect will not amend the Architect Contract without the prior written consent of Lender.

3. Architect hereby subordinates any and all "Architect Liens" (as hereinafter defined) to any and all Lender Liens with the same force and effect as though the deeds of trust and any other instrument creating or evidencing the Lender Liens had been executed, delivered, and recorded prior to the creation or inception of the Architect Liens. As used herein, the term "Architect Liens" means all constitutional, statutory, contractual, or other liens, rights to liens, claims, and/or demands, if any, of whatever kind and nature, and against any property or rights of whatever kind and nature, that may now or hereafter exist or be claimed or asserted by, through, or under Architect for any Work in connection with all or portions of any improvements on the Land, whether pursuant to the Architect Contract or otherwise.

4. Nothing herein shall be construed to impose upon Lender any duty to see to the application of the proceeds of the Construction Loan. Architect acknowledges that Lender is obligated with respect thereto only to Borrower and to no other person or entity.

5. This instrument shall be binding upon Architect and its heirs, personal representatives, successors and assigns and shall inure to the benefit of Lender and its successors and assigns.

EXECUTED on this ____ day of ■, 2001.

ARCHITECT:

■

By: _____

Name: _____

Title: _____

EXHIBIT "A"

LAND

TO BE FILED IN THE REAL PROPERTY RECORDS OF * COUNTY, TEXAS

FINANCING STATEMENT

This is a financing statement to be filed with the County Clerk, * County, Texas, in order to perfect a security interest in the collateral hereinafter described which has been granted to the Secured Party as hereinafter named by the Debtor as hereinafter named:

NAME AND ADDRESS OF DEBTOR:

*

NAME AND ADDRESS OF SECURED PARTY:

**TEXAS DEPARTMENT OF HOUSING
AND COMMUNITY AFFAIRS**
507 Sabine St.
P.O. Box 13491
Austin, Texas 78711-3941

DESCRIPTION OF COLLATERAL:

1. All furniture, equipment and other personal property now or hereafter owned by Debtor and used in connection with, located on or related in any way to the real property ("Property") described in Exhibit "A" hereto attached and made a part hereof, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached in any manner to the buildings and other improvements now or hereafter erected, constructed or developed on the Property ("Project");

2. All building materials and equipment now or hereafter delivered to the Property and all building and construction materials, equipment and parts intended to be installed in or on the Property or Project;

3. All plans and specifications for the Project;

4. All contracts and subcontracts relating to the Project;

5. All deposits (including tenants' security deposits, if any), funds, accounts, contract rights, instruments, documents, general intangibles (including trademarks, trade names and symbols used in connection therewith), and notes or chattel paper arising from or by virtue of any transactions related to the Property;

6. All permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Property;

7. All bank accounts in which rental income, if any, from the Property is deposited;

8. All proceeds arising from or by virtue of the sale, lease or other disposition of any of the real or personal property described herein;

9. All proceeds (including premium refunds) payable or to be payable under each policy of insurance relating to the Project;

10. All proceeds arising from the taking of all or a part of the Property or any rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, for any public or quasi-public use under any law or by rights of eminent domain, or by private or other purchase in lieu thereof; and

11. All other interest of every kind and character which Debtor now has or at any time hereafter acquires in and to the above-described personal property and all property which is used or useful in connection therewith.

SIGNATURE OF DEBTOR:

*

By: _____

Name:

Title:

PROMISSORY NOTE

U.S. \$*

*, 2003

For value received, * ("Borrower") promises to pay to the order of **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS** ("Lender") at 507 Sabine St., P.O. Box 13941 in the City of Austin, Travis County, Texas 78711-3941 (or at such other place in Austin, Travis County, Texas, as Lender may from time to time designate by written notice to Borrower), the sum \$* or so much thereof as may be advanced and outstanding, together with interest thereon as hereinafter provided.

The principal and interest of this Note shall be due and payable in legal tender of the United States of America as follows: one installment of \$* shall be due and payable on this day of *, 2003, and semi-annual installments in the same amount ("Scheduled Payment") shall be due and payable on * and * of each year until the * day of *, on which date the entire balance of principal plus accrued interest shall be due and payable ("Maturity"). Each installment received hereunder shall be applied first to the payment of interest accrued to the date the installment is paid and the remainder shall be applied to principal. To the extent that any payment is less than the Scheduled Payment as a result of insufficient available Surplus Cash, that amount ("Deferred Payment Amount") will be accrued and added to a Deferred Payment Account ("Deferred Payment Account"). Interest will not accrue on the Deferred Payment Amount but the deferred amount will be paid from available Surplus Cash after the next Scheduled Payment. Borrower will complete the attached Exhibit A for each Scheduled Payment.

"Surplus Cash" means any Cash remaining after:

(1) The payment of:

(i) All sums due or currently required to be paid under the terms of any mortgage or note insured or held by the Secretary of Housing and Urban Development;

(ii) All amounts required to be deposited in the reserve fund for replacement;

(iii) All Obligations of the Project other than the insured mortgage unless funds for payment are set aside or deferment of payments has been approved by the Secretary; and

(2) The segregation of:

(i) An amount equal to the aggregate of all special funds required to be maintained by the project; and

(ii) All tenants security deposits held.

“Cash” as used in the definition of "Surplus Cash" means all gross revenues and receipts derived by the Borrower from the operation of the Project during the period in question, including tenant rents and all other moneys as may be paid to or on behalf of the Borrower or to which the Borrower may be entitled with respect to the Project including interest earnings but excluding receipt of tenant security deposits.

"All Obligations of the Project" as used in the definition of "Surplus Cash" means only the sum of:

(a) operating expenses actually incurred by the Borrower for the Project during the period in question (provided that management fees for the Project will be deemed to be equal to the lesser of the management fees actually paid or *% of the actual Project Revenues) with an appropriate adjustment to include in such period an allocable share of property taxes and insurance premiums;

(b) recurring maintenance expenses actually incurred by the Borrower for the Project during the period in question (except to the extent such items are funded from the reserve fund for replacements);

(c) all amounts required to be deposited in the reserve fund for replacements;

(d) all sums due or currently required to be paid under the terms of any mortgage or note insured or held by the Secretary;

(e) all other obligations of the project approved by Lender other than the insured mortgage unless funds for payment are set aside or deferment of payment has been approved by the Secretary and Lender; and

(f) the term specifically excludes any payments or obligations to Borrower, ownership entities of the Borrower or related party entities.

“Payment Term” as used herein means the full stated term of the loan evidenced by this promissory note.

On each semi-annual payment date during the Permanent Term, Borrower will provide Lender an accounting of the Surplus Cash for the applicable period and operating statements for the collateral property, both certified by an authorized representative of Borrower, in a form acceptable to Lender. Lender reserves the right to request audited operating statements at Borrower's expense.

Computations of interest on the unpaid principal balance of this Note shall be made on the basis of 365 or 366 days in a year, as applicable.

After Maturity (by acceleration or otherwise) and until paid, the unpaid principal balance and accrued interest then due shall bear interest at the lesser of (i) * percent (*%) per annum or (ii) the highest interest rate allowed by Applicable Law ("Default Interest Rate"). Notwithstanding any other provision of this Note, the daily Default Interest Rate shall be calculated by dividing the Default Interest Rate per annum applicable for such day by the actual number of days in the calendar year (whether 365 or 366).

This Note may be prepaid in part or in its entirety at any time, without notice or penalty but any amounts prepaid may not be reborrowed. Partial prepayment shall be applied first to accrued and unpaid interest with the balance to the principal installments in reverse order of Maturity. Any payment received more than thirty (30) days before it is due shall be considered a prepayment, unless Borrower otherwise designates in writing at the time such payment is made.

All amounts owing on this Note shall be payable at the address of Lender stated above (or at such other place in Austin, Travis County, Texas designated by Lender in writing delivered to Borrower at the address of Borrower set forth below) in lawful money of the United States of America that is legal tender for public and private debts at the time of payment. The making of any payment in other than immediately available funds, which Lender, at its option, elects to accept shall be subject to collection.

Except as provided in this Note, Borrower and each endorser and guarantor of this Note jointly and severally waive grace, presentment for payment, notice of renewals and extensions, notice of nonpayment, notice of protest, notice of and demand for payment of installments or other amounts coming due under this Note that are not paid when due, notice of intent or election to accelerate Maturity or the actual acceleration of Maturity of the indebtedness evidenced by this Note, and diligence in the collection of this Note or in filing suit on this Note and in seizing or foreclosing on any collateral securing this Note and agree to one or more extensions of Maturity and partial payments before or after Maturity without prejudice to rights of the holder of this Note.

If this Note is placed in the hands of an attorney for collection or is collected by legal proceedings of any kind, Borrower agrees to pay all costs of collection, including reasonable attorneys' fee and costs.

This Note is secured by the liens and security interests granted in the Deed of Trust (with security agreement and assignment of rents) of even date herewith from Borrower to Daisy Stiner, Trustee for Lender.

The proceeds of this Note will be advanced to Borrower at its special instance and request in accordance with the terms of that certain Construction Loan Agreement (the "Loan Agreement") executed effective of even date herewith between Borrower and Lender.

In the event of default in the payment of any part of the principal or interest on this Note which is available from Surplus Cash as Determined by Lender and not tendered by Borrower and Borrower's failure to cure the default within ten (10) days after Lender's delivery of written notice of default to Borrower, or in the event of default in the performance of any agreement

contained in the Loan Agreement or any document securing the payment of this Note or otherwise executed in connection herewith, and Borrower's failure to cure the default within thirty (30) days after Lender's delivery of written notice of the default to Borrower, then the holder of this Note shall have the unconditional right, without demand, notice, or other action, to declare the unpaid principal balance of this Note, together with interest accrued on the unpaid principal balance, at once due and payable and to foreclose each lien and security interest securing the payment of this Note, either under any power of sale contained in any documents creating such lien or security interest or by court proceedings, as the holder may elect. Notice shall be deemed to have been delivered upon actual receipt or upon deposit, if deposited in an official depository of the United States Postal Service, properly addressed to the party entitled to the notice, marked certified mail, return receipt requested, and containing sufficient postage. For the purpose of notice, Borrower's address is *. Borrower shall have the right to change its address and specify any other address within the United States of America by at least five (5) days' written notice to Lender.

All agreements and transactions between Borrower and Lender, whether now existing or hereafter arising, whether contained herein or in any other instrument, and whether written or oral, are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of the Maturity hereof, prepayment, demand for payment or otherwise, shall the amount contracted for, charged or received by Lender from Borrower for the use, forbearance, or detention of the principal indebtedness or interest hereof, which remains unpaid from time to time, exceed the maximum amount permissible under Applicable Law, it particularly being the intention of the parties hereto to conform strictly to the law of the State of Texas and of the United States of America, whichever is applicable. Any interest payable hereunder or under any other instrument relating to the loan evidenced hereby that is in excess of the legal maximum under Applicable Law, shall, in the event of acceleration of Maturity, prepayment, demand for payment or otherwise, be automatically, as of the date of such acceleration, prepayment, demand or otherwise, applied to a reduction of the principal indebtedness hereof and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of such principal, such excess shall be refunded to Borrower. To the extent permitted by Applicable Law, determination of the legal maximum amount of interest shall at all times be made by amortizing, prorating, allocating and spreading in equal parts during the period of the full stated term of the loan, all interest at any time contracted for, charged or received from Borrower in connection with the loan, so that the actual rate of interest on account of such indebtedness is uniform throughout the term thereof.

This Note shall be governed by and construed in accordance with the laws of the State of Texas and the United States of America from time to time in effect.

Borrower warrants and represents to Lender and to each present and future owner and holder of this Note that all loans evidenced by this Note are for business, commercial, investment, agricultural or other similar purpose and not primarily for personal, family, or household use, as such terms are used in Chapter One of the Texas Finance Code.

Notwithstanding anything herein to the contrary, Lender shall have no recourse against Borrower, nor against any guarantor, if any, for payment and performance of all of the

obligations, covenants and agreements of Borrower under this Note and the documents securing same including, but not limited to the Deed of Trust (said documents hereafter collectively called "Security Documents"), except to the full extent of all of the Property which constitutes security for this Note. If default occurs in the timely and proper payment of any portion of such indebtedness or in the timely performance of any of such obligations, agreement or covenants, any judicial proceedings brought by Lender against Borrower or any guarantor shall be limited to the protection and preservation of the Property, the preservation, enforcement and foreclosure of the liens, mortgages, assignments, rights and security interests now or at any time hereafter securing the payment of the Note, and enforcement and collection of obligations, covenants and indebtedness for which Borrower and any guarantors remain liable as provided in this paragraph. If there is a foreclosure of any such liens, mortgages, assignments, rights, and security interests securing the payment of this Note, by power of sale or otherwise, no judgment for any deficiency upon such indebtedness shall be sought or obtained by Lender against Borrower. Notwithstanding the foregoing provisions of this paragraph or any other agreement, Lender shall have full recourse against Borrower and all guarantors, if any, for: (a) for fraud or misrepresentation by Borrower or any guarantor in connection with the transactions herein contemplated; (b) for failure to pay taxes, assessments, charges for labor or materials or other charges that can create liens on any portion of the Property ; (c) for the misapplication of (i) proceeds of insurance covering any portion of the Property, or (ii) proceeds of the sale or condemnation of any portion of the Property, or (iii) rentals received by or on behalf of Borrower subsequent to the date on which Lender gives written notice of the posting of foreclosure notices, (d) for failure to prevent waste to the Property unless Lender is compensated therefor by insurance proceeds collected by Borrower; (e) for the return to Lender of all unearned advance rentals and security deposits paid by tenants of the Property and not refunded to or forfeited by such tenants, (f) for the return of, or reimbursement for, all personalty taken from the Property by or on behalf of Borrower, (g) for all court costs and for all attorneys' fees provided for in any instrument governing, securing or pertaining to the payment of the Note; and (h) for failure to comply with any indemnification provision or covenants pertaining to environmental matters contained in the Security Documents.

THIS WRITTEN AGREEMENT AND THE OTHER WRITTEN AGREEMENTS, INCLUDING THE COLLATERAL AGREEMENTS, SIGNED CONTEMPORANEOUSLY WITH THE SIGNING HEREOF REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

BORROWER

By: _____
Name: _____
Title: _____

CONSTRUCTION LOAN AGREEMENT

This Construction Loan Agreement (this "Agreement") is entered into as of this _____ day of *, 2003, by and between **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official department of the State of Texas ("Lender"), and * ("Borrower").

ARTICLE 1 **DEFINITIONS**

1.1 Definitions. As used in this Agreement, the following terms shall have the meanings indicated:

Architect. *

Completion. When all of the following have been delivered to Lender: (i) Certificate of Occupancy (or its equivalent) from the appropriate Governmental Authority having jurisdiction over the Mortgaged Property, (ii) Certificate of Substantial Completion from the Architect, and (iii) an Affidavit and Full Release of Liens in recordable form from the General Contractor and, upon request of Lender, any other contractors or subcontractors who have performed work on, or furnished materials for, the Improvements, or other documentation specified by Lender.

Completion Date: The date that the Improvements are constructed to Completion, but in no event later than *.

Completion Deposit: An amount (if any) calculated by Lender to equal the difference between (i) the amount which Lender from time to time determines to be necessary to pay all costs to be incurred in connection with the completion of the development of the Mortgaged Property and the construction, marketing, ownership, management, maintenance, operation, sale or leasing of the Improvements in accordance with this Agreement; to pay all sums which may accrue under the Security Documents prior to repayment of the Indebtedness, including, without limitation, the generality of the foregoing, interest on the Indebtedness; and to enable Borrower to perform and satisfy all of the covenants of Borrower contained in the Security Documents, and (ii) the funds then unadvanced by Lender to Borrower on the Note.

Construction Contracts: Any and all contracts and agreements, written or oral, between Borrower and the General Contractor, between Borrower and any other original contractor, between any of the foregoing and any subcontractor and between any of the foregoing and any other person or entity relating in any way to the construction of the Improvements, including, without limitation, the performing of labor or the furnishing of standard or specially fabricated materials in connection therewith.

Deed of Trust: The Deed of Trust and Security Agreement of even date herewith executed by Borrower conveying the Mortgaged Property to a trustee for Lender to secure the repayment of the Indebtedness and performance of the Obligations and all amendments thereto.

Environmental Law: Any federal, state, or local law, statute, ordinance, or regulation pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the "Property" (as hereinafter defined) including, without limitation, (i) the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, as now or hereafter amended (RCRA) (42 U.S.C. §6901 et seq.); (ii) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.) ("CERCLA" or "SuperFund"), as amended from time to time, (iii) the Clean Water Act, as now or hereafter amended (CWA) (33 U.S.C. § 1251 et seq.); (iv) the Toxic Substances Control Act, as now or hereafter amended (TSCA) (15 U.S.C. § 2601 et seq.); (v) the Clean Air Act, as now or hereafter amended (CAA) (42 U.S.C. § 7401 et seq.); (vi) Texas Solid Waste Disposal Act (V.T.C.A. Health and Safety Code § 361.001 et seq.); and the Texas Water Code (V.T.C.A. Water Code §§ 26.001-25.407); (vii) all regulations promulgated under any of the foregoing; (viii) any local, state or federal law, statute, regulation or ordinance analogous to any of the foregoing; and (ix) any other federal, state, or local law (including any common law), statute, regulation, or ordinance regulating, prohibiting, or otherwise restricting the placement, discharge, release, threatened release, generation, treatment, or disposal upon or into any environmental media of any substance, pollutant, or waste which is now or hereafter classified or considered to be hazardous or toxic to human health or the environment.

Environmental Report: A report prepared by a reputable engineer or other party satisfactory to Lender in such detail as Lender may require, indicating that no part of the Mortgaged Property is contaminated with Hazardous Materials or is subject to undue risk of contamination by Hazardous Materials.

Event of Default: Any happening or occurrence described in Article 7 hereof.

General Contractor: *, or any other general contractor engaged by Borrower and approved in writing by Lender to construct the Improvements or any part thereof.

Governmental Authority: Any and all courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

* Guarantor (individually and/or collectively, as the context may require): *

Guaranty (individually and/or collectively, as the context may require): That or those instruments of guaranty, if any, now or hereafter in effect, from Guarantor in favor of Lender guaranteeing the repayment of all or any part of the Indebtedness and/or satisfaction of, or continued compliance with, the Obligations.

Hazardous Materials: Any flammables, explosives, radioactive materials, asbestos, petroleum products, or other hazardous waste, including, without limitation, substances defined as "hazardous substances", "hazardous materials", or "toxic substances" in any Environment Law.

Improvements: The improvements described in the Plans, being generally described as *.

Indebtedness: The principal of, interest on and all other amounts, payments and premiums due under or secured by the Note, the Deed of Trust, the Guaranty and any and all other documents now or hereafter executed by Borrower, Guarantor or any other person or party in connection with the loan evidenced by the Note.

Independent Supervising Architect: The architect, engineer, agent, consultant or other inspector selected and retained by Lender, at Borrower's expense, to supervise construction of and inspect the Improvement on behalf of Lender.

Land: The real estate or interest therein described on Exhibit A attached hereto and made a part hereof for all purposes, all fixtures and improvements situated thereon and all rights, titles and interests appurtenant thereto.

Leases: Any and all leases, subleases, licenses, concessions or other agreements (written or oral, now or hereafter in effect) which grant a possessory interest in and to, or the right to use, all or any part of the Mortgaged Property, together with all security and other deposits made in connection therewith, and all other agreements, such as engineer's contracts, utility contracts, maintenance agreements and service contracts, which in any way relate to the design, use, occupancy, operation, maintenance, enjoyment or ownership of the Mortgaged Property, save and except any and all leases, subleases or other agreements pursuant to which Borrower is granted a possessory interest in the Land.

Legal Requirements: (i) Any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates or ordinances of any Governmental Authority in any way applicable to Borrower, any Guarantor or the Mortgaged Property, including, without limitation, the ownership, use, construction, occupancy, possession, operation, maintenance, alteration, repair or reconstruction thereof, (ii) any and all covenants, conditions, and restrictions contained in any deed or other form of conveyance or in any other instrument of any nature that relate in any way or are applicable to the Mortgaged Property or the ownership, use, construction, occupancy, possession, operation, maintenance, alteration, repair or reconstruction thereof, (iii) Borrower's or Guarantor's presently or subsequently effective bylaws and articles of incorporation or partnership, limited partnership, joint venture, trust or other form of business association agreement, (iv) any and all Leases, (v) any and all terms, provisions and conditions of any commitment which are to be performed or observed by Borrower, (vi) any and all leases, other than those described in (iv) above, and (vii) other contracts (written or oral) of any nature that relate in any way to the Mortgaged Property and to which Borrower or any Guarantor may be bound, including, without limitation, any lease or other contract pursuant to which Borrower is granted a possessory interest in the Land.

Mortgaged Property: The Land, Improvements and Leases, all other property (real, personal or mixed) which is conveyed by the Deed of Trust or in which a security interest is therein created and all other property (real, personal or mixed) on which a lien or security interest is placed or granted to secure the repayment of the Indebtedness or the performance and discharge of the Obligations.

Note: The Promissory Note of even date herewith, executed by Borrower, payable to the order of Lender, in the amount of \$* and any and all modifications, renewals, rearrangements, reinstatements, enlargements or extensions thereof or of any promissory note or notes given therefor.

Obligations: Any and all of the covenants, conditions, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Borrower, Guarantor or any other person or party to Lender or others as set forth in the Note, the Deed of Trust, the Guaranty, the Leases and all other documents now or hereafter executed by Borrower, Guarantor or any other person or party in connection with the loan evidenced by the Note and in any deed, lease, sublease or other form of conveyance or any other agreement pursuant to which Borrower is granted a possessory interest in the Land.

Plans: Any and all contracts and agreements, written or oral, between Architect and Borrower, together with the final plans, specifications, shop drawings and other technical descriptions prepared for the construction of the Improvements, and all amendments and modifications thereof.

Security Documents: This Agreement, the Note, Deed of Trust, the Guaranty and any and all other documents now or hereafter executed by Borrower, the Guarantor or any other person or party to evidence or secure the payment of the Indebtedness or the performance and discharge of the Obligations.

Title Company: The issuer of the Title Insurance.

Title Insurance: A mortgagee policy of title insurance, in form and substance satisfactory to Lender and containing no exceptions (printed or otherwise) which are unacceptable to Lender, issued by a title company (or, if Lender so requires, by several title companies on a co-insured or reinsured basis) acceptable to Lender in the face amount of the Note and insuring that Lender has a first and prior lien on the Land and Improvements, subject only to the permitted encumbrances described in the Deed of Trust.

ARTICLE 2

BORROWER'S WARRANTIES AND REPRESENTATIONS

Borrower hereby unconditionally warrants and represents unto Lender as follows:

2.1 Information. Any and all information, reports, papers and other data (including, without limitation, any and all balance sheets, statements of income or loss, reconciliation of surplus and financial data of any other kind) heretofore furnished, or to be furnished, Lender by or on behalf of Borrower are, or when delivered will be, true and correct in all material respects; all financial data has been, or when delivered will have been, prepared in accordance with generally accepted accounting principles consistently applied and fully and accurately present, or will present, the financial condition of the subjects thereof as of the dates thereof; and, with respect to the

financial data heretofore furnished, no materially adverse change has occurred in the financial condition reflected therein since the dates thereof.

2.2 Litigation. Except as may be otherwise set forth on any exhibit attached hereto, there are no actions, suits or proceedings of a material nature pending or, to the knowledge of Borrower, threatened against or affecting Borrower, any Guarantor or the Mortgaged Property, or involving the validity or enforceability of the Deed of Trust or the priority of the liens and security interests created therein; and no event has occurred (including specifically Borrower's and Guarantor's execution of the respective Security Documents and Borrower's consummation of the loan represented thereby) which will violate, be in conflict with, result in the breach of or constitute (with due notice or lapse of time, or both) a default under any Legal Requirement or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever on the Mortgage Property other than the liens and security interests created by or expressly permitted under the Security Documents.

2.3 Compliance with Legal Requirements. Borrower has (or prior to commencement of the Improvements will have) (i) received all requisite building permits and approvals of the Plans, (ii) filed and/or recorded all requisite plats and other instruments and (iii) complied with all Legal Requirements required to be met prior to commencement of construction of the Improvements.

2.4 Streets, Easements, Utilities and Other Services. All streets, easements, utilities and related services necessary for the construction of the Improvements and the operation thereof for their intended purpose are (or within thirty (30) days after commencement of construction of the Improvements, will be) available to the boundaries of the Land, including, without limitation, potable water, storm and sanitary sewer, gas, electric and telephone facilities and garbage removal.

2.5 Contract and Commencement of Construction. Neither Borrower, any Guarantor nor anyone else on Borrower's behalf has (i) commenced construction of the Improvements, (ii) purchased, contracted for or otherwise brought upon the Land any materials, specially fabricated or otherwise, to be incorporated into the Improvements, (iii) entered into any Construction Contracts or (iv) made any oral or written contract or arrangement of any kind the performance of which by the other party thereto would or could give rise to a lien or claim on the Mortgaged Property, or any portion thereof.

2.6 Validity of Security Documents. All action on Borrower's part requisite for the due authorization, creation, issuance, execution and delivery of the Security Documents has been duly and effectively taken, and each such document constitutes a legal and binding obligation of, and is valid and enforceable against, Borrower and the Mortgaged Property (as the case may be) in accordance with the terms thereof.

2.7 Environmental Matters; Hazardous Substances. The Mortgaged Property has not been the site of any activity that would violate any past or present Legal Requirements, including, without limitation, any Environmental Law. Specifically, without limitation, (i) no solid waste, as that term is defined in the Texas Solid Waste Disposal Act, and no petroleum or petroleum

products have been handled on the Mortgaged Property such that they may have leaked or spilled on to the Mortgaged Property or contaminated the Mortgaged Property, (ii) there is no on-site contamination resulting from activities on the Mortgage Property or adjacent tracts, (iii) there is no off-site contamination resulting from activities on the Mortgaged Property, (iv) the Mortgaged Property contains no Hazardous Materials, and (v) there are no underground storage tanks located in, on or under the Mortgaged Property.

ARTICLE 3

BORROWER'S COVENANTS

Borrower hereby unconditionally covenants with Lender as follows:

3.1 Construction of Improvements. The construction of the Improvements will be commenced by Borrower forthwith, will be prosecuted by Borrower with diligence and continuity to Completion and will be completed by Borrower in a good and workmanlike manner in substantial accordance with the Plans and the other provisions of this Agreement, on or before the Completion Date and free and clear from all liens, or claims for liens, other than the liens and security interests created by the Security Documents. Borrower agrees that (i) construction of the Improvements shall not be commenced unless and until Borrower has furnished the Plans to Lender and afforded Lender the opportunity to accept them (which acceptance shall be evidenced, if at all, by the initials of an authorized representative of Lender thereon), (ii) when the Plans have been furnished to Lender, no changes of a material nature will be made to them by, or be permitted to be made to them by Borrower, Guarantor, Architect or any other person or entity without the prior written approval therefor of all requisite Governmental Authorities, prior compliance with all requisite Legal Requirements and prior acceptance by the Lender, (iii) in instances where Lender does accept the Plans (or any change therein), such acceptance shall be deemed to be strictly limited to an acknowledgement of Lender's consent to the Improvements being constructed in accordance therewith and shall not, in any way, be deemed to imply any warranty, representation or approval by Lender that such Improvements, if so constructed, will be structurally sound, will comply with all Legal Requirements, will be fit for any particular purpose or will have a market value of any particular magnitude, and (iv) within twenty (20) days after construction of the Improvements has commenced Borrower and General Contractor shall execute and file an Affidavit of Commencement in accordance with Section 53.124(c) of the Texas Property Code and provide a copy thereof to Lender.

3.2 Affirmative Covenants. At all times during construction of the Improvements, Borrower will (i) permit Lender, the Independent Supervising Architect and their representatives, to enter upon the Land and into the Improvements, to inspect the same and all materials to be used in the construction of the Improvements and to examine the Plans, (ii) comply strictly with all Legal Requirements, (iii) deliver to Lender, or its representatives, immediately upon demand, counterparts and/or conditional assignments of any and all Construction Contracts, bills of sale, statements, conveyances, receipted vouchers or agreements of any nature under which Borrower claims title to any materials or supplies used or to be used in the construction of the Improvements, (iv) either cause each Construction Contract to contain a provision specifically subordinating any lien right against the Mortgaged Property to the liens and security interests created by the Security Documents or cause the other party thereto to execute any and all

instruments, acceptable in form and substance to Lender, to accomplish the same, (v) if requested by Lender, furnish to Lender, immediately after the pouring of each concrete slab, street and curbstone within the Land, the completion of each foundation of a structure forming part of the Improvements and the completion of the Improvements, a survey certified to by a licensed engineer acceptable to Lender showing all of same and that the location thereof is entirely within the property lines of the Land and does not encroach upon, breach or violate any building line, easement or similar restriction, (vi) use all advances made to it by Lender for, and only for payment of the costs itemized in Section 6.2 hereof and under no circumstances use, directly or indirectly, any portion of such advances for any other purpose, (vii) obtain and maintain, in full force and effect, an owner's and contractor's liability insurance policy or policies (including worker's compensation insurance) and a hazard insurance policy or policies in builder's risk form with loss payable endorsements acceptable to Lender insuring the Improvements and all materials and supplies purchased with advances hereunder against all risks and losses, all such insurance policies to be issued by companies, in amounts and on terms approved by Lender, (viii) upon demand of Lender or the Independent Supervising Architect, furnish Lender with a current list of original contractors, subcontractors, materialmen, vendors, artisans and laborers performing work on the Improvements, and (ix) upon demand of Lender or the Independent Supervising Architect, correct any structural defect in the Improvements or any material departure from the Plans not accepted by Lender, it being understood and agreed that the advance of any loan proceeds shall not constitute a waiver of Lender's right to require compliance with this Section 3.2 with respect to any such defects or departures. Within five (5) days after Completion, Borrower and General Contractor shall execute and file an Affidavit of Completion in accordance with Section 53.106 of the Texas Property Code and provide a copy thereof to Lender.

3.3 Negative Covenants. At no time shall Borrower (i) use, maintain, operate or occupy, or allow the use, maintenance, operative or occupancy of, any part of the Mortgaged Property for any purpose which violates any Legal Requirement or in any manner which may be dangerous unless safeguarded as required by law or which may constitute a public or private nuisance or which may make void, voidable or cancelable or increase the premium of any insurance then in force with respect thereto, or (ii) create or place, permit to be created or placed or, through any act or failure to act, acquiesce in the creation or placing of, or allow to remain, any mortgage, lien (statutory, constitutional or contractual), pledge, security interest, encumbrance of charge or conditional sale or other title retention agreement on the Mortgaged Property (or any part thereof) other than those created by or expressly permitted under the Security Documents, regardless of whether same is expressly subordinate to the liens and security interests created in the Security Document. If any such mortgage, lien, pledge, security interest, encumbrance or charge is asserted against the Mortgaged Property (or any part thereof), Borrower shall promptly, at its own cost and expense, (a) pay the underlying claim in full or take any other action necessary to cause same to be released or, if permitted by Lender in Lender's sole discretion, bonded to the satisfaction of Lender and the Title Company and (b) within five (5) days from the date such mortgage, lien, pledge, security interest, encumbrance or charge is asserted, give Lender notice thereof. The notice shall specify who is asserting such mortgage, lien, pledge, security interest, encumbrance or charge and shall detail the origin and nature of the underlying claim giving rise to the asserted mortgage, lien, pledge, security interest, encumbrance or charge.

3.4 Completion Deposit. If, in the judgment of Lender, it appears at any time or from time to time that the unadvanced loan proceeds will be insufficient to (i) pay all costs to be incurred in connection with the completion of the development of the Mortgaged Property and the construction, marketing, ownership, management, maintenance, operation, sale or leasing of the Improvements in accordance with this Agreement, (ii) pay all sums which may accrue under the Security Documents prior to repayment of the Indebtedness, including, without limitation, interest on the Indebtedness, and (iii) enable Borrower to perform and satisfy all of the covenants of Borrower contained in the Security Documents, Borrower shall immediately deposit, or shall make arrangements satisfactory to Lender to deposit with Lender, the Completion Deposit. The Completion Deposit may be retained by Lender in a non-interest bearing account, need not be segregated from any of Lender's other funds and may be disbursed in accordance with the provisions of the Security Documents by Lender before making any further advances on the Note.

ARTICLE 4 **INSPECTION**

4.1 Inspection. Lender, through its officers, agents or employees, shall have the right at all reasonable times at Borrower's expense:

(a) To enter upon the Mortgaged Property and inspect the construction to determine that it is in conformity with the Plans and all the requirements hereof; and

(b) To examine, copy and make extracts of, the books, records, accounting data and other documents of Borrower that relate in any way to the Mortgaged Property, including without limiting the generality of the foregoing all permits, licenses, consents and approvals of all Governmental Authorities having jurisdiction over Borrower or the Mortgaged Property and all the relevant books and records of contractors and subcontractors supplying goods and/or services in connection with the construction of the Improvements. All such books, records and documents shall be made available to Lender promptly upon written demand therefor; and, at the request of Lender, Borrower shall furnish Lender with convenient facilities for the foregoing purpose. All contracts made or amended by Borrower or its contractors and subcontractors after the date hereof 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.

4.2 No Duty to Inspect. It is expressly understood and agreed that Lender shall have no duty to supervise or to inspect the construction of the Improvements or any books and records, and that any such inspection shall be for the sole purpose of determining whether or not the Obligations of Borrower are being properly discharged and or preserving Lender's rights hereunder. If Lender, or the Independent Supervising Architect acting on behalf of Lender, should inspect the construction of the Improvements or any books and records, Lender and the Independent Supervising Architect shall have no liability or obligation to Borrower or any third party arising out of such inspection. Inspection not followed by notice of default shall not constitute a waiver of any default then existing; nor shall it constitute an acknowledgement or representation by Lender and the Independent Supervising Architect that there has been or will be compliance with the Plans and all Legal Requirements or that the construction is free from

defective materials or workmanship or a waiver of Lender's right thereafter to insist that the Improvements be constructed in accordance with the Plans and Legal Requirements. Lender's failure to inspect the construction of the Improvements or any part thereof or any books and records shall not constitute a waiver of any of Lender's rights hereunder. Neither Borrower nor any third party shall be entitled to rely upon any such inspection or review. Lender and the Independent Supervising Architect owe no duty of care to Borrower or any third party person to protect against, or inform Borrower or any third person of the existence of negligent, faulty, inadequate or defective design or construction of the Improvements.

4.3 Borrower's Responsibilities. Borrower shall be solely responsible for all aspects of Borrower's business and conduct in connection with the Mortgaged Property, including without limitation:

- (a) the quality and suitability of the Plans;
- (b) supervision of construction of the Improvements;
- (c) the qualifications, financial condition and performance of all architects, engineers, contractors, subcontractors and material suppliers, consultants, and property managers;
- (d) conformance of construction of the Improvements to the Plans, to all Legal Requirements and to the requirements of this Agreement;
- (e) the quality and suitability of all materials and workmanship; and
- (f) the accuracy of all requests for the disbursement of loan proceeds and the proper application of disbursed loan proceeds.

4.4 Inspection Fee. In furtherance of Lender's rights hereunder, Lender may, at its option, require an inspection of the Mortgaged Property by the Independent Supervising Architect (i) prior to each advance, (ii) at least once each month during the course of construction even though no advance is to be made for that month, (iii) upon Completion of construction of the Improvements, and (iv) at least annually thereafter. Borrower shall pay all fees for all inspections of the Mortgaged Property. Furthermore, if Lender determines in connection with any such inspection that extra services will be required of the Independent Supervising Architect as a result of noncompliance with the Plans or any Legal Requirement, as a result of deviations from acceptable construction practices, or as a result of Borrower's failure to satisfy the requirements of any commitment or any other agreement, then Borrower shall pay, in addition to the fees for such inspections, the cost of all such extra services.

ARTICLE 5

ADDITIONAL SECURITY

5.1 Construction Contracts. As additional security for the payment of the Indebtedness, Borrower hereby transfers and assigns to Lender all of Borrower's rights, title and interests, but not its obligations, in, under and to the Construction Contracts upon the following terms and conditions:

- (a) Borrower represents and warrants that each copy of any Construction Contract furnished to Lender is a true and complete copy thereof and that Borrower's interest therein is not subject to any claim, setoff or encumbrance.

(b) Neither this assignment nor any action by Lender shall constitute an assumption by Lender of any obligations under the Construction Contracts and Borrower shall continue to be liable for all obligations of Borrower thereunder, Borrower hereby agreeing to perform all of its obligations under the Construction Contracts. Borrower agrees to indemnify and hold Lender harmless against and from any loss, cost, liability or expense (including, without limiting the generality of the foregoing, reasonable attorneys' fees) incurred by Lender and resulting from any failure of Borrower to perform.

(c) Lender shall have the right at any time (but shall have no obligation) to take, in its name or in the name of Borrower, such action as Lender may at any time determine to be necessary or advisable to cure any default under the Construction Contracts or to protect the rights of Borrower or Lender thereunder. Lender shall incur no liability if any action so taken by it or in its behalf shall prove to be inadequate or invalid, and Borrower agrees to hold Lender free and harmless from any loss, cost, liability or expense (including, without limiting the generality of the foregoing, reasonable attorneys' fees) incurred in connection with any such action.

(d) Borrower hereby irrevocably constitutes and appoints Lender as Borrower's attorney-in-fact, in Borrower's name or in Lender's name, to enforce all rights of Borrower under the Construction Contracts; provided, however, that Lender shall have no obligation to enforce such rights.

(e) Prior to an Event of Default, Borrower shall have the right to exercise its rights as owner under the Construction Contracts; provided, however, that Borrower shall not cancel or amend the Construction Contracts or do, or suffer to be done, any act which would impair the security constituted by this assignment without the prior written consent of Lender.

(f) This assignment shall inure to the benefit of Lender, its successors and assigns, including, without limitation, any purchaser upon foreclosure of the Mortgaged Property or any grantee under a deed in lieu of foreclosure, any receiver in possession of the Mortgaged Property and any corporation formed by or on behalf of Lender which assumes Lender's rights and obligations under this Agreement.

5.2 Plans. As additional security for the payment of the Indebtedness, Borrower hereby transfers and assigns to Lender all of Borrower's rights, title and interest in and to the Plans, and hereby represents and warrants to and agrees with Lender as follows:

(a) The original counterparts of the Plans furnished to Lender are true and complete.

(b) The schedule of the Plans delivered to Lender is a complete and accurate description of the Plans.

(c) The Plans are complete and adequate for the construction of the Improvements, and there have been no modifications thereof except as described in such schedule. The Plans shall not be modified without the prior written consent of Lender, except for nonstructural changes which do not change the cost of construction by more than \$5,000.00.

(d) Lender may use the Plans for any purpose relating to the Improvements, including, without limitation, inspections of construction and the completion of the Improvements.

(e) Lender's acceptance of this assignment shall not constitute approval of the Plans by Lender. Lender has no liability or obligation whatsoever in connection with the Plans and no responsibility for the adequacy thereof or for the construction of the Improvements contemplated by the Plans.

(f) This assignment shall inure to the benefit of Lender, its successors and assigns, including, without limitation, any purchaser upon foreclosure of the Mortgaged Property or any grantee under a deed in lieu of foreclosure, any receiver in possession of the Mortgaged Property and any corporation formed by or on behalf of Lender which assumes Lender's rights and obligations under this Agreement.

ARTICLE 6

LENDER'S COMMITMENT

6.1 Loan. Subject to the terms, provisions and conditions of this Agreement, Lender will make and Borrower will accept, in installments, a loan in the aggregate amount of the principal sum of the Note, it being understood that interest as called for in the Note shall be calculated only on sums actually advanced and only from the dates of such advances.

6.2 Advances. Advances shall be made to Borrower on the principal amount of the Note at the times and otherwise in accordance with the procedures established by Lender. The advances on the Note shall be disbursed, at Lender's option, (i) by Lender's check drawn upon Lender's disbursement account and delivered to Borrower, (ii) by depositing the amount of the disbursement to Borrower's account in a bank approved by Lender, (iii) by direct or joint check payment to any or all persons entitled to payment for work performed on or materials delivered to or services performed in connection with the construction of the Improvements or the loan evidenced by the Note, or (iv) by any other method the Lender shall from time to time elect. The advance as to which the Borrower shall be entitled at any one time shall not exceed the cost of the materials, supplies and equipment purchased for the Improvements and stored on the Land in a manner acceptable to Lender, plus the cost of all materials, supplies, equipment and labor actually incorporated into the Improvement, plus any other costs and fees which have been approved for payment by Lender and which are then due or will become due within thirty (30) days thereafter minus the sum of all prior advances. Under no circumstances shall any portion of any advance be used for any purpose other than the payment of those costs and fees approved by Lender as legitimately relating to the purchase price for the Land, the cost of constructing the Improvements and the payment of the Indebtedness. For each advance made to Borrower hereunder Lender shall retain a sum equal to ten percent (10%) thereof (or a greater percentage, if permitted or required by any Legal Requirement) so that, until a period of thirty (30) days after completion of the Improvements (or such longer period if permitted or required by any Legal Requirement or if, during such longer period, a lien or claim could lawfully be filed against the Mortgaged Property by anyone performing work or services, or furnishing materials or goods, during the construction of the Improvements) Lender shall have in its possession a fund equal to

ten percent (10%) of the total cost of the Improvements. Notwithstanding anything to the contrary contained in or inferable from any other provisions hereof or in any other Security Documents, if the Title Insurance is initially a binder, Lender shall have the right, at any time, to cause the binder to be converted into a policy at Borrower's cost and to use any undisbursed proceeds on the Note, any portion of the Completion Deposit and, to the extent not prohibited by law, any other sum then in Lender's possession as payment for the cost thereof.

6.3 First Advance. Lender shall not be obligated to make the first advance to Borrower unless and until:

- (a) Lender has received true, legible and correct copies of the following:
 - (i) the Plans and the final draft of the Construction Contracts as approved by Lender;
 - (ii) a certificate from the Architect and, if Lender elects, the Independent Supervising Architect stating that the Plans have been approved by him or them and that the Construction Contracts are acceptable to him or them and satisfactorily proved for the construction of the Improvements;
 - (iii) all authorizations and permits which are then procurable and required by any Legal Requirement for the construction and proposed use of the Improvements;
 - (iv) an original current survey of the Land containing the certification of the surveyor in form and substance satisfactory to Lender and showing the perimeter of the Land by courses and distances, all easements and rights-of-way, the boundary lines of the streets abutting the Land and the width thereof, any encroachments and the extent thereof in feet and inches, the relation of the proposed Improvements by distances to the perimeter of the Land and the proposed building lines, all acceptable to the Title Company to modify the "area, boundaries and encroachments" exception of the Title Insurance to the maximum extent permitted by law;
 - (v) the policies of insurance required by the Security Documents accompanied by evidence of the payment of the premium thereof;
 - (vi) a payment and performance bond or bonds, if required by Lender, from such companies and in such amounts as are satisfactory to Lender, which bond or bonds shall name Lender as an additional obligee;
 - (vii) a soils investigation report from a soils engineer satisfactory to Lender;
 - (viii) evidence satisfactory to Lender that the Land is not located within the 100 year flood plain or identified as a special flood hazard area as defined by the Federal Flood Hazard Insurance Program.
 - (ix) a complete project budget in form and substance satisfactory to Lender;

(x) an ad valorem tax service contract covering the Mortgaged Property acceptable to Lender;

(xi) an opinion of counsel for Borrower satisfactory to Lender, if Lender elects;

(xii) a copy of the form of tenant lease satisfactory to Lender to be used by Borrower in connection with the Leases;

(xiii) the Environmental Report; and

(xiv) any other documents and information as Lender may reasonably require.

(b) The Security Documents have been duly authorized, executed and recorded or filed in accordance with applicable Legal Requirements and original counterparts thereof delivered to Lender, all prior to the commencement of construction of the Improvements, the placing of any materials or supplies on the Land, the execution or recording of any Construction Contracts (written or oral) for any of the same or the performance of any other act which could give rise to a lien claim equal or superior to the liens and security interests created by the Security Documents.

(c) The Title Company has issued the Title Insurance.

(d) Borrower, Architect and, if Lender requests, the Independent Supervising Architect have executed, or caused to be executed, and delivered to Lender the Disbursement Request Form, in such form as I acceptable to Lender, certifying in acceptable detail the expenditures made or expenses incurred by Borrower of the type described in Section 6.2 hereof, with such supporting data as Lender may require, and that the amount requested represents sums actually spent or indebtedness actually incurred.

(e) Borrower pays to Lender, or any other person or party entitled thereto, all fees and costs then due and payable in connection with this Agreement and the subject hereof.

6.4 Subsequent Advances. Lender shall not be obligated to make any subsequent advance to Borrower unless and until:

(a) Borrower shall have delivered to Lender a duplicate original of all Construction Contracts in the forms approved by Lender.

(b) Borrower, Architect and, if Lender requests, the Independent Supervising Architect shall have executed, or caused to be executed, and delivered to Lender a Disbursement Request Form as described in Section 6.3(d) hereof and the data referred to therein, or made request for disbursement on such other form acceptable to Lender.

(c) Lender shall have received (i) an endorsement (if permitted or required by virtue of the form thereof) to the Title Insurance increasing the coverage thereof to the full amount of the sum advanced and reflecting no changes in the status of title or the Title Insurance since the previous advance, or, if such endorsement cannot be obtained, an abstractor's certificate or other evidence satisfactory to Lender from the Title Company reflecting that there have been no such changes in the status of title or the Title Insurance, (ii) certification from the Architect and, if Lender elects, the Independent Supervising Architect that, in their opinion, the construction of the Improvements theretofore performed has been in substantial accordance with the Plans, (iii) the survey called for in Section 3.2(vi) hereof and as may be required by the Title Company to issue the endorsement or other evidence referred to in Section 6.4(c)(I) hereof, (iv) at the request of Lender, lien waivers or releases (in recordable form) from all contractors, subcontractors, laborers and materialmen employed or furnishing materials in connection with the construction of the Improvements, (v) all amendments, modifications and revisions satisfactory to Lender in the form of tenant lease, (vi) at the request of Lender, a written certification signed by Borrower as to all Leases and the names of the tenants and rents payable thereunder, together with copies of all such Leases, and (vii) such other certifications or evidence of cost and Completion as Lender may request.

(d) Borrower shall have satisfied, if then applicable, the provisions of Section 3.4 hereof.

6.5 Any Advance. Notwithstanding anything to the contrary contained in or inferable from any of the above, Lender shall not be required to make any advance hereunder if, at any time of the requested advance, any of the following exists:

(a) Any Event of Default exists hereunder or under any other Security Document.

(b) The requested advance, plus the sum of the previous advances (including retained amounts deemed to have been advances pursuant to Section 6.2 hereof) or other sums disbursed by Lender under the Security Documents, exceed the face amount of the Note.

(c) In the judgment of Lender, the Improvements will not be completed in substantial accordance with the Plans and the other provisions of this Agreement on or before the Completion Date, regardless of the cause of such failure to complete.

(d) In the judgment of Lender, the sum of the unadvanced loan proceeds plus other sums being held by Lender in escrow for Borrower are insufficient to complete the Improvements in substantial accordance with the Plans and this Agreement, unless and until the provisions of Section 3.4 are satisfied.

(e) The Mortgaged Property (or any part thereof) is demolished or substantially destroyed or condemnation or similar type proceedings are commenced with reference thereto.

(f) Any change in the status of title to the Land or the Improvements has occurred subsequent to the date hereof without Lender's prior written consent.

(g) Borrower is unable to satisfy all of the conditions set forth in Sections 6.2, 6.3 or 6.4 hereof.

(h) Any event has occurred which has given or could give rise to a lien claim of equal or superior rank to the liens and security interests intended to be created by the Security Documents.

(i) An order or decree in any court of competent jurisdiction exists enjoining the construction of the Improvements or enjoining or prohibiting Borrower or Lender or either of them from performing their respective obligations under this Agreement.

(j) Any material deviation exists in the construction of the Improvements from the Plans without the prior written approval of Lender; or it appears to Lender or the Independent Supervising Architect that there are material defects in the workmanship or materials.

(k) Any encroachment exists which has occurred without the approval of Lender.

(l) Construction has ceased prior to completion of the Improvements for a continuous period of ten (10) days or more for caused other than those beyond the control of Borrower or consented to in writing by Lender.

6.6 Third Party Beneficiaries. All conditions precedent to Lender's obligation to make advances hereunder are imposed solely and exclusively for Lender's benefit. No person or entity other than Lender shall have any standing to require satisfaction of such conditions or be entitled to assume that Lender will refuse to make advances absent strict compliance therewith, and any or all of such conditions may be freely waived (in whole or in part) by Lender at any time or times.

ARTICLE 7 **EVENTS OF DEFAULT**

Each of the following shall constitute an Event of Default hereunder:

7.1 Conditions to Advances. If, at any time, Borrower is unable to satisfy any condition or cure any circumstances specified in Article 6 hereof, including, without limitation the occurrence of any circumstance described in Section 6.5 hereof, the satisfaction or curing of which being precedent to its right to receive an advance hereunder, and such inability continues for a period in excess of thirty (30) days.

7.2 Voluntary Bankruptcy. If Borrower or any Guarantor or, if Borrower or any Guarantor is a partnership, joint venture, trust or other type of business association, if any of the parties comprising Borrower or any Guarantor, shall (i) voluntarily be adjudicated as bankrupt or insolvent, (ii) file any petition or commence any case or proceeding under any provision or chapter of the Federal Bankruptcy Code or any other federal or state law relating to its insolvency, bankruptcy, rehabilitation, liquidation or reorganization, (iii) make a general assignment for the bent of its creditors, (iv) have an order for relief entered under the Federal

Bankruptcy Code with respect to it, (v) convene a meeting of its creditors, or any class thereof, for the purpose of effecting a moratorium upon or extension or composition of its debts, (vi) fail to pay its debts as they mature, (vii) admit in writing that it is generally not able to pay its debts as they mature or generally not pay its debts as they mature, or (viii) become insolvent.

7.3 Involuntary Bankruptcy. If (i) a petition is filed or any case or proceeding described in Section 7.2 hereof is commenced against Borrower or any Guarantor or, if Borrower or any Guarantor is a partnership, joint venture, trust or other type of business association, against any of the parties comprising Borrower or any Guarantor, or against the assets of any such persons or entities, unless such petition and the case or proceeding initiated thereby is dismissed within sixty (60) days from the date of the filing, (ii) an answer is filed by Borrower or any Guarantor or, if Borrower or any Guarantor is a partnership, joint venture, trust or other type of business association, by any of the parties comprising Borrower or any Guarantor, admitting the allegations of any such petition, or (iii) a court of competent jurisdiction enters an order, judgment or decree appointing, without the consent of Borrower or any Guarantor, or, if Borrower or any Guarantor is a partnership, joint venture, trust or other type of business association, of any of the parties comprising Borrower or any Guarantor, a custodian, trustee, agent or receiver for it, or for all or any part of its property, or authorizing the taking possession by a custodian, trustee, agent or receiver of it, or all or any part of its property unless such appointment is vacated or dismissed or such possession is terminated within sixty (60) days from the date of such appointment or commencement of such possession, but not later than five (5) days before the proposed sale of any assets of Borrower or any Guarantor, or if Borrower or any Guarantor is a partnership, joint venture, trust or other business association, of any of the parties comprising Borrower or any Guarantor, by such custodian, trustee, agent or receiver, other than in the ordinary course of the business of Borrower or any Guarantor.

7.4 Payment of Indebtedness. If Borrower shall fail, refuse or neglect to pay, in full, any installment or portion of the Indebtedness as and when the same shall become due and payable, whether at the due date thereof stipulated in the Security Documents, or at a date fixed for prepayment or otherwise, and such failure, refusal or neglect continues for a period of ten (10) days thereafter; provided, however, that if such installment or portion of the Indebtedness becomes due and payable as a result of Lender's accelerating the maturity of the Indebtedness in accordance with the Security Documents, the ten (10) day grace period for payment set forth in this Section 7.4 shall not apply to the accelerated due date.

7.5 Performance of Obligations. If Borrower shall fail, refuse or neglect to perform and discharge fully and timely any of the Obligations as and when called for and such failure, refusal or neglect shall either be incurable or, if curable, shall remain uncured for a period of fifteen (15) days after the earlier to occur of (i) the date Lender gives written notice thereof to Borrower or (ii) the date upon which Borrower had actual knowledge of the Obligation to be performed; provided, however, that if such default is curable but requires work to be performed, acts to be done or conditions to be remedied which, by their nature, cannot be performed, done or remedied, as the case may be, within such fifteen (15) day period, no Event of Default shall be deemed to have occurred if Borrower commences same within such fifteen (15) day period and thereafter diligently and continuously prosecutes the same to completion within forty-five (45) days after such notice or date of actual knowledge.

7.6 False Representations. If any representation, statement or warranty made by Borrower, Guarantor or others in, under or pursuant to any of the Security Documents or any affidavit or other instrument executed in connection with the Security Documents shall be false or misleading in any material respect as of the date hereof or shall become so at any time prior to the repayment in full of the Indebtedness.

7.7 Destruction of Improvements. If the Mortgaged Property is demolished, destroyed or substantially damaged so that (in Lender's judgment) it cannot be restored or rebuilt with available funds to the condition existing immediately prior to such demolition, destruction or damage within a reasonable period of time.

7.8 Change in Financial Condition. If Lender reasonably determines that the likelihood of payment of the Indebtedness or performance of the Obligations secured by the Deed of Trust is threatened by reason of a material adverse change in the financial condition or credit standing of Borrower or any Guarantor or, if Borrower or any Guarantor is a partnership, joint venture, trust or other type of business association, of any of the parties comprising Borrower or any Guarantor, or if the estate held by Borrower in the Land is a leasehold estate, of the ground lessor.

7.9 Foreclosure of Other Liens. If the holder of any lien or security interest on the Mortgaged Property (without hereby implying Lender's consent to the existence, placing, creating or permitting of any such lien or security interest) institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.

ARTICLE 8 **REMEDIES**

8.1 Rights, Remedies and Recourses. Upon the happening of any Event of Default, Lender shall have, in addition to any and all other rights, remedies and recourses available to it under any of the Security Documents or otherwise available at law or in equity, including, without limitation, the right to declare immediately due and payable the unpaid advanced principal and unpaid accrued interest on the Note and to foreclose any and all liens and security interests securing the repayment of same, the right (i) to take exclusive possession of the Mortgaged Property, (ii) to use any funds of Borrower, including, without limitation, the Completion Deposit (if any) and any sums which may remain unadvanced hereunder, to complete the Improvements, (iii) to make such changes in and revisions to the Plans a Lender may deem desirable, (iv) to prosecute and defend all actions or proceedings relating to the construction of the Improvements, (v) to pay, settle or compromise all existing bills and claims which are or may be liens against the Mortgaged Property, or may be necessary or desirable for the completion of the Improvements or the clearance of title, (vi) to executed in Borrower's name all applications, certificates and other instruments which may be required by any Construction Contracts, (vii) to do any and every act with respect to the construction of the Improvements which Borrower may do in its own behalf and (viii) to employ such contractors, subcontractors, agents, attorneys, architects, accountants, watchmen and inspectors as Lender may deem desirable to accomplish any of the above purposes. For these purposes, Borrower hereby constitutes and appoints Lender

its true and lawful attorney-in-fact with full power of substitution to take any and all of the above described action, which power of attorney shall be deemed to be coupled with an interest and shall be irrevocable. All sums expended by Lender for any of the above purposes shall be deemed to be advances hereunder and shall be secured by the Security Documents.

8.2 Cessation of Lender's Obligations. Upon the happening of any Event of Default hereunder or under any other Security Document, all obligations (if any) of Lender hereunder, including, without limitation, any obligation to advance funds hereunder, shall immediately cease and terminate.

8.3 Acceleration. Notwithstanding anything to the contrary herein contained or inferable from any provision of this Agreement, upon the happening of an Event of Default as set forth in Sections 7.2, 7.3 or 7.9 hereof, the unpaid principal and unpaid accrued interest on the Note shall immediately become due and payable in full, without the necessity of any further action on the part of Lender, and Borrower expressly waives any requirement of notice of intent to accelerate, or of notice of such acceleration of, the maturity of the Indebtedness.

ARTICLE 9

GENERAL TERMS AND PROVISIONS

9.1 Performance at Borrower's Expense. Subject to the provisions of Section 9.5 hereof, Borrower shall (i) pay all legal fees incurred by Lender in connection with the preparation of this Agreement and any and all other Security Documents contemplated hereby (including any amendments hereto or thereto or consents, releases or waivers hereunder or thereunder), (ii) pay all out-of-pocket expenses of Lender in connection with the administration of this Agreement and the other Security Documents, (iii) reimburse Lender, promptly upon demand, for all amounts expended, advanced or incurred by Lender to satisfy any obligation of Borrower under this Agreement or any other Security Documents, which amounts shall include all court costs, attorneys' fees (including, without limitation, for trial, appeal or other proceedings), fees of auditors and accountants, and investigation expenses reasonably incurred by Lender in connection with any such matter, and (iv) pay any and all other costs and expenses required to satisfy any provision of this Agreement, including, without limitation, documentary taxes and recording, brokerage, attorneys', surveyors', accountants', engineers', architects' and inspectors' fees and Title Insurance premiums. Except to the extent that certain of these costs and expenses are included within the definition of "Indebtedness", the payment by Borrower of any of these costs and expenses shall not be credited, in any way or to any extent, against any portion of the Indebtedness.

9.2 Approval of Lender and Further Assurances. All instruments and policies of insurance to be executed and/or delivered to Lender, and all proceedings to be taken in connection with this Agreement and the loan provided for herein, and all persons or parties responsible in any way for the construction of the Improvements or any obligation to be performed hereunder or under the other Security Documents, shall be subject to the acceptance of Lender as to form, substance, coverage and identity. Immediately upon request of Lender, Borrower will execute, acknowledge and deliver to Lender such further instruments and do such further acts a Lender may deem necessary to carry out more effectively the purpose of this Agreement or to subject to

the liens and security interests of the Security Documents any property intended by the terms thereof to be covered thereby, including, without limitation, any renewals, additions, substitutions, replacements, betterments or appurtenances to the Mortgaged Property.

9.3 No Waiver. Any failure by Lender to insist, or any election by Lender not to insist, upon Borrower's or any Guarantor's strict performance of any of the terms, provisions or conditions of the Security Documents shall not be deemed to be a waiver of same or of any other term, provision or condition thereof; and Lender shall have the right at any time thereafter to insist upon strict performance by Borrower of any and all of same. In specific, no advance by Lender of any loan proceeds hereunder absent Borrower's strict compliance with Article 6 hereof shall in any way preclude Lender from thereafter declaring such failure to comply to be an Event of Default hereunder.

9.4 Modification. This Agreement shall not be amended, waived, discharged or terminated orally but only by an instrument executed by the party against which enforcement of the amendment, waiver, discharge or termination is sought.

9.5 Applicable Law. This Agreement has been executed under, and shall be construed and enforced in accordance with, the laws of the State of Texas from time to time in effect except to the extent preempted by United States federal law. This Agreement and all of the Security Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with the applicable Texas law governing the maximum rate or amount of interest payable on the Indebtedness (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law). If the applicable law is ever judicially interpreted so as to render usurious any amount called for under the Security Documents or contracted for, charged, taken, reserved or received with respect to the Indebtedness, or if the acceleration of the maturity of the Indebtedness or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable law, then it is Borrower's and Lender's express intent that all excess amounts theretofore collected by Lender be credited on the principal balance of the Note (or, if the Note has been or would thereby be paid in full, refunded to Borrower), and the provisions of Security Documents immediately be deemed reformed and the amounts thereafter collectible thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder. All sums paid or agreed to be paid to Lender for the use, forbearance or detention of the Indebtedness shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such Indebtedness until payment in full so that the rate or amount of interest on account of such Indebtedness does not exceed the usury ceiling from time to time in effect and applicable to the Indebtedness for so long as the Indebtedness is outstanding. To the extent that Lender is relying on Article 5069-1.04, as amended, of the Revised Civil Statutes of Texas to determine the maximum rate (the "Maximum Rate") payable on the Indebtedness, Lender will utilize the indicated (weekly) rate ceiling from time to time in effect as provided in Article 5069-1.04, as amended. To the extent United States federal law permits Lender to contract for, charge or receive a greater amount of interest, Lender will rely on

United States federal law instead of Article 5069-1.04, as amended, for the purpose of determining the Maximum Rate. Additionally, to the extent permitted by applicable law now or hereafter in effect, Lender may, at its option and from time to time, implement any other method of computing the Maximum Rate under such Article 5069-1.04, as amended, or under other applicable law by giving notice, if required, to Borrower as provided by applicable law now or hereafter in effect. In no event shall the provisions of Article 5069 chapter 15 of the Revised Civil Statutes of Texas (which regulates certain revolving credit loan accounts and revolving tri-party accounts) apply to the loan evidenced hereby. Notwithstanding anything to the contrary contained herein or in any of the other Security Documents, it is not Lender's intention to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

9.6 Severability. If any provision hereof or of any of the other Security Documents or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, neither the application of such provision to any other person or circumstance nor the remainder of the instrument in which such provision is contained shall be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

9.7 Rights, Remedies and Recourses Cumulative. All rights, remedies and recourses afforded Lender in the Security Documents or otherwise available at law or in equity, including specifically, but without limitation, those granted by the Uniform Commercial Code in effect in the State of Texas (i) shall be deemed cumulative and concurrent, (ii) may be pursued separately, successively or concurrently against Borrower, any Guarantor or anyone else obligated under any or all of the Security Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Lender, (iii) may be exercised as often as the occasion therefor shall arise, it being understood by Borrower that the exercise, failure to exercise or election not to exercise any of the same shall in no event be construed as a waiver of same or of any other right, remedy or recourse available to Lender, and (iv) are intended to be, and shall be, nonexclusive.

9.8 Successors and Assigns. Subject to the provisions of Section 7.9 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, legal representatives and assigns.

9.9 Notices. All notices or other communications required or permitted to be given pursuant to the provisions of this Agreement shall be in writing and shall be considered properly given if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, or by delivering same in person to the intended addressee, or by prepaid telegram, telex or telecopy. Notice so mailed shall be effective upon its deposit in the custody of the U.S. Postal Service. Notice given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the addressee of the parties shall be as follows:

To Lender: *

To Borrower: *

Either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days notice to the other party in the manner set forth herein.

9.10 Participations. Lender may, at any time, sell, transfer, assign or grant participations in any loan or in any loan documents that Borrower or the partners or joint venturers of Borrower have entered into, executed, or granted in favor of Lender; and Lender may forward to each participant and prospective participant all documents and information relating to any such loan, whether furnished by Borrower or otherwise, as Lender determines necessary or desirable.

9.11 Lender's Right to Perform the Obligations. If Borrower shall fail, refuse or neglect to make any payment or perform any act required by the Security Documents, then Lender at any time thereafter, without notice to or demand upon Borrower and without waiving or releasing any other right, remedy or recourse Lender may have because of same, may make such payment or perform such act for the account of and at the expense of Borrower, and shall have the right to enter the Land and Improvements for such purpose and to take all action with respect to the Mortgaged Property as it may deem desirable. If Lender shall elect to pay any statement, invoice or tax bill, Lender may do so in reliance on any bill, statement or assessment procured from the appropriate Governmental Authority or company without inquiring into the accuracy or validity thereof. Similarly, in making any payments to protect the security intended to be created by the Security Documents, Lender shall not be bound to inquire into the validity of any apparent or threatened adverse title, lien, encumbrance, claim or charge before making an advance for the purpose of preventing or removing the same. Borrower shall indemnify Lender for all losses, expenses, damages, claims and causes of action, including reasonable attorneys' fees, incurred or accruing by reason of any acts performed by Lender pursuant to the provisions of this Section 9.11 or by reason of any other provision in the Security Documents. All sums paid by Lender pursuant to this Section 9.11, and all sums expended by Lender to which it shall be entitled to be indemnified, together with interest thereon at the Default Rate (as such term is defined in the Note) from the date of such payment or expenditure until paid, shall constitute advances on and additions to the Indebtedness, shall be secured by the Security Documents and shall be paid by Borrower to Lender upon demand. This indemnification shall survive the payment of all amounts payable pursuant to and secured by, the Security Documents. Payment by Lender shall not be a condition precedent to the obligations of Borrower under this indemnity.

9.12 Headings. The Article, Paragraph and Subparagraph entitlements hereof are inserted for convenience of reference only and in no way shall alter, modify or define, or be used in construing, the text of such Articles, Paragraphs or Subparagraphs.

9.13 Supplement to Deed of Trust. The provisions of this Agreement are not intended to supersede the provisions of the Deed of Trust but shall be construed as supplemental thereto. In the event of any inconsistency between the provisions hereof and the Deed of Trust, the Deed of Trust shall be controlling. This Agreement shall remain in effect until the Indebtedness has been paid in full.

EXECUTED as of the date first above written.

BORROWER:

*

By: _____
Name: _____
Title: _____

LENDER:

**TEXAS DEPARTMENT OF HOUSING
AND COMMUNITY AFFAIRS**

By: _____
Name: Edwina P. Carrington
Title: Executive Director

EXHIBIT "A"

LEGAL DESCRIPTION OF THE LAND

CONTRACTOR AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF * §

WHEREAS, it is proposed that **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official department of the State of Texas ("Lender"), make a Construction Loan (herein so called) to * ("Borrower"), for, among other things, construction of improvement upon the Land (herein so called) situated in the county and state first herein mentioned, more particularly described in Exhibit "A" hereto (the Land, such improvements, and any and all personal property and fixtures now or hereafter affixed to, used in and about, or arising in connection with the Land and such improvements, called the "Project"), to be secured by, among other things, liens and security interests (the "Lender Liens") against the Project and the Construction Contract (hereinafter described); and

WHEREAS, the undersigned ("Contractor") proposes to hereafter perform labor, specially fabricate materials, furnish labor, and/or furnish materials (collectively, the "Work") for construction or repair of all or portions of improvements on the Land pursuant to a Construction Contract (as hereafter amended, supplemented, and/or restated from time to time, herein so called) dated as of * between Contractor and Borrower.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledge, and to induce Lender to make the Construction Loan to Borrower, Contractor hereby agrees with Lender as follows:

1. Contractor represents and warrants to Lender that as of the date hereof (a) Contractor has not reached any agreement or entered into any contract, written or oral, with respect to the construction or repair of improvements on the Land, other than the Construction Contract, which has been duly executed and is in full force and effect, (b) no materials have been delivered to or stored upon the Land, and (c) no work of any kind has been performed on the Land in connection with the construction or repair of any improvements on the Land.

2. Contractor consents and agrees in all respects to the creation in favor of Lender by Borrower of a security interest in Borrower's rights in the Construction Contract as security for the full and complete payment and performance of Borrower's indebtedness and obligations to Lender, and Contractor further agrees with Lender that: (a) if a default occurs in connection with the Construction Loan, Contractor will, upon Lender's request, complete the performance of the Work pursuant to the Construction Contract for the benefit of Lender (notwithstanding any previous default thereunder by Borrower, and Contractor agrees that Lender shall have no liability to it whatsoever by reason of any such default by Borrower), provided that Contractor is paid, in accordance with the Construction Contract, for all Work thereafter rendered by Contractor for the benefit of Lender; (b) upon the occurrence of a default by Borrower under the Construction Contract, Contractor will not exercise any remedies thereunder (other than the cessation of the Work for monetary defaults pending either the cure thereof or the request by Lender that, pursuant to (a) preceding, Contractor complete the Work for the benefit of Lender)

until it has notified Lender thereof in writing and granted Lender a period of 30 days (or a reasonable amount of time if such default cannot be cured in 30 days) after receipt by Lender of such notice in which Lender shall be entitled, but not obligated, to cure such default; (c) in the event any of the proceeds of the Construction Loan are disbursed by Lender directly to Contractor, Contractor will receive all such disbursements, will hold the same as a trust fund for the purpose of paying the costs of the Work under the Construction Contract, and will apply the same only to the payment of such costs and for no other purposes; (d) upon request by Lender, Contractor will furnish to Lender a current list of all persons or firms with whom Contractor has entered into subcontracts or other agreements relating to the Work in connection with the Project, together with a statement as to the status of each such subcontract or agreement and the respective amounts, if any, owed by Contractor thereunder; (e) Contractor shall make timely payment or deposit of all amounts of tax required to be withheld and paid to or deposited with the United States pursuant to the provision of Subtitle C of the Internal Revenue Code of 1954, as from time to time amended, with respect to any and all wages paid to employees of Contractor from funds paid to Contractor by Borrower or Lender; and (f) after execution and delivery of the Construction Contract, Contractor will not amend the Construction Contract without the prior written consent of Lender if such amendment would result in a "Material Change" (as hereinafter defined). As used herein, the term "Material Change" means a change in the Construction Contract or plans for the Project which: (a) increases or decreases (individually, solely as a result of any single change) the costs for or related to construction of the Project set forth in the original budget for the Project by an amount equal to more than \$10,000; or (b) increases or decreases (collectively, when added to all other such changes previously made) the costs for or related to construction of the Project set forth in the original budget for the Project by an amount equal to more than \$25,000; or (c) extends, or is likely to extend, the date of completion of the Project beyond *; or (d) causes the plans for the Project not to comply with all applicable laws.

3. Contractor hereby subordinates any and all "Contractor Liens" (as hereinafter defined) to any and all Lender Liens with the same force and effect as though the deeds of trust and any other instrument creating or evidencing the Lender Liens had been executed, delivered, and recorded prior to the creation or inception of the Contractor Liens. As used herein, the term "Contractor Liens" means all constitutional, statutory, contractual, or other liens, rights to liens, claims, and/or demands, if any, of whatever kind and nature, and against any property or rights of whatever kind and nature, that may now or hereafter exist or be claimed or asserted by, through, or under Contractor for any Work in connection with all or portions of any improvements on the Land, whether pursuant to the Construction Contract or otherwise.

4. Nothing herein shall be construed to impose upon Lender any duty to see to the application of the proceeds of the Construction Loan. Contractor acknowledges that Lender is obligated with respect thereto only to Borrower and to no other person or entity.

5. This instrument shall be binding upon Contractor and its heirs, personal representatives, successors, and assigns and shall inure to the benefit of Lender and its successors and assigns.

EXECUTED on this ____ day of *, 2003.

EXHIBIT "A"

LAND

SECOND LIEN DEED OF TRUST
(WITH SECURITY AGREEMENT AND ASSIGNMENT OF RENTS)

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

ARTICLE I
Definitions

The following terms shall have the respective meanings assigned to them when used herein.

1.01 Grantor: ■

1.02 Grantor's mailing address: ■

1.03 Beneficiary: TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official department of the State of Texas, and any lawful owner, holder, pledgee, or assignee of any indebtedness secured hereby

1.04 Beneficiary's mailing address: 507 Sabine St, P.O. Box 13491, Austin, Texas 78711-3941

1.05 Trustee: Edwina P. Carrington of Travis County, Texas

1.06 Mortgaged Property: The Real Property and the Personal Property.

1.07 Project: The buildings and other improvements now or hereafter erected, constructed or developed on the Real Property.

1.08 Real Property: The real property described in Exhibit "A" attached hereto and located in ■ County, Texas, together with (i) all improvements thereon, all rights, hereditaments and appurtenances belonging thereto including rights of ingress and egress, easements, licenses, and all reversionary rights or interests of Grantor; (ii) all fixtures and personal property now or hereafter attached to the Real Property; (iii) all renewals or replacements thereof or articles in substitution therefor, whether or not now or later attached to the Project in any manner; and (iv) all other interests of every kind which Grantor now has or at any time hereafter acquires in and to the Real Property.

1.09 Personal Property: (i) all furniture, equipment and other personal property now or hereafter owned by Grantor and used in connection with, located on or related in any way to the Mortgaged Property, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Project in any manner; (ii) all building materials and equipment now or hereafter delivered to the Mortgaged Property and all building

and construction materials, equipment and parts intended to be installed in or on the Real Property or Project; (iii) all plans and specifications for the Project; (iv) all contracts and subcontracts relating to the Project; (v) all deposits (including tenant's security deposits, if any), funds, accounts (including any accounts in which escrows are deposited as a reserve for the payment of taxes, assessments and insurance on the Mortgaged Property), contract rights, instruments, documents, general intangibles (including trademarks, trade names and symbols used in connection therewith), and notes or chattel paper arising from or by virtue of any transactions related to the Mortgaged Property; (vi) all permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Mortgaged Property; (vii) all bank accounts in which rental income from the Mortgaged Property is deposited; (viii) all proceeds arising from or by virtue of the sale, lease or other disposition of any of the Real or Personal Property; (ix) all proceeds (including premium refunds) payable or to be payable under each policy of insurance relating to the Project; (x) all proceeds arising from the taking of all or a part of the Real Property or any rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, for any public or quasi-public use under any law, or by rights of eminent domain, or by private or other purchase in lieu thereof; (xi) all other interests of every kind and character which Grantor now has or at any time hereafter acquires in and to the Personal Property and all property which is used or useful in connection therewith.

1.10 Construction Loan Agreement: The Construction Loan Agreement of even date herewith executed by and between Grantor (or the maker of the Note if different from Grantor) and Beneficiary, which agreement sets forth, among other things, the procedure and requirements for disbursing the loan proceeds to be evidenced by the Note.

1.11 LURA: The Land Use Restriction Agreement dated of even date herewith executed by Grantor (or the maker of the Note if different from Grantor) and Beneficiary, which agreement sets forth certain occupancy and rent restrictions for the Project.

1.12 Note: The promissory note of even date herewith executed by Grantor payable to the order of Beneficiary in the original principal sum of \$■ payable as therein provided and finally maturing on ■, and all modifications, extensions and renewals thereof.

1.13 Loan Documents: The Note, this Deed of Trust, the Construction Loan Agreement, the LURA, and any and all other document or instrument heretofore or hereafter executed by Grantor (or the maker of the Note if different from Grantor) securing, evidencing or in any way pertaining to the indebtedness evidenced by the Note.

(OPTIONAL DEFINITIONS)

1.14 First Note: The promissory note dated _____ in the original principal sum of \$_____ executed by _____ payable to the order of _____.

1.15 First Mortgage: The deed of trust of even date with the First Note from _____ to _____, Trustee, which is of record at Volume _____, Page _____, _____ Records of _____ County, Texas, and all other documents securing the First Note.

1.16 Prior Deed of Trust: The deed of trust dated _____, executed by Grantor to _____, Trustee for Beneficiary, recorded in Volume _____, Page _____, Records of _____, Texas, said Prior Deed of Trust having been given to secure the indebtedness of that one certain promissory note of even date therewith in the original principal sum of \$ _____, executed by Grantor to the order of Beneficiary.

ARTICLE II **Conveyance in Trust**

2.01 Grant. Grantor, for and in consideration of the debt evidenced by the Note, has granted, assigned, and conveyed, and by these presents does grant, assign and convey the Mortgaged Property, in trust unto the Trustee, his successors and assigns, to have and to hold the Mortgaged Property, unto Trustee, his successors and assigns, forever. To the extent permitted by law, the Personal Property shall be deemed to be a part of and affixed to the Real Property. In the event the estate of the Grantor in and to any of the Mortgaged Property is a leasehold estate, this conveyance shall include and the lien and security interest and assignment created hereby shall encumber and extend to all other, further or additional title, estates, interest or rights which may exist now or at any time be acquired by Grantor in or to the property demised under the lease creating such leasehold estate and including Grantor's rights, if any, to purchase the property demised under such lease and, if fee simple title to any of such property shall ever become vested in Grantor, such fee simple interest shall be encumbered by this Deed of Trust in the same manner as if Grantor had fee simple title to such property as of the date of execution hereof. Grantor hereby binds itself, its successors and assigns, to warrant and forever defend the Mortgaged Property unto Trustee, his successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

2.02 Security. This conveyance is made in trust, however, to secure and enforce the payment of the Note, the obligations of Grantor (and/or the maker of the Note, if different from Grantor) under the other Loan Documents and the Other Indebtedness as defined herein. If Grantor shall perform the covenants and agreements herein contained, then, and only then, this conveyance shall become null and void and shall be released at Grantor's expense; otherwise it shall remain in full force and effect. No release of this conveyance, or of the lien or security interest or assignment created and evidenced hereby, shall be valid unless executed by Beneficiary.

2.03 Other Indebtedness. This Deed of Trust shall secure, in addition to the Note, all funds hereafter advanced by Beneficiary to or for the benefit of Grantor as contemplated by any provision herein or for any other purpose, and all other indebtedness, of whatever kind or character, owing or which may hereafter become owing by Grantor to Beneficiary, whether such indebtedness is evidenced by note, open account, overdraft, endorsement, surety agreement, guaranty, or otherwise, it being contemplated that Grantor may hereafter become indebted to Beneficiary in further sum or sums ("Other Indebtedness"); provided, however, in no event shall this Deed of Trust secure payment of any installment loan or any open-end line of credit established under Chapter 342, Chapter 343, or Chapter 346 of the Texas Finance Code. This Deed of Trust shall also secure all renewals and extensions of any of the Other Indebtedness secured hereby. All indebtedness secured hereby shall be payable at Beneficiary's address as set forth in Section 1.04; and, unless otherwise provided in the instrument evidencing such

indebtedness, shall bear interest at the highest rate which Grantor could lawfully contract to pay Beneficiary (or if there is no such highest rate, at the rate of one and one-half percent per month) from the date of accrual of such indebtedness until paid. If the Note or Other Indebtedness shall be collected by legal proceedings, whether through a probate or bankruptcy court or otherwise, or shall be placed in the hands of an attorney for collection after maturity, whether matured by the expiration of time or by any option given to the Beneficiary to mature same, Grantor agrees to pay Beneficiary's attorney's and collection fees in the amount set forth in the Note, and such fees shall be a part of the indebtedness secured hereby.

ARTICLE III **Grantor's Covenants and Representations**

Grantor hereby covenants, warrants and represents to and agrees with Beneficiary and with Trustee as follows:

3.01 Payment and Performance. Grantor (i) will pay all of the indebtedness secured hereby, together with the interest thereon, when the same shall become due, in accordance with the terms of the Note or any other instrument evidencing, securing, or pertaining to such indebtedness or evidencing any renewal or extension of such indebtedness, or any part thereof, and (ii) will punctually and properly perform all of Grantor's covenants, obligations, and liabilities under any other security agreement, mortgage, deed of trust, collateral pledge agreement, contract, assignment, loan agreement or any other instrument or agreement of any kind now or hereafter existing as security for, executed in connection with, or related to the indebtedness or other obligations secured hereby, or any part thereof.

3.02 Title and Right to Convey. Grantor (i) has in its own right good and indefeasible title in fee simple, except as otherwise provided herein, to the Mortgaged Property which is free from encumbrance superior to the indebtedness hereby secured, except as otherwise provided herein, and (ii) has full right to make this conveyance.

3.03 Insurance. Grantor shall obtain and maintain at Grantor's sole expense: (1) all-risk insurance with respect to all insurable Mortgaged Property, against loss or damage by fire, lightning, windstorm, explosion, hail, tornado and such hazards as are presently included in so-called "all-risk" coverage and against such other insurable hazards as Beneficiary may reasonably require, in an amount not less than the unpaid balance of the Note, or if available and requested by Beneficiary 100% of the full replacement cost, including the cost of debris removal, without deduction for depreciation and sufficient to prevent Grantor and Beneficiary from becoming a coinsurer, such insurance to be in Builder's Risk (non-reporting) form during and with respect to any construction on the Real Property; (2) if and to the extent any portion of the Project is in a special flood hazard area, a flood insurance policy in an amount equal to the lesser of the principal face amount of the Note or the maximum amount available; (3) comprehensive general public liability insurance, on an "occurrence" basis, against claims for bodily injury, death or property damage occurring on or about the Project, to afford protection in a "single limit" of not less than \$1,000,000 in the event of bodily injury to, or death of, any number of persons or of damage to property arising out of one occurrence, for the benefit of Grantor and Beneficiary as named insureds; and (4) such other insurance on the Mortgaged Property as may

from time to time be reasonably required by Beneficiary, if available, (including but not limited to rent loss or boiler and machinery insurance) and 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, type, construction, location, use and occupancy of buildings and improvements. All insurance policies shall be issued and maintained by insurers, in amounts, with deductibles, and in form reasonably satisfactory to Beneficiary, and shall require not less than thirty (30) days' prior written notice to Beneficiary of any cancellation or change of coverage. All insurance policies maintained, or caused to be maintained, by Grantor with respect to the Mortgaged Property, except for public liability insurance, shall provide that each such policy shall be primary without right of contribution from any other insurance that may be carried by Grantor or Beneficiary and that all of the provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured. If any insurer which has issued a policy of hazard, liability or other insurance required pursuant to this Deed of Trust becomes insolvent or the subject of any bankruptcy, receivership or similar proceeding or if in Beneficiary's reasonable opinion the financial responsibility of such insurer is or becomes inadequate, Grantor shall, in each instance promptly upon the request of Beneficiary and at Grantor's expense, obtain and deliver to Beneficiary a like policy (or, if and to the extent permitted by Beneficiary, a certificate of insurance) issued by another insurer, which insurer and policy meet the requirements of this Deed of Trust. All such policies for loss of or damage to the Mortgaged Property shall contain a standard mortgage clause (without contribution) naming Beneficiary as mortgagee with loss proceeds payable to Beneficiary notwithstanding (i) any act, failure to act or negligence of or violation of any warranty, declaration or condition contained in any such policy by any named insured; (ii) the occupation or use of the Mortgaged Property for purposes more hazardous than permitted by the terms of any such policy; (iii) any foreclosure or other action by Beneficiary under this Deed of Trust; or (iv) any change in title to or ownership of the Mortgaged Property or any portion thereof, such proceeds to be held for application as provided in this Deed of Trust. A copy of each initial insurance policy (or a satisfactory certificate of insurance) shall be delivered to Beneficiary at the time of execution of this Deed of Trust, with premiums fully paid, and each renewal or substitute policy (or certificate) shall be delivered to Beneficiary, with premiums fully paid, at least ten (10) days before the termination of the policy it renews or replaces. Grantor shall pay all premiums on policies required hereunder as they become due and payable and promptly deliver to Beneficiary evidence satisfactory to Beneficiary of the timely payment thereof. If any loss occurs at any time when Grantor has failed to perform Grantor's covenants and agreements in this section, Beneficiary shall nevertheless be entitled to the benefit of all insurance covering the loss and held by or for Grantor, to the same extent as if it had been made payable to Beneficiary. Upon any foreclosure hereof or transfer of title to the Mortgaged Property in extinguishment of the whole or any part of the secured indebtedness, all of Grantor's right, title and interest in and to the insurance policies referred to in this section (including unearned premiums) and all proceeds payable thereunder shall thereupon vest in the purchaser at foreclosure or other such transferee, to the extent permissible under such policies. Beneficiary shall have the right (but not the obligation) to receive the proceeds of, all insurance for loss of or damage to the Mortgaged Property. If Grantor fails to act reasonably and promptly in making proof of loss for, or settling or adjusting any claim under, any such insurance, then Beneficiary shall have the right to make such proof and settle and/or adjust, such claim; and the expenses incurred by Beneficiary in the adjustment and collection of insurance proceeds shall be a part of

the secured indebtedness and shall be due and payable to Beneficiary on demand. Beneficiary shall not be, under any circumstances, liable or responsible for failure to collect or exercise diligence in the collection of any of such proceeds or for the obtaining, maintaining or adequacy of any insurance or for failure to see, to the proper application of any amount paid over to Grantor. Any such proceeds received by Beneficiary shall, after deduction therefrom of all reasonable expenses actually incurred by Beneficiary, including attorneys' fees, at Beneficiary's option be (a) released to Grantor, or (b) applied (upon compliance with such reasonable terms and conditions as may be required by Beneficiary) to repair or restoration, either partly or entirely, of the Mortgaged Property so damaged, or (c) applied to the payment of the secured indebtedness in such order and manner as Beneficiary, in its sole discretion, may elect, whether or not due; provided, however, that Beneficiary shall make such proceeds available to Grantor to pay for restoration or repair of the Mortgaged Property, so damaged, if either (i) the amount of such proceeds is less than \$25,000.00, or (ii) Grantor agrees to reasonable, "construction-loan" provisions (primarily regarding advances of those proceeds and Beneficiary's "pricing" of its activities and expenses connected therewith) and amendments to the loan documents executed in connection with the Note, as then proposed by Beneficiary. In any event, the unpaid portion of the secured indebtedness shall remain in full force and effect and the payment thereof shall not be excused. Grantor shall at all times comply with the requirements of the insurance policies required hereunder and of the issuers of such policies and of any board of fire underwriters or similar body as applicable to or affecting the Mortgaged Property.

3.04 Taxes and Other Impositions. Grantor will pay all taxes and assessments against or affecting the Mortgaged Property as the same become due and payable, and, if Grantor fails to do so, Beneficiary may pay them, together with all costs and penalties thereon, at Grantor's expense. Grantor, however, may in good faith, in lieu of paying such taxes and assessments as they become due and payable, contest by appropriate proceedings the validity thereof, and pending such contest Grantor shall not be deemed in default hereunder because of such nonpayment, (i) if prior to delinquency of the asserted tax or assessment, Grantor furnishes Beneficiary an indemnity bond, conditioned that such tax or assessment with interest, cost and penalties be paid as herein stipulated, secured by a deposit in cash, or security or surety acceptable to Beneficiary, in the amount of the contested tax or assessment, and a reasonable additional sum to pay all possible costs, interest and penalties imposed or incurred in connection therewith, and (ii) if Grantor promptly pays any amount adjudged by a court of competent jurisdiction to be due, with all costs, penalties and interest thereon, before such judgment becomes final or before any writ or order is issued under which the Mortgaged Property may be sold pursuant to such judgment, whichever first occurs.

3.05 Tax and Insurance Escrow. Grantor will create a reserve for the payment of all insurance premiums, taxes, and assessments against or affecting the Mortgaged Property by depositing (and providing Beneficiary evidence monthly of such deposit in a form satisfactory to Beneficiary) in an account in a federally insured bank or savings and loan approved by Beneficiary, on the same day as regular payments are made under the Note until maturity of the Note, a sum equal to the premiums that will next become due and payable on the hazard insurance policies covering the Mortgaged Property, or any part thereof, plus taxes and assessments next due on the Mortgaged Property, or any part thereof, as estimated by Beneficiary, less all sums deposited therefor, divided by the number of months to elapse before

one month prior to the date when such premiums, taxes and assessments will become delinquent. Grantor shall have the right to rely upon tax information furnished by applicable taxing authorities in the payment of such taxes or assessments and shall have no obligation to make any protest of any such taxes or assessments. Any excess over the amounts required for such purposes shall be held in such account for future use as provided in this section. All such funds so deposited may not be mingled with the general funds of Grantor and shall be applied by Grantor toward the payment of such taxes, assessments, charges and premiums when statements therefor are presented to Grantor. Any interest accrued on such funds deposited shall be for the account of Grantor and may be withdrawn from the account by Grantor from time to time. The conveyance or transfer of Grantor's interest in the Mortgaged Property for any reason (including without limitation the foreclosure of a subordinate lien or security interest or a transfer by operation of law) shall constitute an assignment or transfer of Grantor's interest in and rights to such funds under this section but subject to the rights of Beneficiary hereunder.

3.06 Assignment of Awards. Grantor hereby assigns all judgments, decrees and awards for injury or damage to the Mortgaged Property, all awards or settlements pursuant to proceedings for condemnation thereof, in their entirety to Beneficiary, who may apply the same to the indebtedness secured hereby in such manner as it may elect. Grantor authorizes Beneficiary to execute and deliver valid acquittances for, and to appeal from, any such award, judgment or decree in the name of Grantor. In the event Beneficiary, as a result of any such judgment or decree of award, believes that the payment or performance of any obligation secured by this Deed of Trust is impaired, Grantor authorizes Beneficiary to declare, without notice, all of the indebtedness secured hereby immediately due and payable.

3.07 Trustee's Title and Future Laws. If, while this trust is in force, the title of Trustee to, or the interest of Beneficiary in, the Mortgaged Property or any part thereof, shall be endangered or shall be attacked directly or indirectly, Grantor authorizes Beneficiary, at Grantor's expense, to take all necessary and proper steps for the defense of such title or interest, including the employment of counsel, the prosecution or defense of litigation, and the compromise or discharge of claims made against such title or interest. If at any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Deed of Trust, or upon any rights, titles, liens, or security interests created hereby, or upon the Note, or any part thereof, Grantor shall immediately pay all such taxes. In the alternative, Grantor may, in the event of the enactment of such a law, and must, if it is unlawful for Grantor to pay such taxes, prepay the Note and the Other Indebtedness in full within sixty (60) days after demand therefor by Beneficiary. Grantor shall at any time and from time to time, furnish promptly, upon request, a written statement or affidavit, in such form as may be required by Beneficiary, stating the unpaid balance of the Note, and that there are no offsets or defenses against full payment of the Note and performance of the terms hereof, or if there are any such offsets and defenses, specifying them.

3.08 Repayment to Beneficiary. If, pursuant to any covenant contained herein or in any other instrument executed in connection with the loan evidenced by the Note or in connection with any other indebtedness secured hereby, Beneficiary shall expend any money chargeable to Grantor or subject to reimbursement by Grantor under the terms of such covenant or agreement, Grantor will repay the same to Beneficiary immediately at the place where the Note or other

indebtedness secured hereby is payable, together with interest thereon at the rate of interest payable on account of the Note or such other indebtedness in the event of a default thereunder from and after the date of Beneficiary's making such payment. The sum of each such payment shall be added to the indebtedness hereby secured and thereafter shall form a part of the same, and it shall be secured by this Deed of Trust and, by subrogation to all of the rights of the person or entity receiving such payment.

3.09 Condition of Property. Upon completion of certain renovations, additions and improvements to the Project, Grantor will keep every part of the Mortgaged Property in good condition and presenting a good appearance, making promptly all repairs, renewals and replacements necessary to such end, and doing promptly all else necessary to such end. Grantor will discharge all claims for labor performed and material furnished therefor, and will not suffer any lien of mechanics or materialmen to attach to any part of the Mortgaged Property. Grantor will guard every part of the Mortgaged Property from removal, destruction and damage, and will not do or suffer to be done any act whereby the value of any part of the Mortgaged Property may be lessened.

3.10 Successors. If the ownership, control or management of the Mortgaged Property or any part thereof becomes vested in a person other than Grantor, or in the event of a change of ownership of more than thirty percent interest in any Grantor other than an individual, Grantor agrees that Beneficiary may, without notice to Grantor, deal with such successor or successors in interest with reference to this Deed of Trust and to the indebtedness hereby secured in the same manner as with Grantor without in any way vitiating or discharging Grantor's liability hereunder or upon the indebtedness hereby secured. No sale of the Mortgaged Property, and no forbearance on the part of Beneficiary, and no extension of the time for the payment of the indebtedness hereby secured, given by Beneficiary, shall operate to release, discharge, modify, change or affect the original liability of Grantor or the liability of any guarantors or sureties of Grantor, either in whole or in part.

ARTICLE IV **Events of Default**

4.01 Events of Default. The following shall be events of default ("Events of Default") hereunder:

(a) The sale of the Mortgaged Property, or any part thereof.

(b) Grantor's agreement to or the granting of an easement, restrictive covenant or other encumbrance affecting the Mortgaged Property.

■ **Alternatives:**

(c) If Grantor is a corporation, partnership, or limited liability company, more than thirty percent (30%) of ownership of Grantor (determined by interest held and not by number of the shareholders, partners or members, as applicable) changes other than changes resulting from the transfer of shares or interest among the present owners of Grantor, such

determination to be made by aggregating all ownership changes (other than those involving only the present owners of Grantor) occurring subsequent to the date hereof.

or

(c) In the event there shall occur any change in the legal or equitable ownership of a controlling interest in Grantor (or of the maker of the Note if different from the Grantor), or any change in the management of Grantor (or of the maker of the Note if different from Grantor), if in Beneficiary's sole judgment such a change materially and adversely effects the ability of Grantor to perform Grantor's obligations under this Deed of Trust [provided, however, Grantor may sell or transfer limited partnership interests without the consent of the Beneficiary and such sale or transfer shall not be considered an event of default hereunder].

(d) Grantor's failure to promptly pay when due the indebtedness secured hereby, or any part thereof and such failure continues for a period of ten (10) days after written notice of such failure is given by Beneficiary to Grantor; or Grantor's failure to keep and perform any of the covenants (other than the failure to pay the indebtedness) or agreements contained herein or in any other instrument executed by Grantor in connection with the indebtedness secured hereby within thirty (30) days after written notice of such failure is given by Beneficiary to Grantor.

(e) Beneficiary's discovery that any statement, representation, or warranty in the Note, this Deed of Trust or in any writing delivered to Beneficiary in connection with the indebtedness secured hereby is false, misleading or erroneous in any material respect.

(f) If Grantor, or any person liable for the indebtedness secured hereby, or any part thereof, including any guarantor of or surety for the performance of any obligation hereunder, (i) files a voluntary petition in bankruptcy; (ii) makes an assignment for the benefit of any creditor; (iii) suffers an order for relief in bankruptcy to be entered against it; (iv) admits in writing its inability to pay its debts generally as they become due; (v) applies for or consents to the appointment of a receiver, trustee, or liquidator of Grantor or of any such guarantor or surety or of all or a substantial part of its assets; (vi) takes advantage of or seeks any relief under any bankruptcy, reorganization, debtor's relief or other insolvency law now or hereafter existing; (vii) files an answer admitting the material allegations of, or consenting to, or defaulting in, a petition against Grantor or any such guarantor or surety, in any bankruptcy, reorganization, or other insolvency proceedings; or (viii) institutes or voluntarily is or becomes a party to any other judicial proceedings intended to effect a discharge of the debts of Grantor or of any guarantor or surety, in whole or in part, or to effect a postponement of the maturity or the collection thereof, or to effect a suspension of any of the rights or powers of Beneficiary granted in the Note, this Deed of Trust or in any other instrument evidencing or securing the indebtedness secured hereby.

(g) If an order, judgment or decree shall be entered by any court of competent jurisdiction appointing a receiver, trustee or liquidator of Grantor or of any guarantor or surety or of all or any substantial part of the assets of Grantor or of any such guarantor or surety; or if Grantor or any guarantor or surety shall fail to pay any money judgment against it within thirty (30) days after any such judgment becomes final and non-appealable.

(h) If Grantor or any such guarantor or surety shall fail to have discharged any attachments, sequestration, or similar proceedings against any assets of Grantor or of any guarantor or surety which remains undischarged and unstayed for a period of thirty (30) consecutive days; or if the Mortgaged Property is placed under control or in the custody of any court, or if Grantor abandons any of the Mortgaged Property.

(i) Grantor's execution or delivery of any pledge, security agreement, mortgage or deed of trust covering all or any portion of the Mortgaged Property ("Subordinate Mortgage") without the prior written consent of Beneficiary (which consent may be withheld). In the event of consent by Beneficiary to the foregoing or in the event the foregoing prohibition is determined by a court of competent jurisdiction to be unenforceable by the provisions of any applicable law, Grantor will not execute or deliver any Subordinate Mortgage unless there shall have been delivered to Beneficiary not less than ten (10) days prior to the date thereof a copy thereof which shall contain express covenants to the effect:

(i) That the Subordinate Mortgage is in all respects unconditionally subject and subordinate to the lien, security interest and assignment evidenced by this Deed of Trust and each term and provision hereof;

(ii) That if any action or proceeding shall be instituted to foreclose the Subordinate Mortgage (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), no tenant of any portion of the Mortgaged Property will be named as a party defendant, nor will any action be taken with respect to the Mortgaged Property which would terminate any occupancy or tenancy of the Mortgaged Property without the prior written consent of Beneficiary;

(iii) That all of the rents, royalties (including, but not limited to, royalties arising out of the sale of oil, gas, and any other minerals produced from the Mortgaged Property, or any properties pooled with the Mortgaged Property), issues, profits, revenue, income and other benefits derived from the Mortgaged Property or arising from the use or enjoyment of any portion thereof or from any lease or agreement pertaining thereto, if collected through a receiver or by the holder of the Subordinate Mortgage, shall be applied first to the obligations secured by this Deed of Trust, including principal and interest due and owing on or to become due and owing on the Note and the other indebtedness secured hereby and then to the payment of maintenance, operating charges, taxes, assessments, and disbursements incurred in connection with the ownership, operating and maintenance of the Mortgaged Property; and

(iv) That if any action or proceeding shall be brought to foreclose the Subordinate Mortgage, written notice of the commencement thereof will be given to Beneficiary contemporaneously with the commencement of such action or proceeding.

(j) The liquidation, termination, dissolution, merger, consolidation or failure to maintain good standing in the State of Texas (or in the case of an individual, the death or legal incapacity) of the owner of the Mortgaged Property or any person obligated to pay any part of the secured indebtedness.

(k) The liens, mortgages or security interests of Beneficiary in any of the Mortgaged Property become unenforceable in whole or in part, or cease to be of the priority herein required, or the validity or enforceability thereof, in whole or in part, shall be challenged or denied by Grantor or any person obligated to pay any part of the secured indebtedness.

(l) If the ownership of any of the Mortgage Property is forfeited or otherwise transferred to any governmental agency under a federal or state law for which forfeiture of property is a potential penalty or remedy.

(m) A default or event of default occurs under any other documents executed as security for or in connection with the Note or under any other documents evidencing a loan or indebtedness owed by Grantor to Beneficiary or any other agency of the State of Texas, and the same is not remedied within the applicable period for curing such default (if any).

(n) A default or event of default occurs under the LURA executed by Grantor of even date herewith and filed in the Real Property Records of ■ County, Texas, and same is not remedied within the applicable period for curing such default.

4.02 Remedies. Upon the occurrence of any Event of Default, Beneficiary, at its sole option, may declare the Note and all other indebtedness secured hereby immediately due and payable and/or may pursue any rights and remedies it may have hereunder or at law or in equity.

ARTICLE V **Nonjudicial Foreclosure and Sale**

5.01 Trustee's Sale. If Grantor shall default hereunder, Grantor authorizes and empowers the Trustee, at the request of Beneficiary, at any time during the continuance of any default, to sell all or any portion of the Mortgaged Property, at public auction, to the highest bidder, for cash or for credit against the indebtedness secured hereby if Beneficiary is the highest bidder, at the county court house of the county in Texas in which such Mortgaged Property or any part thereof is situated, as herein described, in the area designated by the commissioners court for such purpose pursuant to a recordation of such designation in the real property records of such county, or if no such recorded designation by the commissioners court has been made, in the area at the county court house designated in the notice of proposed sale posted, filed and served in accordance with the further provisions of this paragraph, between the hours of 10:00 o'clock A.M. and 4:00 o'clock P.M. on the first Tuesday of any month. The Trustee shall give notice of the time, place and terms of said sale, and of the property to be sold, as follows:

Notice of such proposed sale shall be given by posting written notice thereof at least twenty-one days preceding the date of the sale at the court house door, and by filing a copy of the Notice in the office of the county clerk of the county in which the sale is to be made, and if the property to be sold is situated in more than one county, one notice shall be posted at the court house door and filed with the county clerk of each county in which the property to be sold is situated. In addition, Beneficiary shall, at least twenty-one days preceding the date of sale, serve written notice of the proposed sale by certified mail on each debtor

obligated to pay the debt secured hereby according to the records of Beneficiary. Service of such notice shall be completed upon deposit of the notice, enclosed in a postpaid wrapper, properly addressed to such debtor at the most recent address as shown by the records of Beneficiary, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of service.

Any notice that is required or permitted to be given to Grantor may be addressed to Grantor at Grantor's mailing address. Any notice that is to be given by certified mail to any other debtor may, if no address for such other debtor is shown by the records of Beneficiary, be addressed to such other debtor at Grantor's mailing address. Notwithstanding the foregoing provisions of this paragraph, notice of such sale given in accordance with the requirements of the applicable law of the State of Texas in effect at the time of such sale shall constitute sufficient notice of such sale. Grantor hereby authorizes and empowers the Trustee to sell all or any portion of the Mortgaged Property, together or in lots or parcels, as the Trustee may deem expedient, and to execute and deliver to the purchaser or purchasers of such property, good and sufficient deeds of conveyance of fee simple title with covenants of general warranty made on behalf of the Grantor. In no event shall the Trustee be required to exhibit, present or display at any such sale, any of the personalty described herein to be sold at such sale. The Trustee making such sale shall receive the proceeds thereof and shall apply the same as follows: (i) first, he shall pay the reasonable expense of executing this trust including a reasonable Trustee's fee or commission; (ii) second, he shall pay, so far as may be possible, the indebtedness secured hereby, discharging first that portion of the indebtedness arising under the covenants or agreements herein contained and not evidenced by the Note; (iii) third, he shall pay the residue, if any, to the person or persons legally entitled thereto. Payment of the purchase price to the Trustee shall satisfy the obligation of the purchaser at such sale therefor, and such purchaser shall not be bound to look after the application thereof. The sale or sales by the Trustee of less than the whole of the Mortgaged Property shall not exhaust the power of sale herein granted, and the Trustee is specifically empowered to make successive sale or sales under such power until the whole of the Mortgaged Property shall be sold; and if the proceeds of such sale or sales of less than the whole of such Mortgaged Property shall be less than the aggregate of the indebtedness secured hereby and the expense of executing this trust, this Deed of Trust and the lien, security interest and assignment hereof shall remain in full force and effect as to the unsold portion of the Mortgaged Property just as though no sale or sales had been made; provided, however, that Grantor shall never have any right to require the sale or sales of less than the whole of the Mortgaged Property, but Beneficiary shall have the right, at its sole election, to request the Trustee to sell less than the whole of the Mortgaged Property. If default is made hereunder, the holder of the indebtedness or any part thereof on which the payment is delinquent shall have the option to proceed with foreclosure in satisfaction of such item either through judicial proceedings or by directing the Trustee to proceed as if under a full foreclosure, conducting the sale as herein provided without declaring the entire indebtedness secured hereby due, and if sale is made because of default of an installment, or a part of an installment, such sale may be made subject to the unmatured part of the Note and other indebtedness secured by this Deed of Trust; and it is agreed that such sale, if so made, shall not in any manner affect the unmatured part of the indebtedness secured by this Deed of Trust, but as to such unmatured part,

this Deed of Trust shall remain in full force and effect as though no sale had been made under the provisions of this paragraph. Several sales may be made hereunder without exhausting the right of sale for any unmatured part of the indebtedness secured hereby.

5.02 Successor Trustee. If the Trustee shall die or become disqualified from acting in the execution of this trust, or shall fail or refuse to execute the same when requested by Beneficiary to do so; or if, for any reason, Beneficiary shall prefer to appoint a substitute Trustee to act instead of the Trustee named herein, Beneficiary shall have full power to appoint, by written instrument, a substitute Trustee, and, if necessary, several substitute Trustees in succession, who shall succeed to all the estate, rights, powers, and duties of the original Trustee named herein. Such appointment may be executed by any authorized agent of Beneficiary; and if Beneficiary is a corporation and such appointment is executed in its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. In the event of an assignment of the interests of Beneficiary under this Deed of Trust, all rights and remedies granted to Beneficiary in this Deed of Trust shall inure to the benefit of, and may be exercised by, the assignee.

5.03 Acts and Statements of Trustee. Grantor hereby agrees, in its behalf and in behalf of its heirs, executors, administrators, successors, personal representatives and assigns, that any and all statements of fact or other recitals made in any deed of conveyance given by the Trustee, with respect to the identity of Beneficiary, or with respect to the occurrence or existence of any default, or with respect to the acceleration of the maturity of any indebtedness secured hereby, or with respect to the request to sell, the notice of sale, the giving of notice to all debtors legally entitled thereto, the time, place, terms, and manner of sale, and receipt, distribution, and application of the money realized therefrom, or with respect to the due and proper appointment of a substitute Trustee, and, without being limited by the foregoing, with respect to any other act or thing having been duly done by the Beneficiary or by the Trustee hereunder, shall be taken by all courts of law and equity as prima facie evidence that the statements or recitals state facts and are without further question to be so accepted, and Grantor hereby ratifies and confirms every act that Trustee or any substitute Trustee hereunder may lawfully do in the premises by virtue hereof.

5.04 Disaffirmance by Purchaser. The purchaser at any trustee's or foreclosure sale hereunder may disaffirm any easement granted, or rental, lease or other contract made, in violation of any provision of this Deed of Trust, and may take immediate possession of the Mortgaged Property free from, and despite the terms of, such grant of easement and rental or lease contract.

5.05 Beneficiary May Bid. Beneficiary shall have the right to become the purchaser at all sales to enforce this trust, being the highest bidder, and to have the amount of which such property is sold credited on the indebtedness secured hereby which is then owing.

ARTICLE VI **Hazardous Materials**

6.01 Definitions. For the purpose of this Deed of Trust, Grantor, Beneficiary and Trustee agree that, unless the context otherwise specifies or requires, the following terms shall have the meaning herein specified:

(a) Hazardous Materials: Any substance the presence of which on the Mortgaged Property is regulated by any Governmental Requirements (as hereinafter defined), including but not limited to: (i) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 *et seq.*), as amended from time to time, and regulations promulgated thereunder; (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 *et seq.*) ("CERCLA" or "SuperFund"), as amended from time to time, and regulations promulgated thereunder; (iii) asbestos; (iv) polychlorinated biphenyls; (v) any petroleum-based products; and (vi) underground storage tanks, whether empty, filled or partially filled with any substance.

(b) Governmental Requirements: All laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the city, or any other political subdivision in which the Mortgaged Property is located, and any other political subdivision, agency or instrumentality exercising jurisdiction over Grantor or the Mortgaged Property.

(c) Hazardous Materials Contamination: The contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on, over or under the Mortgaged Property by Hazardous Materials, or the contamination of the improvements, facilities, soil, ground-water, air or other elements on, over or under any other property as a result of Hazardous Materials at any time (whether before or after the date of this Deed of Trust) emanating from the Mortgaged Property.

6.02 Representations and Warranties. Grantor hereby represents and warrants that:

(a) No Hazardous Materials are located on the Mortgaged Property or have been released into the environment, or deposited, discharged, placed or disposed of at, on, under or near the Mortgaged Property, or transported to or from the Mortgaged Property. No portion of the Mortgaged Property is being used or, to the best of Grantor's knowledge, has been used at any previous time, for the disposal, storage, treatment, processing, manufacturing or other handling of Hazardous Materials nor is any part of the Mortgaged Property affected by any Hazardous Materials Contamination.

(b) To the best of Grantor's knowledge (i) no Hazardous Materials are located on property adjoining the Mortgaged Property; (ii) no property adjoining the Mortgaged Property has ever been used at any previous time for the disposal, storage, treatment, processing, manufacturing or other handling of Hazardous Materials; and (iii) no property adjoining the Mortgaged Property is affected by Hazardous Materials Contamination.

(c) No asbestos or asbestos-containing materials have been installed, used, incorporated into, or disposed of on the Mortgaged Property.

(d) No polychlorinated biphenyls or materials containing polychlorinated biphenyls are located on or in the Mortgaged Property, in the form of electrical transformers, fluorescent light fixtures with ballasts, cooling oils, or any other device or form.

(e) No underground storage tanks are located on the Mortgaged Property or, to the best of Grantor's knowledge, were previously located on the Mortgaged Property and subsequently removed or filled.

(f) No investigation, administrative order, consent order, agreement, litigation or settlement with respect to Hazardous Materials or Hazardous Materials Contamination is proposed, threatened, anticipated or in existence with respect to the Mortgaged Property. The Mortgaged Property and its existing and prior uses comply and at all times have complied with any applicable Governmental Requirements relating to environmental matters or Hazardous Materials. There is no condition on the Mortgaged Property which is in violation of any applicable Governmental Requirements relating to Hazardous Materials, and Grantor has received no communication from or on behalf of any Governmental Authority that any such condition exists. The Mortgaged Property is not currently on, and to the best of Grantor's knowledge, has never been on, any federal, state or local "Superfund" or "Superlien" list.

(g) Except for studies, audits, and reports pertaining to the Mortgaged Property which have been made available to Beneficiary, there have been no environmental investigations, studies, audits, tests, reviews or other analyses conducted by or which are in the possession of or available to Grantor in relation to the Mortgaged Property.

(h) All representations and warranties contained in this Section 6.02 shall survive the consummation of the transactions contemplated by this Deed of Trust.

6.03 Covenants. Grantor agrees: (a) that Grantor shall not receive, store, dispose or release any Hazardous Materials on or to the Mortgaged Property or transport any Hazardous Materials to or from the Mortgaged Property or permit the existence of any Hazardous Materials Contamination; (b) to give written notice to Beneficiary immediately upon Grantor's acquiring knowledge of the presence of any Hazardous Materials on the Mortgaged Property or of the transport of any Hazardous Materials to or from the Mortgaged Property or of the existence of any Hazardous Materials Contamination, with a full description thereof; (c) promptly, at Grantor's sole cost and expense, to comply with any Governmental Requirements requiring the removal, treatment or disposal of such Hazardous Materials or Hazardous Materials Contamination and provide Beneficiary with satisfactory evidence of such compliance; (d) to provide Beneficiary, within thirty (30) days after demand by Beneficiary, with financial assurance evidencing to Beneficiary's satisfaction that the necessary funds are available to pay the cost of removing, treating and disposing of such Hazardous Materials or Hazardous Materials Contamination and discharging any assessments which may be established on the Mortgaged Property as a result thereof; and (e) to insure that all leases, licenses, and agreements of any kind now or hereafter executed which permit any party to occupy, possess, or use in any way the Mortgaged Property or any part thereof, whether written or oral, include an express prohibition on the disposal or discharge of any Hazardous Materials at or affecting the Mortgaged Property,

and a provision that failure to comply with such prohibition shall expressly constitute a default under any such agreement.

6.04 Liens. Grantor shall not cause or suffer any liens to be recorded against the Mortgaged Property as a consequence of, or in any way related to, the presence, remediation or disposal of Hazardous Materials in or about the Mortgaged Property, including any so-called state, federal or local "Superfund" lien relating to such matters.

6.05 Site Assessments. Beneficiary (by its officers, employees and agents) at any time and from time to time, either prior to or after the occurrence of an Event of Default, may contract for the services of persons (the "Site Reviewers") to perform environmental site assessments ("Site Assessments") on the Mortgaged Property for the purpose of determining whether there exists on the Mortgaged Property any environmental condition which could result in any liability, cost or expense to the owner, occupier or operator of such Mortgaged Property arising under any Governmental Requirements relating to Hazardous Materials. The Site Assessments may be performed at any time or times, upon reasonable notice, and under reasonable conditions established by Grantor which do not impede the performance of the Site Assessment. The Site Reviewers are hereby authorized to enter upon the Mortgaged Property for such purposes. The Site Reviewers are further authorized to perform both above and below-ground testing for environmental damage or the presence of Hazardous Materials or Hazardous Materials Contamination on the Mortgaged Property and such other tests on the Mortgaged Property as may be necessary to conduct the Site Assessments in the reasonable opinion of the Site Reviewers. Grantor will supply to the Site Reviewers such historical and operational information regarding the Mortgaged Property as may be reasonably requested by the Site Reviewers to facilitate the Site Assessments and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. On request, Beneficiary shall make the results of such Site Assessments fully available to Grantor, which (prior to an Event of Default) may at its election participate under reasonable procedures in the direction of such Site Assessments and the description of tasks of the Site Reviewers. The cost of performing such Site Assessments shall be paid by Grantor upon demand of Beneficiary and any such obligations shall be indebtedness secured by this Deed of Trust.

6.06 Indemnification. Grantor shall at all times retain any and all liabilities arising from the presence, handling, treatment, storage, transportation, removal or disposal of Hazardous Materials on the Mortgaged Property. Regardless of whether any Site Assessments are conducted hereunder, and regardless of whether any Event of Default (as defined in Section 4.01 of this Deed of Trust) shall have occurred and be continuing or any remedies in respect to the Mortgaged Property are exercised by Beneficiary, Grantor shall defend, indemnify and hold harmless Beneficiary and Trustee (and any successor to the Trustee) from and against any and all liabilities (including strict liability), suits, actions, claims, demands, penalties, damages (including, without limitation, lost profits, consequential damages, interest, penalties, fines and monetary sanctions), losses, costs and expenses (including, without limitation, reasonable attorneys' fees and remedial costs) (the foregoing are hereinafter collectively referred to as "Liabilities") which may now or in the future (whether before or after the culmination of the transactions contemplated by this Deed of Trust) be incurred or suffered by Beneficiary or Trustee (or any successor to the Trustee) by reason of, resulting from, in connection with, or

arising in any manner whatsoever out of the breach of any warranty or covenant or the inaccuracy of any representation of Grantor contained or referred to in this Article VI or in any loan agreement made and entered into between Grantor and Beneficiary relating to the Mortgaged Property or which may be asserted as a direct or indirect result of the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from the Mortgaged Property of any Hazardous Materials or any Hazardous Materials Contamination or arise out of or result from the environmental condition of the Mortgaged Property or the applicability of any Governmental Requirements relating to Hazardous Materials, regardless of whether or not caused by or within the control of Grantor, Beneficiary or Trustee (or any successor to the Trustee).

Such Liabilities shall include, without limitation: (i) injury or death to any person; (ii) damage to or loss of the use of any property; (iii) the cost of any demolition and rebuilding of any improvements now or hereafter situated on the Mortgaged Property or elsewhere, and the cost of any repair or remediation of any such improvements; (iv) the cost of any activity required by any Governmental Authority; (v) any lawsuit brought or threatened, good faith settlement reached, or governmental order relating to the presence, disposal, release or threatened release of any Hazardous Materials, on, from or under the Mortgaged Property; and (vi) the imposition of any liens on the Mortgaged Property arising from the activity of Grantor or Grantor's predecessors in interest on the Mortgaged Property or from the existence of Hazardous Materials upon the Mortgaged Property or Hazardous Materials Contamination. The covenants, warranties, agreements and indemnifications contained in this Article VI shall survive the consummation of the transactions contemplated by this Deed of Trust.

6.07 Right of Entry. Beneficiary shall have the right but not the obligation, without in any way limiting Beneficiary's other rights and remedies under this Deed of Trust, to enter onto the Mortgaged Property or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Materials or Hazardous Materials Contamination on or under the Mortgaged Property following receipt of any notice from any person or entity asserting the existence of any Hazardous Materials or Hazardous Materials Contamination pertaining to the Mortgaged Property, or any part thereof which, if true, could result in an order, notice, suit, imposition of a lien on the Mortgaged Property, or other action, and/or which, in Beneficiary's sole opinion, could jeopardize Beneficiary's security upon this Deed of Trust. All costs and expenses paid or incurred by Beneficiary in the exercise of any such rights shall be indebtedness secured by this Deed of Trust and shall be payable by Grantor upon demand.

ARTICLE VII **Additional Provisions**

7.01 Rights of Beneficiary. If any of the indebtedness hereby secured shall become due and payable, Trustee or Beneficiary shall have the right and power to proceed by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure hereunder or for the sale of the Mortgaged Property under the judgment or decree of any court or courts of competent jurisdiction or for the appointment of a receiver pending any foreclosure

hereunder or the sale of the Mortgaged Property under the order of a court or courts of competent jurisdiction or under executory or other legal process, or for the enforcement of any other appropriate legal or equitable remedy. Grantor agrees, to the full extent that it lawfully may, that in case one or more of the defaults hereunder shall have occurred and shall not have been remedied, then, and in every such case, the Beneficiary shall have the right and power to enter into and upon and take possession of all or any part of the Mortgaged Property in the possession of the Grantor, its successors or assigns, or its or their agents or servants, and may exclude Grantor, its successors or assigns, and all persons claiming under Grantor, and its or their agents or servants, wholly or partly therefrom; and, holding the same, the Beneficiary may use, administer, manage, operate and control the Mortgaged Property and conduct the business thereof to the same extent as Grantor, its successors or assigns, might at the time do and may exercise all rights and powers of Grantor, in the name, place and stead of Grantor, or otherwise as the Beneficiary shall deem best; and in the exercise of any of the foregoing rights and powers Beneficiary shall not be liable to Grantor for any loss or damage thereby sustained.

7.02 The Lien. Any part of the Mortgaged Property may be released by the Beneficiary without affecting the lien, security interest and assignment hereof against the remainder. The lien, security interest and other rights granted hereby shall not affect or be affected by any other security taken for the same indebtedness or any part thereof. The taking of additional security, or the extension or renewal of the indebtedness secured hereby or any part thereof, shall not release or impair the lien, security interest and other rights granted hereby, or affect the liability of any endorser, guarantor or surety, or improve the right of any permitted junior lienholder; and this Deed of Trust, as well as any instrument given to secure any renewal or extension of the indebtedness secured hereby, or any part thereof, shall be and remain a first and prior lien, except as otherwise provided herein on all of the Mortgaged Property not expressly released until the indebtedness secured hereby is completely paid.

7.03 Waiver. To the extent that Grantor may lawfully do so, Grantor agrees that Grantor shall not assert and hereby expressly waives, any right under any statute or rule of law pertaining to the marshalling of assets, the exemption of homestead, the administration of estates of decedents, or other matter whatever to defeat, reduce or affect the right of Beneficiary, under the terms of this Deed of Trust, to sell the Mortgaged Property for the collection of the indebtedness secured hereby (without any prior or different resort for collection) or the right of Beneficiary, under the terms of this Deed of Trust, to the payment of such indebtedness out of the proceeds of sale of the Mortgaged Property in preference to every other person and claimant whatever (only reasonable expenses of such sale being first deducted). No provision of this Deed of Trust or any other document securing or pertaining to the Note shall be construed to impose on Beneficiary any duty to sell the Mortgaged Property or any other collateral for the Note for collection of the indebtedness secured by this Deed of Trust or to pursue any other remedy in Beneficiary's power whatsoever. Grantor expressly waives and relinquishes any right or remedy which it may have or be able to assert by reason of the provisions of Chapter 34 of the Business and Commerce Code of the State of Texas, pertaining to the rights and remedies of sureties. To the full extent permitted by applicable law, Grantor waives any right to require Beneficiary to use diligence in collection of any indebtedness secured by this Deed of Trust, to proceed against or exhaust any security or collateral for the loan evidenced by the Note, to mitigate Beneficiary's

damages in connection with the loan evidenced by the Note, or to pursue any other remedy in Beneficiary's power whatsoever.

7.04 Subrogation. To the extent that proceeds of the Note are used to pay an outstanding lien, charge or encumbrance against or affecting the Mortgaged Property, such proceeds have been advanced by Beneficiary at Grantor's request, and Beneficiary shall be subrogated to all rights, interests and liens owned or held by any owner or holder of such outstanding liens, charges and encumbrances, irrespective of whether such liens, charges or encumbrances are released of record.

7.05 Limitation on Interest. All agreements between Grantor and Beneficiary, whether now existing or hereafter arising and whether written or oral, are expressly limited so that in no contingency or event whatsoever shall the amount paid, or agreed to be paid, to Beneficiary for the use, forbearance, or detention of the money to be loaned pursuant to the Note or otherwise, or for the performance or payment of any covenant or obligation contained herein, exceed the maximum amount permissible under applicable law. If from any circumstance whatsoever fulfillment of any provision hereof at the time performance of such provision shall be due shall involve transcending the limit of validity prescribed by law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any such circumstance Beneficiary shall ever receive as interest under such Note or this Deed of Trust or otherwise an amount that would exceed the highest lawful rate, such amount that would be excessive interest shall be applied to the reduction of the principal amount owing under the Note or on account of the other indebtedness secured hereby and not to the payment of interest or if such excessive interest exceeds the unpaid balance of principal of the Note and such other indebtedness, such excess shall be refunded to Grantor, or to the maker of the Note or other evidence of indebtedness if other than Grantor. All sums paid or agreed to be paid to Beneficiary for the use, forbearance, or detention of the indebtedness secured hereby shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the actual rate of interest on account of such indebtedness is uniform throughout the term thereof. The terms and provisions of this Section shall control and supersede every other provision of all agreements between Grantor, the maker of the Note or other evidence of indebtedness if other than Grantor, and Beneficiary.

7.06 Waiver and Invalidity. No waiver of any default on the part of Grantor or breach of any of the provisions of this Deed of Trust or of any other instrument executed in connection with the indebtedness secured hereby shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers herein granted shall be construed as a waiver of such rights and powers, and likewise no exercise or enforcement of any rights or powers hereunder shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. If any provision of this Deed of Trust is held to be illegal, invalid, or unenforceable under present or future laws effective while this Deed of Trust is in effect, the legality, validity, and enforceability of the remaining provisions of this Deed of Trust shall not be affected thereby, and in lieu of each such illegal, invalid, or unenforceable provision there shall be added automatically as a part of this Deed of Trust a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. If any of the liens, security interest or

assignment of rents created by this Deed of Trust shall be invalid or unenforceable, the unsecured portion of the indebtedness secured hereby shall be completely paid prior to the payment of the remaining and secured portion of such indebtedness and all payments made on account of such indebtedness shall be considered to have been paid on and applied first to the complete payment of the unsecured portion of such indebtedness.

7.07 Tenancy at Will. In the event of a trustee's sale hereunder and if at the time of such sale the Grantor occupies the portion of the Mortgaged Property so sold, or any part thereof, Grantor shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either tenant or landlord, at a reasonable rental per day based upon the value of the portion of the Mortgaged Property so occupied, such rental to be due and payable daily to the purchaser. An action of forcible detainer shall lie if the tenant holds over after a demand in writing for possession of such Mortgaged Property and premises; and this agreement and any trustee's deed shall constitute a lease and agreement under which the tenant's possession, each and all, arose and continued.

7.08 Security Agreement. With respect to any portion of the Mortgaged Property which constitutes personal property or fixtures governed by the Uniform Commercial Code of the State of Texas (hereinafter called the "Code"), this Deed of Trust shall constitute a security agreement between Grantor as the Debtor and Beneficiary as the Secured Party, and Grantor hereby grants to Beneficiary a security interest in such portion of the Mortgaged Property. Cumulative of all other rights of Beneficiary hereunder, Beneficiary shall have all of the rights conferred upon secured parties by the Code. Grantor will execute and deliver to Beneficiary all financing statements that may from time to time be required by Beneficiary to establish and maintain the validity and priority of the security interest of Beneficiary, or any modification thereof, and all costs and expenses of any searches reasonably required by Beneficiary. Beneficiary may exercise any or all of the remedies of a secured party available to it under the Code with respect to such property, and it is expressly agreed that if upon default Beneficiary should proceed to dispose of such property in accordance with the provisions of the Code, then (10) days' notice by Beneficiary to Grantor shall be deemed to be reasonable notice under any provision of the Code requiring such notice; provided, however, that Beneficiary may at its option dispose of such property in accordance with Beneficiary's rights and remedies with respect to the real property pursuant to the provisions of this Deed of Trust, in lieu of proceeding under the Code.

7.09 Changes in Grantor's Identity. Grantor shall give advance notice in writing to Beneficiary of any proposed change in Grantor's name, address, identity, or corporate structure and will execute and deliver to Beneficiary, prior to or concurrently with the occurrence of any such change, all additional financing statements that Beneficiary may require to establish and maintain the validity and priority of Beneficiary's security interest with respect to any Mortgaged Property described or referred to herein.

7.10 Fixtures. Some of the items of Mortgaged Property described herein are goods that are or are to become fixtures related to the real estate described herein, and it is intended that as to those goods, this Deed of Trust shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the county in which the Mortgaged Property is situated. Information concerning the security interest created by this

instrument may be obtained from Beneficiary, as secured party, at the address of Beneficiary stated above. The mailing address of the Grantor, as debtor, is as stated in Section 1.02.

7.11 Annual Statements. Grantor shall deliver to Beneficiary, (i) within ninety (90) days after the end of each of Grantor's fiscal years, then current audited annual statements, in form and content satisfactory to Beneficiary, itemizing the income and expenses of the Mortgaged Property and financial statements of Grantor (and each of them) all in detail satisfactory to Beneficiary, (ii) a copy of Grantor's federal income tax return for each tax year during the term of the Note and all amendments thereto within thirty (30) days after Grantor's filing of same with the Internal Revenue Service, and (iii) certified monthly operating statements for the Project in form and content satisfactory to Beneficiary.

7.12 Applicable Law. All references in this Deed of Trust to the "law" or to "lawful rate" shall be construed to be the laws of the State of Texas and the United States, whichever is applicable. "Applicable law" as used herein means (a) the law pertaining to maximum rates of interest that is now in effect, and (b) any law that comes into effect at any time in the future allowing a higher maximum rate than the law now in effect.

7.13 Binding Effect. The covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, personal representatives, successors and assigns of the parties hereto, and to any substitute Trustee. Whenever used, the singular number shall include the plural and the singular, and the use of any gender shall be applicable to all genders. The duties, covenants, conditions, obligations and warranties of Grantor in this Deed of Trust shall be joint and several obligations of Grantor and each Grantor if more than one, and Grantor's heirs, personal representatives, successors and assigns. Each party who executes this Deed of Trust (other than Beneficiary), and each subsequent owner of the Mortgaged Property, or any part thereof, covenants and agrees that it will perform, or cause to be performed, each condition, term, provision, and covenant of this Deed of Trust.

7.14 Right to Inspect. Beneficiary shall have at all times a right of access to and upon the Mortgaged Property for purposes of inspection and, at Beneficiary's option, for purposes of performing any obligations required of Grantor hereunder.

7.15 Notices. All notices, requests, consents, demands and other communications required or which any part desires to give hereunder shall be in writing. Notice will be deemed effective upon deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed to the party to whom directed at the addresses specified in Article I of this Deed of Trust (unless changed by notice in writing given by the particular party whose address is to be changed). Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. Provided, however, service of a notice required by Texas Property Code Section 51.002, as amended, shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon receipt. This section shall not be construed in any way to affect or impair any waiver of notice or demand provided in the Note or any other instrument securing the Note or to require giving of notice or demand to or upon any person in any situation or for any reason.

7.16 Assignment of Rents. All of the rents, royalties (including, but not limited to, royalties arising out of the sale of oil, gas, and any other minerals produced from the Mortgaged Property, or any properties pooled with the Mortgaged Property), issues, profits, revenue, income and other benefits derived from the Mortgaged Property or arising from the use or enjoyment of any portion thereof or from any lease or agreement pertaining thereto (hereinafter called the "Rents and Profits") are hereby assigned, transferred, conveyed and set over to Beneficiary as security for (i) payment of the principal and interest and all other sums payable on the Note, (ii) payment of any other indebtedness secured hereby and (iii) the performance and discharge of each and every obligation, covenant and agreement of Grantor set forth herein or in the Note or in any other instrument securing payment of the Note. Prior to the occurrence of any default hereunder, Grantor shall collect and receive all Rents and Profits, and Grantor shall apply the funds so collected first to the payment of the principal and interest and all other sums payable on the Note and in payment of all other indebtedness secured hereby and thereafter, so long as no default hereunder has occurred, the balance shall be distributed to the account of Grantor. Grantor will not (i) execute an assignment of any of its right, title or interest in the Rents and Profits, or (ii) except in the ordinary course of business, including but not limited to where the lessee is in default thereunder, terminate or consent to the cancellation or surrender of any lease of the Mortgaged Property or any part thereof, now or hereafter existing having an unexpired term of one year or more except that any lease may be canceled, provided that promptly after the cancellation or surrender thereof a new lease is entered into with a new lessee having a credit standing, in the judgment of Beneficiary, at least equivalent to that of the lessee whose lease was canceled, on substantially the same terms as the terminated or canceled lease, or (iii) except in the ordinary course of business, modify any lease of the Mortgaged Property or any part thereof so as to shorten the unexpired term thereof or so as to decrease any amount of the rent payable thereunder, or (iv) accept prepayments of any installments of rent to become due under any of such leases in excess of one month, except prepayments in the nature of security for the performance of the lessee thereunder, or (v) in any other manner impair the value of the Mortgaged Property or the security of this Deed of Trust. Upon default in the payment of the Note or any other indebtedness secured hereby, Beneficiary may, at its option, and without notice to Grantor receive and collect all Rents and Profits. Effective upon such default and for the foregoing purpose Grantor has irrevocably made, constituted and appointed, and by these presents does irrevocably make, constitute and appoint Beneficiary as its true and lawful attorney for it and in its name, place and stead to receive and collect the Rents and Profits, compromise and settle all claims therefor, and execute, deliver, cancel, modify and to release any and all leases and lessees, giving and granting unto Beneficiary full power and authority to do and perform all and every act and thing whatsoever, requisite and necessary to be done in connection therewith, as fully, to all intents and purposes, as Grantor might or could do if personally present and also giving and granting unto Beneficiary full power to substitute one or more attorney or attorneys under it, concerning such matters. Default shall be presumed upon Beneficiary's filing with the County Clerk of the County in which the Mortgaged Property is located of an affidavit to the effect that default has occurred hereunder and all persons dealing with Beneficiary may rely upon such affidavit. Grantor agrees that all persons dealing with Beneficiary and its substitutes that this power of attorney shall remain effective for so long as there is default under the terms hereof. Grantor agrees to indemnify and hold Beneficiary and its substitutes harmless

from any and all liability arising out of Beneficiary's or its substitutes' acts pursuant to the authority herein granted. This power of attorney is one coupled with an interest.

7.17 Construction Mortgage. This Deed of Trust constitutes a "construction mortgage" as defined in Section 9.313 of the Code and secures an obligation incurred for the construction of improvements on the real property described herein.

7.18 Construction Loan Agreement. It is understood and agreed that all or a portion of the funds to be advanced under the Note are to be used in the rehabilitation/construction of the Project in accordance with a certain Construction Loan Agreement ("Loan Agreement") made by and between Grantor or the maker of the Note or other evidence of the indebtedness secured hereby and Beneficiary, dated of even date herewith, which Loan Agreement is incorporated herein by reference to the same extent and effect as if fully set forth herein and made a part hereof. This Deed of Trust secures the payment of all sums and the performance of all covenants required by Grantor under the Loan Agreement, and upon the failure of Grantor to keep and perform all the covenants, conditions and agreements of the Loan Agreement, the indebtedness secured hereby shall, at the option of Beneficiary, become due and payable, anything herein contained to the contrary notwithstanding.

7.19 Attorney in Fact. Grantor has irrevocably made, constituted and appointed, and by these presents does irrevocably make, constitute and appoint Beneficiary its true and lawful attorney, for it and in its name, place and stead to contract for the sale of and convey all or any part of the Mortgaged Property, giving and granting unto Beneficiary full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in connection therewith, as fully, to all intents and purposes, as Grantor might or could do if personally present and also giving and granting unto Beneficiary full power to substitute one or more attorneys under it, in or concerning such matters. Grantor agrees that this power of attorney shall be effective upon default in the payment of the Note or under any instrument executed as security therefor, and Grantor agrees and represents to those dealing with Beneficiary, and its substitute or substitutes, that this power of attorney shall be effective upon Beneficiary's filing with the County Clerk of ■ County, Texas, an affidavit to the effect that default has occurred under the terms of the Note or any instruments executed as security therefor and such persons may rely upon Beneficiary's representation with regard to the continuation of such default, Grantor agrees with all persons dealing with Beneficiary, its substitute and substitutes that this power of attorney shall remain effective for so long as there is default under the terms of the Note or any instruments executed as security therefor, and further agrees with such persons that they may rely upon the representations of Beneficiary, its substitute and substitutes, with regard to the continuation of such default. Subject to the limitations contained herein, Grantor agrees to indemnify and hold Beneficiary and its substitutes harmless from any and all liability arising out of Beneficiary's or its substitutes' acts pursuant to the authority herein granted. This power of attorney is one coupled with an interest.

7.20 Subordination to LURA. Notwithstanding anything to the contrary, Grantor and Beneficiary hereby acknowledge and agree that the lien and security interest created hereby are expressly subordinate to the LURA.

EXECUTED this ____ day of ■, 2003.

■

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS §

§

COUNTY OF ; §

This instrument was acknowledged before me on this ___ day of _____, 2003 by _____, _____, of _____, a _____, on behalf of said _____.

Notary Public, State of Texas

VENDOR'S LIEN CLAUSE (Optional)

7. Secured by Vendor's Lien. The Note is primarily secured by the vendor's lien and superior title retained in deed of even date herewith from _____ to Grantor conveying the Mortgaged Property. The acceptance of this Deed of Trust with power of sale shall not be construed as a waiver of said vendor's lien and superior title retained in said deed which have been transferred to Beneficiary.

SECOND LIEN CLAUSE (Optional)

7. _____. Notwithstanding any provision of this Deed of Trust to the contrary, the lien and security interest created hereby are expressly subordinate and inferior to the lien created by the First Mortgage which secures the First Note. Any default under the terms of the First Note or pursuant to any instruments securing same shall constitute default hereunder, the terms of the Note and all instruments securing same. In the event of such default, Beneficiary shall have the right (but not the obligation) to cure same in which event all monies advanced and costs expended for such purpose shall be an obligation of Grantor secured hereby and payable on demand, together with interest thereon at the highest lawful rate Grantor could contract to pay to Beneficiary at the time of Beneficiary's advance or expenditure, or if there is no such highest lawful rate at the rate of 18% per annum. Beneficiary's curing of such default shall not cure the default hereunder. Grantor shall: (i) not agree to allow any renewal, extension, modification or rearrangement of the First Note or the First Mortgage without Beneficiary's prior written consent; (ii) not increase the indebtedness secured by the liens and security interest created by the First Mortgage; (iii) timely perform all of the covenants contained in the First Note and the First Mortgage; and (iv) promptly deliver to Beneficiary copies of all notices received by Grantor from the holder of the First Note and the First Mortgage.

HOMESTEAD CLAUSE (Optional)

7. Homestead Claims. Grantor represents and warrants to Beneficiary that no part of the Mortgaged Property constitutes a part of its homestead, either business or personal. Grantor claims the property described in Sections ____ and ____ as its only homestead. Grantor acknowledges that Beneficiary is relying upon the representation and warranty set forth in this Section in the funding of the loan evidenced by the Note.

RENEWAL AND EXTENSION (Optional)

7. Renewal and Extension. This Deed of Trust and the liens, rights and interest herein created and granted are in renewal and extension, but not in extinguishment, of the liens, rights, and interest originally created in or arising out of the Prior Deed of Trust. All liens, rights and interest granted in or arising out of the Prior Deed of Trust are hereby ratified, renewed and brought forward for the benefit of Beneficiary, and Beneficiary is subrogated into and entitled to the benefits of said prior deed of trust, and it is agreed that none of the rights of Beneficiary,

including, but not limited to, the priority of Beneficiary's lien, shall be in any way adversely affected hereby.

PREPARED BY:

Texas Department of Housing
and Community Affairs
Legal Division
507 Sabine St.
Austin, Texas 78701
(512) 475-3902

AFTER RECORDING RETURN TO:

Texas Department of Housing
and Community Affairs
Legal Division
P.O. Box 13941
Austin, Texas 78711-3941

LAND USE RESTRICTION AGREEMENT
(Multifamily Properties)
(HOME)

THE STATE OF TEXAS §
 §
COUNTY OF * §

THIS LAND USE RESTRICTION AGREEMENT ("Agreement"), effective this ____ day of *, is between * ("Owner"), and the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official department of the State of Texas (the "Department").

RECITALS:

Owner is the owner of certain improvements ("Improvements") known as * (the "Project") situated on real property ("Land") located in the City of *, County of *, State of Texas, more fully described in Exhibit "A" attached hereto and incorporated herein by reference. The Land and Improvements are hereinafter collectively referred to as the "Property".

Of even date herewith, the Department has agreed to loan certain funds (the "Loan") to Owner, made available to the Department under the Federal Act and State Act (hereafter defined), in accordance with that certain Construction Loan Agreement executed by and between Owner and the Department, which funds shall be used by Owner for the *[acquisition] of the Property and/or [rehabilitation] [construction] of the Project.

Pursuant to the Federal Act and State Act and the HOME Regulations, as amended, Owner, as a condition to the Department making the Loan, must agree to comply with certain occupancy, rent and other restrictions, and the parties have entered into this Agreement to evidence Owner's agreement to comply with such restrictions during the Term (hereinafter defined).

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE I
Definitions

Section 1.1. General. Capitalized terms used in this Agreement shall have, unless the context clearly requires otherwise, the meanings specified in this Article I. Certain additional terms may be defined elsewhere in this Agreement.

(a) **"Adjusted Income"** means "adjusted income" as defined in 24 C.F.R. Section 92.203.

(b) **"Agreement"** means this Land Use Restriction Agreement, as it may from time to time be amended.

(c) **"Annual Income"** means "annual income" as defined in 24 C.F.R. Section 92.203.

(d) **"Area Median Income"** means the median income, adjusted for family size, for the area where the Property is located, as such median income is established by HUD at least annually in accordance with the Federal Act, or as otherwise established by the Department.

(e) **"Displaced Persons"** means a person that moves from the Project or moves personal property from the Project, permanently, as a direct result of acquisition, reconstruction, rehabilitation or demolition of the Project or as otherwise provided in the HOME Regulations.

(f) **"Department Compliance Monitoring and Auditing Procedures"** means procedures and requirements adopted or imposed by the Department or HUD for the purpose of monitoring and auditing the Property and the books and records of the Owner for compliance with this Agreement, the HOME Regulations, the HOME Manual, those inspections and examinations allowed pursuant to Section 2306.231 of the State Act and any and all other Governmental Requirements (as defined below).

(g) **"Extremely Low Income Families"** means families and individuals whose Annual Incomes do not exceed thirty percent (30%) of the area median income in the area in which the Property is located, as determined by the Department in accordance with the State Act.

(h) **"Federal Act"** means the Cranston-Gonzalez National Affordable Housing Act, as set forth in 42 U.S.C. Section 12701 et seq. or any corresponding provision or provisions of succeeding law as it or they may be amended from time to time.

(i) **"Governmental Authority"** means the United States of America, the State of Texas, the County of *, Texas, and the City of *, Texas, and any political subdivision of any of the foregoing, and any other political subdivision, agency, or instrumentality exercising jurisdiction over Borrower or the Property.

(j) **"Governmental Requirements"** means all federal, state and local laws, statutes, ordinances, rules, regulations, orders and decrees or any court or administrative body of tribunal related to the activities and performances under this Agreement.

(k) **"Hazardous Substance"** means any substance defined as a hazardous substance, hazardous material, hazardous waste, toxic substance or toxic waste in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. Section 9601 et seq.; the Hazardous Materials Transportation Act, as amended, 39 U.S.C. Section 1801 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq.; or any similar applicable federal, state or local law; or in any regulation adopted or publication promulgated pursuant to any said law, either existing or promulgated from time to time.

(l) **"HOME Manual"** means the State of Texas HOME Implementation Manual, as amended or superseded from time to time, which serves as a comprehensive guidebook to those entities that have been provided funds through the Department pursuant to the HOME Program, together with any and all other manuals and guidelines developed by the Department in connection with the implementation and operation of the HOME Program.

(m) **"HOME Program"** means the federal housing program designated as the HOME Investment Partnership Program and established pursuant to the Federal Act and State Act and the HOME Regulations.

(n) **"HOME Regulations"** means the regulations promulgated pursuant to the Federal Act and State Act by HUD and the Department, respectively, or any respective successor, as finalized and amended from time to time, which regulations govern the HOME Program. The HOME Regulations are set forth at Title 24 Part 92 of the Code of Federal Regulations and Title 10 Chapter 53 of the Texas Administrative Code.

(o) **"HUD"** means the United States Department of Housing and Urban Development and its successor.

(p) **"Low Income Families"** means families and individuals whose Annual Incomes do not exceed eighty percent (80%) of the Area Median Income, or such other income limits as established by HUD in accordance with the Federal Act or as otherwise determined by the Department.

(q) **"Monthly Adjusted Income"** means one-twelfth (1/12) of the Annual Income.

(r) **"Project"** means the *-unit multifamily rental housing project to be located on the Land, including Owner's activities concerning the ownership, rehabilitation and operation of the Property. The general reference name for the Project is *.

(s) **"Project Documents"** means all tenant lists, applications, (whether accepted or rejected), leases, lease addenda, tenant and owner certifications, advertising records, waiting lists, rental calculations and rent records, utility allowance documentation, income examinations and re-examinations relating to the Project and other documents otherwise required by the Department.

(t) **"Qualified Tenant"** means a family or individual tenant of a Qualifying Unit who satisfies the requirements of Article II of this Agreement with respect to such Qualifying Unit.

(u) **"Qualifying Unit"** means a unit that (i) is rented to either a Low Income Family or Very Low Income Family and (ii) is used in complying with the occupancy requirements of Article II of this Agreement.

(v) **"Relocation Plan"** means a residential anti-displacement and relocation assistance plan as established by HUD and which: (i) includes provisions consistent with the requirements of Section 104(d) of the Housing and Community Development Act of 1974, as amended (42 USC §

5304(d)) and the HOME Regulations and HOME Manual and (ii) is in form and substance consistent with requirements of the Department.

(w) **"Special Needs Individual" or "Special Needs Family"** means a Low Income or Very Low Income individual or family with at least one member who is considered: (1) elderly (62 years of age or older); (2) victims of domestic violence; (3) a person with HIV/AIDS and their families; (4) migrant farm workers; or (5) persons with disabilities (6) persons with alcohol or other drug addictions; or (7) homeless. A disability is defined as a physical or mental impairment, or being regarded as having such an impairment. According to the definition, disabilities may include, but are not limited to: HIV/AIDS, epilepsy, heart disease, disfigurement, obesity, diabetes, mental retardation, emotional illness, cancer, learning disabilities, sensory impairment, or psychological disorders. The disability must be long-term, permanent and/or progressive, as certified in writing by a medical statement or public service agency with access to medical records.

(x) **"State Act"** means TEX. GOV'T CODE Chap. 2306 as amended from time to time.

(y) **"Term"** means the period commencing on the effective date of this Agreement and ending on the date which is * (*) years from the effective date of this Agreement.

(z) **"Unit"** means a residential accommodation constituting a part of the Property and containing separate and complete living facilities.

(aa) **"Utility Allowance"** means a monthly allowance for utilities and services (excluding telephone) to be paid by the tenant, which monthly allowance is provided by the local public housing authority or as determined by the Department annually and from time to time as required under the HOME Regulations.

(bb) **"Very Low Income Families"** means families and individuals whose Annual Incomes do not exceed fifty percent (50%) of the Area Median Income, or such other income limits as established by HUD in accordance with the Federal Act or as otherwise determined by the Department.

Section 1.2. Generic Terms. Unless the context clearly indicates otherwise, where appropriate the singular shall include the plural and the masculine shall include the feminine or neuter, and vice versa, to the extent necessary to give the terms defined in this Article I and/or the terms otherwise used in this Agreement their proper meanings.

ARTICLE II
Use and Occupancy of the Property

Section 2.1. Use of the Property. During the Term, Owner will maintain the Property as rental housing and will rent or hold available for rental each Unit on a continuous basis in order to meet the occupancy requirements of this Agreement.

Section 2.2. Common Areas. During the Term, Owner agrees that any common areas, including, without limitation, any laundry or community facilities on the Property shall be for the exclusive use of the tenants and their guests and shall not be available for use by the general public.

Section 2.3. Occupancy Requirements.

(a) **Initial Occupancy Requirements.** Notwithstanding anything herein to the contrary, at the time of occupancy of the Property or the time funds are invested pursuant to the HOME Program in connection with the Property, whichever is later, Owner must comply with the following occupancy requirements:

(1) At least *or twenty percent (20%) of the Units *[acquired] [rehabilitated] [constructed] with funds provided under the HOME Program must be occupied by Very Low Income Families;

(2) At least *or seventy percent (70%) of the Units *[acquired] [rehabilitated] [constructed] with funds provided under the HOME Program must be occupied by families or individuals whose Annual Incomes do not exceed sixty percent (60%) of the Area Median Income; and

(3) The remaining * or ten percent (10%) of the Units *[acquired] [rehabilitated] [constructed] with funds provided under the HOME Program may be occupied by Low Income Families.

(b) **Long Term Occupancy Requirements.** Subject to subsection (a) of this Section 2.3, during the Term, Owner will make available for occupancy by Very Low Income Families not less than * (*) Qualifying Units or twenty percent (20%) of the Qualifying Units. The remaining * (*) Qualifying Units or not more than eighty percent (80%) of the Qualifying Units shall be made available for occupancy by Low Income Families. Owner shall use its best efforts to distribute Units reserved for Low Income Families and Very Low Income Families among unit sizes in proportion to the distribution of unit sizes in the Property and to avoid concentration of Low Income Families and Very Low Income Families in any area or areas of the Property. **[OPTIONAL FOR NEW CONSTRUCTION OR SET ASIDE (IF NOT NEW CONSTRUCTION):]** In addition, at least * (*) Units or five percent (5%) of all Qualifying Units , whichever is greater, shall be made available for occupancy by Special Needs Individuals or Special Needs Families with mobility impairments and at least * _ (*) Units or two percent (2%) of all Qualifying Units, whichever is greater, shall be made available for occupancy by Special Needs Individuals or Special Needs Families with hearing or vision impairments; provided, however, the Project contains at least 5 units, unless a survey (the form and methodology of which is satisfactory to the Department in its sole

discretion) conducted by the Owner or the Department, justifies a lesser need, in which event the Department (in its sole discretion) may lower the Special Needs Individual or Family occupancy requirement to correspond to the amount of need found by the Owner or the Department.

Section 2.4. Income Determination.

(a) The determination of whether the Annual Income of a family or individual occupying or seeking to occupy a Qualifying Unit complies with the requirements for Very Low Income Families or Low Income Families shall be made by Owner prior to admission of such family or individual to occupancy in a Qualifying Unit (or to designation of a Unit occupied by such family or individual as a Qualifying Unit). Thereafter, such determinations shall be made by Owner at least annually.

(b) If the Annual Income of a tenant which previously was classified as a Very Low Income Family shall be determined upon reexamination to exceed the applicable income limit for Very Low Income Families, but does not exceed the applicable income limit for Low Income Families, the Unit shall continue to be counted as occupied by a Qualified Tenant during such family's or individual's continuing occupancy of such Unit, and the Owner shall not be considered out of compliance with the occupancy requirements of Section 2.3, provided Owner shall hold the next available Unit available for occupancy by a Very Low Income Family or as otherwise may be necessary to comply with the occupancy requirements of Section 2.3.

(c) If the Annual Income of a tenant which previously was classified as a Very Low Income Family or Low Income Family shall be determined upon reexamination to exceed the applicable income limit for Low Income Families, the Unit occupied by such family or individual shall continue to be counted as occupied by a Qualified Tenant during such family's or individual's continuing occupancy of such Unit and the Owner shall not be considered out of compliance with the occupancy requirements of Section 2.3, provided (A) such family or individual pays as rent thirty percent (30%) of such family's or individual's Monthly Adjusted Income, as recertified; and (B) Owner shall hold the next available Unit available for occupancy by a Low Income Family or Very Low Income Family, whichever is necessary to comply with the occupancy requirements of Section 2.3.

(d) If the initial determination made in Section 2.4(a) results in such family or individual exceeding the applicable income limit, such family or individual shall not be considered a Qualified Tenant.

Notwithstanding anything herein to the contrary, the Department may, upon written application by Owner, waive the occupancy requirements provided herein for a particular Unit on a case-by-case basis if the Department determines, in its sole absolute discretion, (i) that Owner has taken all reasonable steps to rent such Unit to a Very Low Income Family, Low Income Family or particular Special Needs Individual or Special Needs Family as may otherwise be necessary for Owner to comply with the occupancy requirements of this Agreement and has been unable to do so and (ii) the continued vacancy will cause financial hardship to the Property.

* [OPTIONAL]

* **Section 2.5 Mixed Income Restrictions.** If, during the Term, Owner markets and/or rents Units in the Property to persons other than Low Income Families or Very Low Income Families, Owner agrees each building in the Property shall satisfy the rent and occupancy requirement of Article II and Article III of this Agreement.

ARTICLE III

Rent

Section 3.1. Rent Limitations for Low Income Families. The maximum monthly rent charged by Owner for Units occupied by Low Income Families other than Very Low Income Families shall not exceed the limits determined by the applicable calculations required by HUD or the Department in accordance with Title 24, Section 92.252 of the Code of Federal Regulations, as may be amended or modified from time to time.

Section 3.2. Rent Limitations for Very Low Income Families. The maximum monthly rent charged by Owner for Qualifying Units occupied by Very Low Income Families shall not exceed the limits determined by the applicable calculations required by HUD or the Department in accordance with Title 24, Section 92.252 of the Code of Federal Regulations as may be amended or modified from time to time.

ARTICLE IV

Administration

Section 4.1. Lease Provisions. All tenant leases entered into with Qualified Tenants during the Term shall be in writing and contain provisions wherein each individual tenant (i) certifies the accuracy of the information provided in connection with the examination or reexamination of Annual Income of the household of such lessee, and in connection therewith, agrees to execute an Income Certification form prescribed by the Department, and (ii) agrees that the Annual Income and other eligibility requirements shall be deemed substantial and material obligations of his or her tenancy, that he or she will comply promptly with all requests for information with respect thereto from Owner or the Department, and that his or her failure to provide accurate information regarding such requirements (regardless of whether such inaccuracy is intentional or unintentional) or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of his or her tenancy and constitute cause for immediate termination thereof. All tenant leases entered into with Qualified Tenants during the Term shall also contain provisions which are consistent with the HOME Regulations and HOME Manual, including, without limitation, the rent restrictions provided herein and allowing for necessary increases in rent pursuant to Section 2.4(c) and (d) herein. In addition, all tenant leases entered into with Qualified Tenants during the Term shall be supplemented and amended by a HOME Addendum to Lease in a form prescribed by the Department.

Section 4.2. Nondiscrimination.

Owner shall select Qualified Tenants for available Units from a written waiting list in chronological order of their application, insofar as it is practical, and without regard as to disability, religion, race, color, family composition, national origin or sex or whether such Qualified Tenants are holders of a certificate of family participation under Title 24 Part 882 of the Code of Federal Regulations (Rental Certificate Program) or a rental voucher under Title 24 Part 887 of the Code of Federal Regulations (Rental Voucher Program) or holders of a comparable document evidencing participation in a HOME tenant-based rental assistance program and without regard as to whether such Qualified Tenants receive or rely on any other rent-based assistance or other assistance from any state or federal program.

Section 4.3. Examination and Re-examination of Incomes.

(a) Owner shall be responsible for determination of the Annual Income and family composition of Qualified Tenants at initial occupancy of a Unit, and for reexamination of Annual Income and family composition of Qualified Tenants at least annually, based on information collected, verified and certified by Owner, in accordance with procedures set forth in the HOME Regulations and HOME Manual, or as otherwise required by the Department.

(b) As a condition of admission to occupancy of a Qualifying Unit, Owner shall require the household head and other such household members as it designates to execute a Department-approved release and consent authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to Owner and to the Department such information as Owner or Department determines to be necessary. Owner shall also require the household to submit directly documentation determined to be necessary. Information or documentation shall be determined to be necessary if it is required for purposes of determining or auditing a household's eligibility as a Qualified Tenant, or for verifying related information. The use or disclosure of information obtained from a household or from another source pursuant to this release and consent shall be limited to purposes directly connected with administration of this Agreement.

(c) Owner shall not be deemed to be in violation of Articles II and III of this Agreement if, in determining Annual Income and family composition of a Qualified Tenant, (i) Owner has relied in good faith upon information which is supplied to Owner by the tenant, (ii) Owner has no reason to believe such information is false, and (iii) Owner shall have complied with all requirements of the Department with respect to verification of household income and family composition.

Section 4.4. Certification by Owner. During the Term, Owner shall, at least monthly or as the Department may otherwise approve, submit to the Department in a form prescribed by the Department, a certificate of continuing compliance with all occupancy standards, terms and provisions of this Agreement. The certification will also include statistical data relating to Special Needs Individuals race, ethnicity, income and fair housing opportunities and other information requested by the Department. In addition, Owner shall include in its certification information detailing the resolution of any fair housing complaints received by Owner.

Section 4.5. Maintenance of Documents. All Project Documents and any other report or records which Owner is required to prepare and/or provide to the Department pursuant to this Agreement, the HOME Regulations or HOME Manual must be retained for the periods set out in the HOME Regulations, or if no specific period is set out, for five (5) years after the end of the Term, or as otherwise specified by law or required by the Department. All Project Documents shall at all times be kept separate and identifiable from any other business of Owner which is unrelated to the Property, and shall be maintained in compliance with the HOME Regulations, the HOME Manual, and any other requirements of the Department, in a reasonable condition for proper audit and subject to examination and photocopying during business hours by representatives of the Department, HUD, or the United States Comptroller General. Owner agrees and acknowledges that any and all of the Project Documents are confidential in nature. Owner agrees not to disclose the Project Documents or any of the terms, provisions or conditions thereof, or any other information that is deemed confidential under federal law or state law related to tenants' or applicants' income, social security number, employment status, disability, or other related matters to any party outside of Owner's organization, except as otherwise expressly required in this Agreement or by the HOME Regulations or HOME Manual. Owner further agree that within its organization, the Project Documents and other confidential information will be disclosed and exhibited only to those persons within Owner's organization whose position and responsibilities make such disclosure necessary.

Section 4.6. Compliance Review. During the Term, Owner agrees to permit Department and HUD, or its designated representative, access to the Property for the purpose of performing Department Compliance Monitoring Procedures. The Department or HUD periodically will monitor and audit Owner's compliance with the requirements of this Agreement, the HOME Regulations, the HOME Manual and any and all other Governmental Requirements, in accordance with Department Compliance Monitoring Procedures. In conducting its compliance review, the Department and HUD will rely primarily on information obtained from Owner's records and reports, findings from on-site monitoring, and audit reports. The Department and HUD may also consider relevant information gained from other sources, including litigation and citizen complaints. In accordance with Section 2306.231 of the State Act, and to the extent permitted by the Federal Act and its implementing regulations, Owner shall reimburse the Department or HUD, as appropriate, on demand for their respective costs incurred in connection with monitoring, auditing, inspecting and examining the Owner's compliance with the requirements of this Agreement.

Section 4.7. Hazardous Materials: Indemnification. (a) Owner agrees (i) that Owner shall not receive, store, dispose or release any Hazardous Materials on or to the Property or transport any Hazardous Materials to or from the Property or permit the existence of any Hazardous Materials Contamination; (ii) to give written notice to the Department immediately upon Owner's acquiring knowledge of the presence of any Hazardous Materials on the Property or the transport of any Hazardous Materials to or from the Property or of the existence of any Hazardous Materials Contamination, with a full description thereof; (iii) promptly, at Owner's sole cost and expense, to comply with any Governmental Requirements requiring the removal, treatment or disposal of such Hazardous Materials or Hazardous Materials Contamination and provide the Department with satisfactory evidence of such compliance; (iv) to provide the Department, within thirty (30) days after demand by the Department, with financial assurance evidencing to the Department's satisfaction that the necessary funds are available to pay the cost of removing, treating and disposing of such Hazardous Materials or Hazardous Materials Contamination and discharging any

assessments which may be established on the Property as a result thereof; and (v) to insure that all leases, licenses, and agreements of any kind now or hereafter executed which permit any party to occupy, possess, or use in any way the Property or any part thereof, whether written or oral, include an express prohibition on the disposal or discharge of any Hazardous Materials at or affecting the Property, and a provision that failure to comply with such prohibition shall expressly constitute a default under any such agreement.

(b) Owner shall not cause or suffer any liens to be recorded against the Property as a consequence of, or in any way related to, the presence, remediation or disposal of Hazardous Materials in or about the Property, including any so-called state, federal or local "Superfund" lien relating to such matters.

(c) OWNER SHALL AT ALL TIMES RETAIN ANY AND ALL LIABILITIES ARISING FROM THE PRESENCE, HANDLING, TREATMENT, STORAGE, TRANSPORTATION, REMOVAL OR DISPOSAL OF HAZARDOUS MATERIALS ON THE PROPERTY. REGARDLESS OF WHETHER ANY EVENT OF DEFAULT (AS DEFINED IN SECTION 6.1 OF THIS AGREEMENT) SHALL HAVE OCCURRED AND BE CONTINUING OR ANY REMEDIES IN RESPECT OF THE PROPERTY ARE EXERCISED BY THE DEPARTMENT, OWNER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE DEPARTMENT FROM AND AGAINST ANY AND ALL LIABILITIES (INCLUDING STRICT LIABILITY), SUITS, ACTIONS, CLAIMS, DEMANDS, PENALTIES, DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, CONSEQUENTIAL DAMAGES, INTEREST, PENALTIES, FINES AND MONETARY SANCTIONS), LOSSES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND REMEDIAL COSTS) (THE FOREGOING ARE HEREINAFTER COLLECTIVELY REFERRED TO AS "LIABILITIES") WHICH MAY NOW OR IN THE FUTURE (WHETHER BEFORE OR AFTER THE CULMINATION OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT) BE INCURRED OR SUFFERED BY THE DEPARTMENT BY REASON OF, RESULTING FROM, IN CONNECTION WITH, OR ARISING IN ANY MANNER WHATSOEVER OUT OF THE BREACH OF ANY WARRANTY OR COVENANT OR THE INACCURACY OF ANY REPRESENTATION OF OWNER CONTAINED OR REFERRED TO IN THIS SECTION 4.7 OR WHICH MAY BE ASSERTED AS A DIRECT OR INDIRECT RESULT OF THE PRESENCE ON OR UNDER, OR ESCAPE, SEEPAGE, LEAKAGE, SPILLAGE, DISCHARGE, EMISSION OR RELEASE FROM THE PROPERTY OF ANY HAZARDOUS MATERIALS OR ANY HAZARDOUS MATERIALS CONTAMINATION OR ARISE OUT OF OR RESULT FROM THE ENVIRONMENTAL CONDITION OF THE PROPERTY OR THE APPLICABILITY OF ANY GOVERNMENTAL REQUIREMENTS RELATING TO HAZARDOUS MATERIALS, REGARDLESS OF WHETHER OR NOT CAUSED BY OR WITHIN THE CONTROL OF OWNER OR THE DEPARTMENT.

SUCH LIABILITIES SHALL INCLUDE, WITHOUT LIMITATION: (I) INJURY OR DEATH TO ANY PERSON; (II) DAMAGE TO OR LOSS OF THE USE OF ANY PROPERTY; (III) THE COST OF ANY DEMOLITION AND REBUILDING OF ANY IMPROVEMENTS NOW OR HEREAFTER SITUATED ON THE PROPERTY OR ELSEWHERE, AND THE COST OF REPAIR OR REMEDIATION OF ANY SUCH IMPROVEMENTS; (IV) THE COST OF ANY ACTIVITY REQUIRED BY ANY

GOVERNMENTAL AUTHORITY; (V) ANY LAWSUIT BROUGHT OR THREATENED, GOOD FAITH SETTLEMENT REACHED, OR GOVERNMENTAL ORDER RELATING TO THE PRESENCE, DISPOSAL, RELEASE OR THREATENED RELEASE OF ANY HAZARDOUS MATERIAL, ON, FROM OR UNDER THE PROPERTY; AND (VI) THE IMPOSITION OF ANY LIENS ON THE PROPERTY ARISING FROM THE ACTIVITY OF OWNER OR OWNER'S PREDECESSORS IN INTEREST ON THE PROPERTY OR FROM THE EXISTENCE OF HAZARDOUS MATERIALS UPON THE PROPERTY OR HAZARDOUS MATERIALS CONTAMINATION.

The covenants and agreements contained in this Section 4.7 shall survive the consummation of the transactions contemplated by this Agreement.

Section 4.8. Affirmative Marketing. Owner shall maintain and abide by an affirmative marketing plan to be approved by the Department which shall be designed to attract tenants and Project management employees from all racial, ethnic, gender, and Special Needs groups and shall require all press releases and written materials, advertising or promoting of the Project to, when feasible, include the equal housing opportunity logo or slogan. Owner further agrees to maintain documents and records evidencing its compliance with said plan and the affirmative marketing requirements imposed by the HOME Regulations and the HOME Manual.

Section 4.9. Federal and State Requirements. Owner shall comply with the HOME Regulations and HOME Manual and each and every Governmental Requirement as the same may be amended.

Section 4.10. Access and Inspection. Owner will permit the Department, its agents, employees and representatives, and any interested Governmental Authority at any and all reasonable times during business hours, to enter upon and inspect the Project and all materials to be used in the *[rehabilitation] [construction] thereof and to examine and copy all of Owner's books, records, contracts and bills pertaining to the Project. Owner will also cooperate and cause all Contractors to cooperate with the Department and its agents, employees and representatives during such inspections; provided, however, nothing herein shall be deemed to impose upon the Department any duty or obligation to undertake such inspections or any liability for the failure to detect or failure to act with respect to any defect which was or might have been disclosed by such inspections.

Section 4.11. Property Standards. Owner agrees that any HOME-Assisted Unit shall be rehabilitated or constructed, as applicable, and maintained in accordance with the requirements set forth in the HOME Regulations and the HOME Manual.

Section 4.12. Fair Lease and Grievance Procedure; Tenant Participation. Owner shall maintain and abide by the fair lease and grievance procedure approved by the Department and shall have any changes in said procedures approved by the Department prior to the effective date of said changes. Owner agrees to maintain and abide by a program of tenant participation in management decisions as set forth in the HOME Regulations and the HOME Manual.

Section 4.13. Reports. Owner shall deliver to the Department:

(a) Within ten (10) days after the last day of each quarter in each fiscal year of Owner, or as requested by the Department, a rent roll for the Project, setting forth with respect to each portion of the Project which is subject to a separate lease: a Rental Housing Compliance Report for the Project and a Tenant Income Certification in a form acceptable to the Department for each household that begins occupying a unit or undergoes recertification during the reporting period.

(b) From time to time and promptly upon each request, such data, certificates, reports, statements, documents, or further information regarding the assets or the business, liabilities, financial position, projections, results of operations, or business prospects of Owner or such other matters concerning Owner's compliance with the HOME Regulations and HOME Manual as the Department may reasonably request or as necessary to assist the Department in meeting its recordkeeping and reporting requirements under the HOME Regulations, including, without limitation, the following:

1. Records that demonstrate that the Project meets the Property Standards set out in Title 24 Section 92.251 of the Code of Federal Regulations;

2. Records that demonstrate that the Project meets the requirements set out in Title 24 Section 92.252 of the Code of Federal Regulations for the Term;

3. Records that demonstrate compliance with the requirements of Title 24 Section 92.253 of the Code of Federal Regulations for tenant protections;

4. Records that indicate whether the Project is mix-income, mix-use, or both.

5. Other federal requirements records:

(i) Equal opportunity and fair housing records containing:

(A) Data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for, participated in, or benefited from, any program or activity funded in whole or in part with HOME funds.

(B) Documentation of actions undertaken to meet the requirements of Title 24 Section 92.350 of the Code of Federal Regulations, which implements Section 3 of the Housing Development Act of 1968, as amended (12 U.S.C. 1701u).

(C) Documentation and data on the steps taken to implement the Owner's outreach programs to minority-owned and female-owned businesses including data indicating the racial/ethnic or gender character of each business entity receiving a contract or subcontract of \$25,000 or more paid, or to be paid,

with HOME funds; the amount of the contract or subcontract, and documentation of Owner's affirmative steps to assure that minority business and women's business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction, and services.

- (D) Documentation of the actions the Owner has taken to affirmatively further fair housing;
 - (ii) Records indicating the affirmative marketing procedures and requirements under Title 24 Section 92.351 of the Code of Federal Regulations.
 - (iii) Records that demonstrate compliance with environmental review requirements in Title 24 Section 92.352 of the Code of Federal Regulations (and part 58 of this title).
 - (iv) Records which demonstrate compliance with the requirements in Title 24 Section 92.353 of the Code of Federal Regulations regarding displacement, relocation, and real property acquisition, including project occupancy lists identifying the name and address of all persons occupying the real property on the date described in 92.353(c)(2)(i)(A) of the Code of Federal Regulations, moving into the property on or after the date described in Section 92.353(c)(2)(i)(A), and occupying the property upon completion of the project.
 - (v) Records demonstrating compliance with labor requirements in Title 24 Section 92.354 of the Code of Federal Regulations, including contract provisions and payroll records.
 - (vi) Records concerning lead-based paint under Title 24 Section 92.355 of the Code of Federal Regulations.
 - (vii) Records supporting requests for waivers of the conflict of interest prohibition in Title 24 Section 92.356 of the Code of Federal Regulations.
 - (viii) Records of certifications concerning debarment and suspension required by Title 24, Part 24 of the Code of Federal Regulations.
 - (ix) Records demonstrating compliance with flood insurance requirements.

- (x) Records demonstrating intergovernmental review, as required by Title 24 Part 52 of the Code of Federal Regulations.

Section 4.14. Information and Reports Regarding the Project. Owner shall deliver to the Department, at any time within thirty (30) days after notice and demand by the Department but not more frequently than once per month, (a) a statement in such reasonable detail as the Department may request, certified by Owner, of the leases relating to the Project, and (b) a statement in such reasonable detail as the Department may request, certified by a certified public accountant or, at the option of the Department, by the Owner, of the income from and expenses of any one or more of the following: (i) the conduct of any business on the Project, (ii) the operation of the Project, or (iii) the leasing of the Project or any part thereof, for the last twelve (12) month calendar period prior to the giving of such notice, and, on demand, Owner shall furnish to the Department executed counterparts of any such tenant leases and any other contracts and agreements pertaining to facilities located on the Property or which otherwise generate ancillary income for the Project, for the audit and verification of any such statement.

Section 4.15. Other Information. Owner shall deliver to the Department, at any time within thirty (30) days after notice and demand by the Department, any information or reports required by the laws of the State of Texas or as otherwise reasonably required by the Department.

Section 4.16. Displaced Persons. In the event there are any Displaced Persons as a result of any of the Units being acquired, rehabilitated or reconstructed with HOME Funds, Owner shall comply with the requirements and provisions of the Relocation Plan.

ARTICLE V

Representations and Warranties of Owner

Section 5.1. Representations and Warranties. Owner represents and warrants to the Department that:

(a) **Valid Execution.** Owner has validly executed this Agreement and the same constitutes the binding obligation of Owner. Owner has full power, authority and capacity (i) to enter into this Agreement, (ii) to carry out Owner's obligations as described in this Agreement and (iii) to assume responsibility for compliance with all applicable Governmental Requirements, including, without limitation, those in the HOME Regulations and the HOME Manual.

(b) **No Conflict or Contractual Violation.** To the best of Owner's knowledge the making of this Agreement and Owner's obligations thereunder:

(i) will not violate any contractual covenants or restrictions (A) between Owner or any third party or (B) affecting the Property;

(ii) if Owner is other than an individual, will not conflict with any of the instruments that create or establish Owner's authority;

(iii) will not conflict with any applicable public or private restrictions;

(iv) do not require any consent or approval of any public or private authority which has not already been obtained; and

(v) are not threatened with invalidity or unenforceability by any action, proceeding or investigation pending or threatened, by or against (A) Owner, without regard to capacity, (B) any person with whom Owner may be jointly or severally liable, or (C) the Property or any part thereof.

(c) No Litigation. No action, litigation, investigation or proceeding is now pending or, to the best of Owner's knowledge, threatened against Owner which, if adversely determined, could individually or in the aggregate have an adverse effect on title to or the use and enjoyment or value of the Property, or any portion thereof, or which could in any way interfere with the consummation or enforceability of this Agreement.

(d) No Bankruptcy. There is not pending or, to Owner's best knowledge, threatened against Owner any case or proceeding or other action in bankruptcy, whether voluntary or otherwise, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for Owner under any federal, state or other statute, law, regulation relating to bankruptcy, insolvency or relief for debtors.

(e) Prior Warranties, Representations, and Certifications. All warranties, representations and certifications made and all information and materials submitted or caused to be submitted to the Department in connection with the Project are true and correct, and there have been no material changes in or conditions affecting any of such warranties, representations, certifications, materials or information prior to the effective date hereof.

(f) Conflicting Agreements. Owner has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

(g) Consideration. Owner has freely and without reservation placed itself under the obligations of this Agreement and that the receipt of financial assistance from the Department or HUD is an essential part of the consideration for this Agreement.

(h) Conflicts of Interest. No member, employee, officer, agent, consultant, or official of the Owner, nor any member of their immediate family, during their tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or any proceeds or benefits arising therefrom, except as allowed by Title 24, Section 92.356 of the Code of Federal Regulations, as amended from time to time, relating to an employee or agent of the owner or developer who occupies a housing unit as the project manager or maintenance worker.

(i) Debarment and Suspension. Neither Owner nor any of its principals are presently debarred, suspended, proposed for debarment, suspension, declared ineligible, or voluntarily

excluded from participation in this transaction of the HOME Program by any federal department or agency.

(j) No Religious Organization. Owner is not a religious organization and is not in any way controlled by a religious organization.

(k) Flood Insurance. Except to the extent Owner has previously notified the Department in writing to the contrary, the Property is not located in an area identified by the Federal Emergency Management Agency ("FEMA") as having special flood hazards. In the event the Property is in such an area, Owner warrants and represents to the Department that (i) such area is participating in The National Flood Insurance Program or less than one (1) year has passed since FEMA notification regarding such hazards; and (ii) Owner has obtained flood insurance for the Property in an amount and form satisfactory to the Department.

* [OPTIONAL IF OWNER IS A CHDO]

(l) Community Housing Development Organization. (a) Owner is a Community Housing Development Organization and meets the requirements of the same under the HOME Regulations; (b) Owner has no part of its net earnings inuring to the benefit of any member, founder, contributor or individual; (c) Owner is neither controlled by nor under the direction of individuals or entities seeking to derive profit or gain from Owner; (d) if Owner is sponsored or created by a for-profit entity, said for-profit entity does not: (i) have as its primary purpose the development, building or management of housing; or (ii) have the right to or the power to appoint in excess of one third (1/3) of the members of Owner's governing body; (e) no member of Owner's governing body (which member was appointed by a for-profit entity) has the right or power to appoint any of the remaining two thirds (2/3) members of the Owner's governing body; (f) if the Owner is sponsored or created by a for-profit entity, the Owner is free to contract for goods and services from vendors of its own choosing; (g) Owner has been issued a ruling or determination letter from the Internal Revenue Service, which letter establishes that Owner is exempt from federal income taxation under one of the subsections of Section 501(c) of the Internal Revenue Code of 1986, as amended, and said letter is still in effect; (h) no member of Owner's governing body receives compensation for its services rendered to Owner; (i) Owner is not a state department, agency, board, bureau, commission, authority, public corporation, participating jurisdiction (as said term is defined in the HOME Regulations), public housing authority, redevelopment agency, urban renewal agency, redevelopment authority, down town development authority, housing finance agency or instrumentality thereof (hereinafter referred to as "Public Body") and is not significantly controlled by a Public Body; (j) if Owner is sponsored, created, or chartered by a Public Body, said Public Body neither has the right nor the power to appoint in excess of one third (1/3) of the members of the Owner's governing body; (k) no more than one third (1/3) of the members of the Owner's governing body are public officials; (l) no member of Owner's governing body (which member was appointed by a Public Body) has the right or power to appoint any of the remaining two thirds (2/3) members of the Owner's governing body; (m) Owner has in effect and follows financial accountability standards which conform to Attachment of the OMB Circular No. A-110 (Rev.) "Standards For Financial Management Systems;" (n) Owner has among its purposes the provision of decent housing that is affordable to Low Income Families and Very Low Income Families, as evidenced in its charter, articles of incorporation, resolutions or by-laws; (o) Owner: (i) maintains at least one third

(1/3) of its governing board membership for either residents of low income neighborhoods or residents of other low income communities (as said term is defined in the HOME Regulations) in which the Project is located, or elected representatives of low income neighborhood organizations, including but not limited to block groups, town watch organizations, civic associations, neighborhood church groups and neighborhood work groups; and (ii) has a written process by which Low Income Families and Very Low Income Families may advise Owner in its decisions regarding the design, siting, development and management of the Project; (p) Owner has either (i) experienced accomplished key staff who have successfully completed projects similar to Project; or (ii) an enforceable contract for services with a consultant which consultant has successfully completed projects similar to the Project and said contract for services includes training by said consultant of appropriate key members of the Owner's staff; and (q) Owner has served the community in which the Project is located for at least one year, or if Owner is less than one year old, Owner's non-profit parent organization has served the community in which the Project is located for at least one year.

Section 5.2. Misrepresentations and Omission. Acts constituting fraud, false filings, misrepresentation or omission may subject the alleged offender to criminal prosecution and may also result in the alleged offender being barred from further participation in the Department's programs.

Section 5.3. INDEMNIFICATION. OWNER AGREES TO INDEMNIFY AND HOLD HARMLESS THE DEPARTMENT FROM AND AGAINST ALL LIABILITIES, LOSSES, CLAIMS, DAMAGES, JUDGMENTS, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES) INCURRED BY THE DEPARTMENT AS A RESULT OF ANY MATERIAL INACCURACY OR BREACH IN ANY OF THE REPRESENTATIONS AND WARRANTIES CONTAINED IN SECTION 5.1 HEREOF. OWNER FURTHER AGREES TO INDEMNIFY AND HOLD HARMLESS THE DEPARTMENT FROM AND AGAINST ANY AND ALL LIABILITY, LOSSES, CLAIMS AND DAMAGES (INCLUDING ALL FORESEEABLE AND UNFORESEEABLE CONSEQUENTIAL DAMAGES), JUDGMENTS, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, THE COST OF ANY REPAIR, CLEANUP, DETOXIFICATION OR REMEDIATION, AND THE PREPARATION OF ALL CLOSURE AND OTHER REQUIRED PLANS), WHETHER SUCH ACTION IS REQUIRED OR NECESSARY, PRIOR TO OR FOLLOWING THE DATE OF THIS AGREEMENT, DIRECTLY OR INDIRECTLY ARISING OUT OF THE USE, GENERATION, MANUFACTURE, STORAGE, OR DISPOSAL OF HAZARDOUS SUBSTANCE ON, UNDER, OR ABOUT THE PROPERTY.

ARTICLE VI

Default, Enforcement and Remedies

Section 6.1. Events of Default. Occurrence of one or more of the following events will, at the sole election of the Department, constitute an event of default ("Event of Default") under this Agreement:

(a) Owner shall default in the performance of any of its obligations under this Agreement or breaches any covenant, agreement, restriction, representation or warranty set forth herein, and such default remains uncured for a period of thirty (30) days after notice thereof shall have been given by the Department (or for an extended period approved by the Department if the

default or breach stated in such notice can be corrected, but not within such 30-day period, unless Owner does not commence such correction or commences such correction within such 30-day period but thereafter does not diligently pursue the same to completion within such extended period);

(b) Owner shall be adjudged bankrupt or insolvent, or a petition or proceeding for bankruptcy or for reorganization shall be filed against it and it shall admit the material allegations thereof, or an order, judgment or decree shall be entered approving such petition and such order, judgment or decree shall not be vacated or stayed within thirty (30) days of its entry or a receiver or trustee shall be appointed for the Owner or the Property, Land or any part thereof and remain in possession thereof for thirty (30) days; or

(c) Owner shall sell or otherwise transfer the Property, in whole or in part (except leases of individual Units/ for a period not to exceed one (1) year and otherwise in accordance with this Agreement), without the prior written consent of Department.

Section 6.2. Remedies. Upon an occurrence of an Event of Default, the Department, in its sole discretion may, (i) apply to any court having jurisdiction of the subject matter for specific performance of this Agreement, and/or for an injunction against any violation of this Agreement, for the appointment of a receiver to take over and operate the Property in accordance with the terms of this Agreement, or (ii) take any and all action at law, in equity, or otherwise for such other relief as may be appropriate, it being acknowledged that the beneficiaries of Owner's obligations thereunder cannot be adequately compensated by monetary damages in the event of Owner's default. The Department shall be entitled to its reasonable attorneys' fees in any such judicial action in which the Department shall prevail. The Department shall also be compensated for fees associated with additional compliance monitoring during corrective periods of non-compliance upon a default by Owner hereunder.

Section 6.3. Cumulative and Concurrent Remedies. Each right, power and remedy of the Department provided for in this Agreement now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the Department of any one or more of the rights, powers or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the Department of any or all such other rights, powers or remedies.

Section 6.4. Enforcement and Remedies of Other Parties. The occupancy and maximum rent requirements set forth in Articles II and III hereof, respectively, also shall inure to the benefit of, and may be judicially enforced against Owner by, affected Low Income Families or Very Low Income Families. Any of the persons or entities described above shall be entitled to judicially enforce Sections 2.3, 2.4, 3.1 or 3.2 of this Agreement in the same manner that the Department may seek judicial enforcement in accordance with Sections 6.2 and 6.3, and any such party that prevails in any such judicial action shall be entitled to its reasonable attorneys' fees. Further, any deed, lease, conveyance of contract made in violation of this Agreement shall be void and may be set aside on petition of one or more of the parties to the Agreement, and all successors in interest, heirs,

executors, administrators, or assigns, shall be deemed parties to this Agreement to the same effect as the original signer; and when any such conveyance or other instrument is set aside by decree of a court of competent jurisdiction, all costs and all expenses of such proceedings shall be taxed against the offending party or parties, and shall be declared by the court to constitute a lien against the real estate so wrongfully deeded, sold, leased, or conveyed, until paid, and such lien may be enforced in such manner as the court may order.

Section 6.5. Reliance Upon Information. In carrying out its obligations hereunder, Owner shall be entitled to rely upon information provided by the Department with respect to (i) income limits applicable to Lower Income Individuals and Families and Very Low Income Families, (ii) the method for calculating the incomes of such individuals and families and (iii) the maximum rents which may be charged to such individuals and families pursuant to Sections 3.1 and 3.2 hereof.

ARTICLE VII
Miscellaneous

Section 7.1. Amendments. This Agreement may not be amended or modified except by written instrument signed by Owner and the Department, or their respective heirs, successors or assigns, which instrument shall not be effective until it is recorded in the Real Property Records of the county in which the Property is located.

Section 7.2. Notices. All notices required or permitted to be given under this Agreement must be in writing. Notice will be deemed effective upon deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, and properly addressed to the party to be notified. Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

Department: 507 Sabine, Suite 400
 P.O. Box 13941
 Austin, Texas 78711-3941
 Attention: Director of Multifamily Finance Production
 HOME Program

with copy to: Texas Department of Housing and Community Affairs
 507 Sabine, Suite 400
 P.O. Box 13941
 Austin, Texas 78711-3941
 Attention: Director of Portfolio Management and Compliance

Owner: *
 Attention: *

Any party may change its address for notice purposes by giving notice to the other parties in accordance with this Section 7.2.

Section 7.3. Entire Agreement. This Agreement contains the entire understanding between the parties hereto with respect to the subject matter hereof. There are no representations, oral or otherwise, other than those expressly set forth herein. Time is of the essence of this Agreement.

Section 7.4. Cooperation. Should any claims, demands, suits or other legal proceedings be made or instituted by any person against the Department which arise out of any of the matters relating to this Agreement, Owner shall cooperate fully by giving Department all pertinent information and reasonable assistance in the defense or other disposition thereof.

Section 7.5. Choice of Law and Venue. In the event the enforceability or validity of any provision of this Agreement is challenged or questioned, such provision shall be governed by, and shall be construed in accordance with, the laws of the State of Texas or the federal laws, whichever may be applicable. This Agreement is performable in Travis County, Texas and Owner consents to any suit, action or proceeding with respect to this Agreement being, at the option of the Department, brought in any court of competent jurisdiction located in Travis County, Texas, unless dictated otherwise by state law. Owner further waives any objection that it may have now or hereafter to the venue of any such suit, action or proceeding in any such court and any claim that any of the foregoing has been brought in an inconvenient forum.

Section 7.6. Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

Section 7.7. Binding Effect; Covenants Running with the Land. During the Term, this Agreement and the covenants, reservations and restrictions contained herein shall be deemed covenants running with the land for the benefit of the Department and its successors, and shall pass to and be binding on Owner's heirs, assigns and successors in title to the Property, or if the Property shall not include title to land, but shall include a leasehold interest in land, this Agreement and the covenants, restrictions and reservations shall bind the leasehold interest as well as the Property and shall pass to and be binding upon all heirs, assigns and successors to such interests; provided, however, that upon expiration of the Term in accordance with the terms hereof said covenants, reservations and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. If a portion or portions of the Property are conveyed, all of such covenants, reservations and restrictions shall run to each portion of the Property. Owner, at its cost and expense, shall cause this Agreement to be duly recorded or filed and re-recorded or refiled in such places, and shall pay or cause to be paid all recording, filing, or other taxes, fees and charges,

and shall comply with all such statutes and regulations as may be required by law, in the opinion of qualified counsel, in order to establish, preserve and protect the ability of the Department to enforce this Agreement.

Section 7.8. Counterparts. This Agreement and any amendments hereto may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

Section 7.9. Section Titles. Section titles and the table of contents are for descriptive purposes only and shall not control or limit the meaning of this Agreement as set forth in the text.

Section 7.10. Change in Neighborhood. A substantial or radical change in the character of the neighborhood surrounding the Property will not extinguish the restrictive covenants of this Agreement. The restrictive covenants shall survive any and all changed circumstances, including but not limited to the following: housing pattern changes; zoning amendments; the issuance of variances affecting the immediate or surrounding area; increased traffic or road conditions; enhancement of the value of the Land or Property; growing industrial activity; encroachment of business areas; development of natural resources; financial downturn of the Owner; or commercialization of the neighborhood in question.

EXECUTED to be effective as of the date first written above.

By: _____
Name: _____
Title: _____

**TEXAS DEPARTMENT OF HOUSING AND
COMMUNITY AFFAIRS**

By: _____
Name: Edwina P. Carrington
Title: Executive Director

THE STATE OF TEXAS §
 §
COUNTY OF * §

This instrument was acknowledged before me on this ____ day of *, 2003 by _____
_____, _____ of _____, a _____, on behalf of such
_____.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this _____ day of *, 2003 by Edwina P. Carrington, Executive Director of the Texas Department of Housing and Community Affairs, a public and official department of the State of Texas, on behalf of such department.

Notary Public, State of Texas

“EXHIBIT “A”

(LAND)

INTERCREDITOR AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

THIS INTERCREDITOR AGREEMENT (this "Agreement"), dated as of _____, _____, 2002, is entered into by and between, (i) _____, ("First Lender") the owner and holder of that certain \$_____ promissory note ("First Note") dated _____, executed by _____ ("Borrower"), and payable to the order of First Lender, the repayment of which is secured by that certain Deed of Trust to First Lender, dated _____, recorded in Volume _____, Page _____, _____ Records of _____ County, Texas (hereinafter referred to as the "First Deed of Trust"), (ii) **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS** ("Second Lender") the owner and holder of that certain \$_____ promissory note ("Second Note") dated as of the date hereof, executed by Borrower, and payable to the order of Second Lender, the repayment of which is secured by that certain Deed of Trust of even date herewith, recorded in the _____ Records of _____ County, Texas ("Second Deed of Trust"), (iii) Borrower; and (iv) **U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT** ("HUD").

WHEREAS, Borrower has granted a first and second lien on, and security interest in, the real property described on attached Exhibit "A" (the "Property"); and

WHEREAS, HUD, First Lender and Second Lender desire to enter into this Intercreditor Agreement to evidence HUD's, First Lender's and Second Lender's agreement to allow a second lien on, and security interest in the Property to secure the payment of the Second Note.

NOW, THEREFORE, for \$10.00 and in consideration of the foregoing, the premises and the mutual promises and covenants contained herein, the parties hereto agree as follows:

1. This is a continuing agreement and will remain in full force and effect until all of the loans from First Lender and Second Lender have been fully paid, performed and satisfied.
2. First Lender and Second Lender agree to give each other written notice of any default or event of default or claimed default under its loan documents and the intended recipient of such notice shall have sixty (60) days from the date of such notice is given in order to cure all such defaults or claimed defaults.
3. HUD and First Lender consent, without the necessity of any other documentation, to the loan by Second Lender including the terms of all documents securing the loan by Second Lender including the Second Note and Second Deed of Trust.
4. Once, during every calendar year, within ten (10) business days after a request therefor by First Lender or Second Lender, as the case may be (the "Requesting Party") the party of whom such request is made (the "Responding Party") shall furnish the Requesting Party

a written letter addressed to the Requesting Party and any other party reasonably requested by the Requesting Party which states the principal amount then outstanding on the Responding Party's loan and the date to which interest on such loan has been paid, the amount of any escrows, reserves or other sums held by or on behalf of the Responding Party and stating whether it has given any notice of the existence of any default under the Responding Party's loan.

5. This Agreement shall be subject to modification or amendments only if in writing.

6. All notices required or permitted to be given under this Agreement must be in writing. Notice will be deemed effective upon deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, and properly addressed to the party to be notified. Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

Second Lender: Texas Department of Housing and Community Affairs
507 Sabine, Suite 400
P.O. Box 13941
Austin, Texas 78711-3941
Attention: Housing Trust Fund Program Manager

Borrower: _____

First Lender: _____

HUD: U.S. Department of Housing and Urban Development

7. Borrower must use HUD's construction contract only for construction of improvements on the Property.

8. All change orders for construction of improvements on the Property are at HUD's sole discretion.

9. Storage of material for use in the construction contract for construction of improvements on the Property are at HUD's sole discretion.

10. All work performed with the proceeds of the second mortgage:
 - a. must be cost certified; and
 - b. must conform with Davis-Bacon requirements including submission of payrolls, certifications, etc.
11. The holder of the First Note and First Deed of Trust have superior rights with respect to the leases and the rents, insurance proceeds, tax and insurance escrows, and assignments of any judgment, decrees or awards relating to the Property.
12. The Borrower's breach of any covenant contained in the Second Deed of Trust shall not constitute a default under the First Deed of Trust unless such act shall also be a breach of the First Deed of Trust.
13. The Second Deed of Trust is subject to, and subordinate to, the First Deed of Trust, the HUD's Regulatory Agreement and the First Lender's Building Loan Agreement relating to improvements on the Property.
14. In the event the Secretary of HUD ("Secretary") acquires title to the project by a deed-in-lieu of foreclosure, the lien of the second mortgage will automatically terminate subject to the conditions hereinafter described. The holder of the second mortgage may cure a default under the first mortgage prior to a conveyance by deed-in-lieu of foreclosure. The Secretary shall give written notice to the holder of the second mortgage of a proposed tender of title in the event (1) the Secretary decides to accept a deed-in-lieu of foreclosure or (2) the Secretary receives notice from the holder of the HUD-insured mortgage of its election to accept a deed-in-lieu of foreclosure. Such notice shall be given at the address stated herein or such other address as may subsequently, upon written notice to the Secretary, be designated by the holder of the second mortgage as its legal business address. The second mortgage holder shall have thirty (30) days to cure the default after the notice of intent to accept a deed-in-lieu of foreclosure is mailed.
15. Prior written consent of the Secretary of HUD is not necessary before foreclosure of the second lien but HUD may require approval of transfer of the Property to a third party
16. HUD, First Lender and Second Lender agree that if there is a conflict with this Intercreditor Agreement and HUD's Regulatory Agreement, First Lender's loan documents or Second Lender's loan documents relating to improvements on the Property; this Intercreditor Agreement will control.

FIRST LENDER

By: _____
Name: _____
Title: _____

BORROWER

By: _____
Name: _____
Title: _____

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

By: _____
Name: _____
Title: _____

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

By: _____
Name: Edwina P. Carrington
Title: Executive Director

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

Before me, the undersigned, a Notary Public in and for the County and State aforesaid, on this ____ day of _____, 2002 personally appeared _____ of _____, and did acknowledge to me that he/she executed the same as his/her free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

Notary Public, State of Texas

THE STATE OF TEXAS §

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2002, by _____, _____ of _____, a federally regulated and insured depository financial institution, as agent for _____, on behalf of such institution.

Notary Public, State of Texas

THE STATE OF TEXAS §

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2002, by _____, _____ of the _____, on behalf of the _____.

Notary Public, State of Texas

THE STATE OF TEXAS §

COUNTY OF _____ §

On this _____ day of _____, 2002 before me appeared _____ who, being duly sworn, did say that he is the duly appointed Authorized Agent and the person who executed the foregoing instrument by virtue of the authority vested in him and acknowledged the same to be his free and voluntary act and deed as Authorized Agent for and on behalf of the U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

IN TESTIMONY HEREOF, I have hereunto set my hand on the day and year last above written.

Notary Public

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on the ____ day of _____, 2002 by Edwina P. Carrington, Executive Director of the Texas Department of Housing and Community Affairs, a public and official department of the State of Texas, on behalf of such department.

Notary Public, State of Texas

AFTER RECORDING, RETURN TO:

Texas Department of Housing and Community Affairs
Attn: Legal Division
P. O. Box 13947
Austin, Texas 78711-3941

MEMORANDUM OF UNDERSTANDING

Between

The U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

and

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

This Memorandum of Understanding (“MOU”) is made and entered into between the **U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT** (“HUD”) and the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS** (“TDHCA”), to be effective _____, 2002.

RECITALS

WHEREAS, HUD and TDHCA desire to facilitate financing for affordable housing in the state of Texas;

WHEREAS, HUD and TDHCA believe that leveraging resources and providing a combination of financing will assist the production of affordable housing in the State;

WHEREAS, on certain projects HUD requires TDHCA's financing to be payable only from surplus cash (or residual receipts) of a project, as the term surplus cash (or residual receipts) is defined in the Regulatory Agreement affecting any such project (said projects hereinafter referred to as “Covered Transactions”);

WHEREAS, to facilitate the financing of projects by HUD and TDHCA, the entities have created certain form documents attached hereto for use by TDHCA in Covered Transactions;

NOW THEREFORE, in consideration of the representations contained herein, HUD and TDHCA hereby agree as follows:

1. HUD and TDHCA approve the use of the forms attached hereto, and listed as (a) – (k) below, for use by TDHCA in Covered Transactions:

- a. SURPLUS CASH PROMISSORY NOTE;
- b. INTERCREDITOR AGREEMENT;
- c. LAND USE RESTRICTION AGREEMENT (Multifamily Properties)(HOME);
- d. LAND USE RESTRICTION AGREEMENT (Multifamily Properties)(HOUSING TRUST FUND);
- e. CONSTRUCTION LOAN AGREEMENT;

- f. FINANCING STATEMENT TO BE FILED IN THE UCC RECORDS OF THE SECRETARY OF STATE;
- g. FINANCING STATEMENT TO BE FILED IN THE REAL PROPERTY OR UCC RECORDS OF THE APPROPRIATE TEXAS COUNTY;
- h. NOTICE OF INVALIDITY OF ORAL AGREEMENTS;
- i. DEED OF TRUST (WITH SECURITY AGREEMENT AND ASSIGNMENT OF RENTS);
- j. CONTRACTOR AGREEMENT; AND
- k. ARCHITECT AGREEMENT.

2. TDHCA Prior written consent of HUD is not necessary before foreclosure of the second lien but HUD will require approval of transfer of the Property to a third party.

3. In the event the HUD acquires title to a project by a deed-in-lieu of foreclosure, the lien of the TDHCA second mortgage will automatically terminate subject to the conditions hereinafter described. The TDHCA, as holder of the second mortgage, may cure a default under the first mortgage prior to a conveyance by deed-in-lieu of foreclosure. HUD shall give written notice to the TDHCA, as the holder of the second mortgage, of a proposed tender of title in the event: (1) HUD decides to accept a deed-in-lieu of foreclosure; or (2) HUD receives notice from the holder of the HUD-insured mortgage of its election to accept a deed-in-lieu of foreclosure. Such notice shall be given at the address provided to HUD by the TDHCA. The TDHCA, as second mortgage holder, shall have thirty (30) days to cure the default after the notice of intent to accept a deed-in-lieu of foreclosure is mailed.

4. Once, during every calendar year, within ten (10) business days after a request therefor by HUD or TDHCA, as the case may be (the "Requesting Party") the party of whom such request is made (the "Responding Party") shall furnish the Requesting Party a written letter addressed to the Requesting Party and any other party reasonably requested by the Requesting Party which states the principal amount then outstanding on the Responding Party's loan and the date to which interest on such loan has been paid, the amount of any escrows, reserves or other sums held by or on behalf of the Responding Party and stating whether it has given any notice of the existence of any default under the Responding Party's loan.

5. This Agreement shall be subject to modification or amendments only if in writing, and approved by both HUD and TDHCA.

6. All notices required or permitted to be given under this Agreement must be in writing. Notice will be deemed effective upon deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, and properly addressed to the party to be notified. Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

TDHCA: Texas Department of Housing and Community Affairs
507 Sabine, Suite 400
P.O. Box 13941
Austin, Texas 78711-3941
Attention: Housing Trust Fund Program Director

HUD: U.S. Department of Housing and Urban Development
Texas State Office
Multifamily Housing Division, 6AHM
801 Cherry Street
P.O. Box 2905
Fort Worth Texas 76113-2905

7. Any borrower in a Covered Transaction must use HUD's construction contract only for construction of improvements on the Property.

8. All change orders for construction of improvements in transactions Covered Transaction are at HUD's sole discretion.

9. Storage of material for use in the construction contract for construction of improvements in Covered Transactions are to be at HUD's sole discretion.

10. All work performed with the proceeds of a TDHCA second mortgage in Covered Transactions:

a. must be cost certified; and

b. must conform with Davis-Bacon requirements including submission of payrolls, certifications, etc.; however, TDHCA does not require or monitor conformance with Davis-Bacon Requirements under its state funded Housing Trust Fund program

11. The holder of a first lien note and first lien deed of trust in Covered Transactions have superior rights with respect to the leases and the rents, insurance proceeds, tax and insurance escrows, and assignments of any judgment, decrees or awards relating to the Property.

12. The Borrower's breach of any covenant contained in the TDHCA's second lien deed of trust in transactions Covered Transaction shall not constitute a default under the First Deed of Trust unless such act shall also be a breach of the First Deed of Trust.

13. The TDHCA's second lien deed of trust shall be subject to, and subordinate to, the first lien deed of Trust, the HUD's Regulatory Agreement and the First Lender's Building Loan Agreement relating to improvements in Covered Transaction.

14. HUD shall consent, without the necessity of any other documentation, to the loan by TDHCA Lender including the terms of all documents securing the loan in Covered Transaction.

15. The addresses of the parties may be changed by providing notice to the other party of such other address as provided for in paragraph 6.

The undersigned bind themselves to the faithful performance of this Agreement. It is mutually understood that this Agreement shall not become effective until approved by HUD and TDHCA.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

By: _____
Name: _____
Title: _____

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

By: _____
Name: Edwina P. Carrington
Title: Executive Director

THE STATE OF TEXAS §

COUNTY OF _____ §

On this _____ day of _____, 2002 before me appeared _____ who, being duly sworn, did say that he is the duly appointed Authorized Agent and the person who executed the foregoing instrument by virtue of the authority vested in him and acknowledged the same to be his free and voluntary act and deed as Authorized Agent for and on behalf of the U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

IN TESTIMONY HEREOF, I have hereunto set my hand on the day and year last above written.

Notary Public

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on the ____ day of _____, 2002 by Edwina P. Carrington, Executive Director of the Texas Department of Housing and Community Affairs, a public and official department of the State of Texas, on behalf of such department.

Notary Public, State of Texas

NOTICE OF INVALIDITY OF ORAL AGREEMENTS

TO: Borrower and all other Debtors and Obligors with respect to the Loan which is identified below.

1. **THE WRITTEN LOAN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.**

THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

2. As used in this Notice:

"Borrower" means the Borrower identified below.

"Debtor" and "Obligor" means any entity or individual who (i) is obligated to pay the Note or (ii) otherwise is or becomes obligated to pay the Loan (for example, as cosigner or guarantor) or (iii) has pledged any property as security for the Loan.

"Lender" means Texas Department of Housing and Community Affairs.

"Loan" means the loan by Lender which is to be evidenced by the promissory note ("Note") dated ■ _____, 2003, executed by Borrower, payable to the order of Lender, in the principal face amount of \$■.

"Loan Agreement" means one or more promises, promissory notes, agreements, undertakings, security agreements, deeds of trust or other documents, or commitments, or any combination of those actions or documents, relating to the Loan.

3. This Notice is given by Lender with respect to the Loan, pursuant to Section 26.02 of the Texas Business and Commerce Code. Each Borrower, Debtor, and Obligor who signs below acknowledges, represents, and warrants to Lender that Lender has given and such party has received and retained a copy of this Notice on the date stated above.

BORROWER:



By: _____
Name: _____
Title: _____

LENDER:

**TEXAS DEPARTMENT OF HOUSING AND
COMMUNITY AFFAIRS**, a public and official
department of the State of Texas

By: _____
Name: Edwina P. Carrington
Title: Executive Director

TO BE FILED IN THE UCC RECORDS OF THE SECRETARY OF STATE OF TEXAS

FINANCING STATEMENT

This is a financing statement to be filed with the Secretary of State, State of Texas, in order to perfect a security interest in the collateral hereinafter described which has been granted to the Secured Party as hereinafter named by the Debtor as hereinafter named:

NAME AND ADDRESS OF DEBTOR:

Organization Name: *

Mailing Address: *

Type of Organization: *

Jurisdiction: *

Organization ID: *

NAME AND ADDRESS OF SECURED PARTY:

**TEXAS DEPARTMENT OF HOUSING AND
COMMUNITY AFFAIRS**

507 Sabine St.

P.O. Box 13941

Austin, Texas 78711-3941

DESCRIPTION OF COLLATERAL:

1. All furniture, equipment and other personal property now or hereafter owned by Debtor and used in connection with, located on or related in any way to the real property ("Property") described in Exhibit "A" hereto attached and made a part hereof, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached in any manner to the buildings and other improvements now or hereafter erected, constructed or developed on the Property ("Project");

2. All building materials and equipment now or hereafter delivered to the Property and all building and construction materials, equipment and parts intended to be installed in or on the Property or Project;

3. All plans and specifications for the Project;

4. All contracts and subcontracts relating to the Project;

5. All deposits (including tenants' security deposits, if any), funds, accounts, contract rights, instruments, documents, general intangibles (including trademarks, trade names

and symbols used in connection therewith), and notes or chattel paper arising from or by virtue of any transactions related to the Property;

6. All permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Property;

7. All bank accounts in which rental income, if any, from the Property is deposited;

8. All proceeds arising from or by virtue of the sale, lease or other disposition of any of the real or personal property described herein;

9. All proceeds (including premium refunds) payable or to be payable under each policy of insurance relating to the Project;

10. All proceeds arising from the taking of all or a part of the Property or any rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, for any public or quasi-public use under any law or by rights of eminent domain, or by private or other purchase in lieu thereof; and

11. All other interest of every kind and character which Debtor now has or at any time hereafter acquires in and to the above-described personal property and all property which is used or useful in connection therewith.

SIGNATURE OF DEBTOR:

*

By: _____

Name: _____

Title: _____

LAND USE RESTRICTION AGREEMENT
(Multifamily Properties)

THE STATE OF TEXAS §
 §
COUNTY OF ■ §

THIS LAND USE RESTRICTION AGREEMENT ("Agreement") is made and entered into to be effective this ____ day of ■, 2003, by and between ■, a ■ ("Owner"), and **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS** ("Department"), a public and official department of the State of Texas.

R E C I T A L S :

The Owner is the owner of certain improvements ("Improvements"), known as ■ (the "Project") situated on real property ("Land") located in the City of ■, County of ■, State of Texas, more fully described in Exhibit "A" attached hereto and incorporated herein by reference. The Land and Improvements are hereinafter collectively referred to as the "Property".

Of even date herewith, the Department has agreed to loan certain funds (the "Loan") to Owner in accordance with that certain Construction Loan Agreement executed by and between Owner and the Department, which funds shall be used by Owner for the ■[rehabilitation] [construction] of the Project or [acquisition of the Property].

As a condition to the Department's making the Loan, Owner must agree to comply with certain occupancy, rent and other restrictions, and the parties have entered into this Agreement to evidence Owner's agreement to comply with such restrictions during the Term (hereinafter defined).

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE I
Definitions

Section 1.1. General. Capitalized terms used in this Agreement shall have, unless the context clearly requires otherwise, the meanings specified in this Article I. Certain additional terms may be defined elsewhere in this Agreement.

(a) "**Act**" means TEX. GOV'T CODE Chap. 2306, as amended from time to time.

(b) "**Agreement**" means this Land Use Restriction Agreement, as it may from time to time be amended.

(c) "**Annual Income**" means "annual income" as defined in 24 CFR part 5.609.

- (d) **"Board"** means the governing Board of the Department.
- (e) **"Department Compliance Monitoring Procedures"** means procedures and requirements adopted or imposed by the Department for the purpose of monitoring the Property for compliance with this Agreement, Title VI of the Civil Rights Act of 1964, The Fair Housing Act, Executive Order 11063 and HUD regulations issued pursuant thereto, including those inspections and examinations allowed pursuant to Section 2306.231 of the Act.
- (f) **"Extremely Low Income Families"** means families and individuals whose Annual Incomes do not exceed thirty percent (30%) of the area median income in the area in which the Property is located, as determined by the Department in accordance with the Act.
- (g) **"Low Income Families"** means families and individuals whose Annual Incomes do not exceed eighty percent (80%) of the area median income in the area in which the Property is located, as determined by the Department in accordance with the Act.
- (h) **"Metropolitan Areas" and "Metro-Areas"** means areas as designated by the Bureau of the Census as metropolitan statistical areas (MSA) in the most recent decennial census.
- (i) **"Non-metropolitan Areas" and "Non-metro Areas"** means all areas outside those areas designated as MSAs by the Bureau of the Census in the most recent decennial census.
- (j) **"Owner"** means ■ as set forth at the beginning of this Agreement, or any successor in title to the Property.
- (k) **"Project"** means Owner's activities concerning the ownership and operation of the Property. The general reference name for the Project is ■.
- (l) **"Qualified Tenant"** means a family or individual tenant of a Qualifying Unit who satisfies the requirements of Section 2.2(a) of this Agreement with respect to such Qualifying Unit.
- (m) **"Qualifying Unit"** means a Unit that (i) is rented to either a Low Income Family, Very Low Income Family, or Extremely Low Income Family and (ii) is used in complying with the low income occupancy requirements of Section 2.2(a) of this Agreement.
- (n) **"Regulations"** means the Housing Trust Fund Rules set forth in 10 TEX. ADMIN. CODE § 51.1, et seq. and all amendments thereto.
- (o) **"Special Needs Individual" or "Special Needs Family"** means an individual or family of Low Income, Very Low Income or Extremely Low Income who is considered disabled or handicapped under a state or federal law, or who is elderly (60 years or more), or as otherwise

designated by Owner in its loan application and approved by the Department or as otherwise designated by the Department.

(p) **"Term"** means the period commencing on the date hereof and ending on the date which is the earlier to occur of the following:

(1) the date upon which there is a change in state or federal law which prevents the Department from enforcing this Agreement; or

(2) the date which is ■ (■) ■[must be at least 20 years]■ years from the effective date of this Agreement.

(q) **"Unit"** means a residential accommodation constituting a part of the Property and containing separate and complete living facilities.

(r) **"Very Low Income Families"** means families and individuals whose Annual Incomes do not exceed sixty percent (60%) of area median income in the area in which the Property is located, as determined by the Department in accordance with the Act.

Section 1.2. Generic Terms. Unless the context clearly indicates otherwise, where appropriate the singular shall include the plural and the masculine shall include the feminine or neuter, and vice versa, to the extent necessary to give the terms defined in this Article I and/or the terms otherwise used in this Agreement their proper meanings.

ARTICLE II

Use and Occupancy of the Property

Section 2.1. Use of the Property. During the Term, Owner will maintain the Property as multifamily rental housing and will rent or hold available for rental each Unit on a continuous basis.

Section 2.2. Occupancy Requirements.

(a) Subject to subsection (c), during the Term, Owner will set aside ■ Units of the ■ Unit development to be made continuously available as follows:

A minimum of ■ Units of the ■ Qualifying Units must be set aside for Low Income Individuals and Families;

A minimum of ■ Units of the ■ Qualifying Units must be set aside for Very Low Income Individuals and Families

A minimum of ■ Units of the ■ Qualifying Units must be set aside for Extremely Low Income Individuals and Families;

In addition, at least ■ (■) Units of all ■ Qualifying Units shall be made available for occupancy by Special Needs Individuals or Special Needs Families to include as follows:

Homeless a minimum of ■ Units;
Persons with HIV a minimum of ■ Units;
Wheelchair Accessible Housing a minimum of ■ Units;
Sight or Hearing Impaired a minimum of ■ Unit;
Housing for Person with other Disabilities a minimum of ■ Units; and
Housing for Persons with other non-disabling Special Needs a Minimum of ■ Units.

unless a survey (the form and methodology of which is satisfactory to the Department in its sole discretion) conducted by the Owner or the Department, justifies a lesser need, in which event the Department may lower the Special Needs Individual or Family occupancy requirement to correspond to the amount of need found by the Owner or the Department

(b) (i) The determination of whether the Annual Income of a family or individual occupying or seeking to occupy a Qualifying Unit exceeds the applicable income limit shall be made prior to admission of such family or individual to occupancy in a Qualifying Unit (or to designation of a Unit occupied by such family or individual as a Qualifying Unit). Thereafter such determinations shall be made at least annually on the basis of an examination or reexamination of the anticipated Annual Income of the family or individual.

(ii) If the Annual Income of a Qualified Tenant which is an Extremely Low Income Family shall be determined upon reexamination to exceed the applicable income limit for Very Low Income Families, but does not exceed the applicable income limit for Low Income Families, the Unit shall be counted as occupied by a Qualified Tenant which is a Low Income Family other than a Very Low Income Family during such family's or individual's continuing occupancy of such Unit in accordance with Subsection (b) (iii) below and Owner shall be required to make the next available Qualifying Unit available for occupancy in accordance with Subsection (b) (iv) below.

(iii) If the Annual Income of a Qualified Tenant shall be determined upon reexamination to exceed the applicable income limit for Low Income Families, the Unit occupied by such family or individual shall be counted as occupied by a Qualified Tenant [and such family or individual shall be considered, for purposes of Subsection (a) and Article III, a Qualified Tenant which is a Low Income Family (other than a Very Low Income Family)] so long as (A) the Annual Income of such family or individual shall not be determined to exceed 140 percent (140%) of the applicable income limit for Low Income Families, or (B) if the Annual Income of such family or individual shall be determined to exceed 140 percent (140%) of the applicable income limit for Low Income Families, so long as each Unit of comparable or smaller size in the Property which is or becomes available is occupied or held available for occupancy by a new resident whose Annual Income does not exceed the applicable income limit for Low Income Families (or a Unit other than a Qualifying Unit occupied by a family or individual whose Annual Income is determined to not exceed the applicable income limit for Low Income Families is designated a Qualifying Unit) until the occupancy requirements of Subsection (a) are met without counting such over-income family or individual.

(iv) If the required occupancy by Very Low Income Families is not met at any time but the required occupancy by Low Income Families is met, Owner shall not be required to make the next available Unit in the Property available to a Very Low Income Family but shall be required to make each Qualifying Unit vacated by a Low Income Family available for occupancy by a Very Low Income Family until the required occupancy by Very Low Income Families is met.

(v) If neither the required occupancy by Extremely Low Income Families or Very Low Income Families nor the required occupancy by Very Low Income Families, if applicable [including families or individuals counted as Low Income Families in accordance with Subsection (b) (iii)] is met at any time, preference (as between potential tenants on a waiting list or simultaneous applicants) must be given to Extremely Low Income Families and then to Very Low Income Families in the renting of each Unit in the Property which becomes available until the required occupancy by the Very Low Income Families is met, after which the rule of Subsection (b) (iv) will apply, if necessary.

(c) Anything to the contrary in the foregoing notwithstanding, Owner will not terminate the occupancy of any tenants in occupancy on the effective date hereof that are not Low Income Families, Very Low Income Families or Extremely Low Income for purposes of meeting the requirements of this section. In the event that Owner is unable to comply with the occupancy requirements of this Section because of the occupancy as of the effective date hereof of any Units by tenants who are not Low Income Families, Very Low Income Families, or Extremely Low Income Families, or who have not been determined to be Qualified Tenants, Owner will be in compliance with this section if each Unit which thereafter becomes vacant is occupied or held available for occupancy by Low Income Families, Very Low Income Families, or Very Low Income Families as the case may be, in accordance with the requirements of Subsection (b) until the low income occupancy requirements of this Section 2.2 are met.

ARTICLE III

Rent

Section 3.1. Rent Limitations for Qualified Tenants.

(a) (i) The gross rent charged by Owner for Qualifying Units designated as Extremely Low Income Families shall not exceed the maximum rent for Extremely Low Income Families for Units of the applicable size in the area, as established by the Department. Such maximum rent shall not be greater than thirty percent (30%) of the income of a family whose income equals thirty percent (30%) of area median income, with adjustment for family size based upon Unit type (or number of bedrooms in the Unit).

(ii) The gross rent charged by Owner for Qualifying Units designated as Very Low Income Families shall not exceed the maximum rent for Very Low Income Families for Units of the applicable size in the area, as established by the Department. Such maximum rent shall not be greater than thirty percent (30%) of the income of a family whose income equals sixty percent (60%) of area median income, with adjustment for family size based upon Unit type (or number of bedrooms in the Unit).

(iii) The gross rent charged by Owner for Qualifying Units designated as Low Income Families other than Very Low Income Families shall not exceed the maximum rent for Low Income Families for Units of the applicable size in the area, as established by the Department. Such maximum rent shall be not greater than thirty percent (30%) of the income of a family whose income equals sixty-five percent (65%) of area median income, with adjustment for family size based upon Unit type (or number of bedrooms in the Unit).

For purposes of this Section 3.1(a), "gross rent" (i) does not include any payment under Section 8 of the United States Housing Act of 1937 or any comparable rental assistance program (with respect to such Unit or occupants thereof), (ii) includes any utility allowance determined by the Secretary of HUD (as hereinafter defined) after taking into account such determinations under Section 8 of the United States Housing Act of 1937, (iii) does not include any fee for a supportive service which is paid to the owner of the Unit (on the basis of the low-income status of the tenant of the Unit) by any governmental program of assistance (or by an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") and exempt from tax under Section 501(a) of the Code if such program (or organization) provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services, and (iv) does not include any rental payment to the owner of the Unit to the extent such owner pays an equivalent amount to the Farmers' Home Administration under Section 515 of the Housing Act of 1949. For purposes of clause (iii), the term "supportive service" means any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped.

For purposes of this Section 3.1(a), the adjustment for family size based upon Unit type is the income limitation which would apply to individuals occupying the Unit if the number of individuals occupying the Unit were as follows: (i) in the case of a Unit which does not have a separate bedroom, 1 individual and (ii) in the case of a Unit which has one or more separate bedrooms, 1.5 individuals for each separate bedroom.

(b) Such rents shall be subject to annual adjustments upon publication by the U.S. Department of Housing and Urban Development ("HUD") of revised income limits for all Low Income and Very Low Income Families and Individuals, which adjustments shall be based upon changes in the applicable area median income limits.

(c) If a Qualified Tenant ceases to be considered a Qualified Tenant in accordance with Section 2.2(b), Owner shall, subject to the terms of such tenant's lease, be free to condition such tenant's continued occupancy in the Property upon its payment of a rental charge not subject to the limitations in this Article III.

ARTICLE IV **Administration**

Section 4.1. Lease Provisions. All tenant leases entered into with Qualified Tenants during the Term shall contain provisions wherein each individual tenant (i) certifies the accuracy of the information provided in connection with the examination or reexamination of Annual Income of the household of such lessee, and (ii) agrees that the Annual Income and other eligibility requirements shall be deemed substantial and material obligations of his or her tenancy, that he or she will comply promptly with all requests for information with respect thereto from Owner or the Department, and that his or her failure to timely provide accurate information regarding such requirements (regardless of whether such inaccuracy is intentional or unintentional) or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of his or her tenancy and constitute cause for immediate termination thereof.

Section 4.2. Examination and Reexamination of Incomes.

(a) Owner shall be responsible for the collection, verification and certification of the Annual Income and family composition of Qualified Tenants, and for reexamination of Annual Income and family composition of Qualified Tenants at least annually, in accordance with procedures prescribed by the Department.

(b) As a condition of admission to occupancy of a Qualifying Unit, Owner shall require the household head and other such household members as it designates to execute a Department-approved release and consent authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to Owner and to the Department such information as Owner or Department determines to be necessary. Owner shall also require the household to submit directly to owner documentation determined to be necessary. Information or documentation shall be determined to be necessary if it is required for purposes of determining or auditing a household's eligibility as a Qualified Tenant, or for verifying related information. The use or disclosure of information obtained from a household or from another source pursuant to this release and consent shall be limited to purposes directly connected with administration of this Agreement.

(c) Owner shall not be deemed to be in violation of Articles II and III of this Agreement if, in determining Annual Income and family composition of a Qualified Tenant, (i) Owner has relied in good faith upon information which is supplied to Owner by the tenant, (ii) Owner has no reason to believe such information is false, and (iii) Owner shall have complied with all requirements of the Department with respect to verification of household income and family composition.

Section 4.3. Certification by Owner. During the term of this Agreement, Owner, at least monthly or as the Department may otherwise approve, submit to the Department in a form prescribed by the Department, a certificate of continuing compliance with all occupancy standards, terms and provisions of this Agreement. The certification will also include statistical data relating to race, ethnicity, income and fair housing opportunities.

Section 4.4. Maintenance of Documents. All tenant lists, utility allowance documents, applications, leases, lease addenda, tenant and owner certifications, advertising

records, waiting lists, rental calculations and rent records, income examinations and reexaminations relating to the Property shall at all times be kept separate and identifiable from any other business of Owner which is unrelated to the Property, and shall be maintained, in compliance with Department requirements, in a reasonable condition for proper audit and subject to examination and photocopying during business hours by representatives of the Department.

Section 4.5. Compliance Review. During the Term of this Agreement, Owner agrees to permit Department, or its designated representative, access to the Property, including all parts thereof, for the purpose of performing Department Compliance Monitoring Procedures. The Department periodically will monitor Owner's compliance with the requirements of this Agreement, Title VI of the Civil Rights Act of 1964, the Fair Housing Act, Executive Order 11063 and HUD regulations issued pursuant thereto, in accordance with Department Compliance Monitoring Procedures. In conducting its compliance review, the Department will rely primarily on information obtained from Owner's records and reports, findings from on-site monitoring, and audit reports. The Department may also consider relevant information gained from other sources, including litigation and citizen complaints. Pursuant to Section 2306.231 of the Act, Owner shall reimburse the Department, on demand, for its costs incurred in connection with monitoring, auditing, inspecting and examining the Owner's compliance with the requirements of this Agreement.

Section 4.6. Releases. The Department shall execute such documents as may be required to evidence release of the Property from the covenants and restrictions set forth in this Agreement upon the expiration of the Term as provided in Section 1.1 hereof.

Section 4.7 Nondiscrimination. Owner shall select Qualified Tenants for available Units from a written waiting list in chronological order of their application, insofar as it is practical, and without regard as to race, color, family composition, national origin or sex or whether such Qualified Tenants are holders of a certificate of family participation under 24 C.F.R. Part 882 (Rental Certificate Program) or a rental voucher under 24 C.F.R. Part 887 (Rental Voucher Program) or holders of a comparable document evidencing participation in a HOME tenant-based assistance program and without regard as to whether such Qualified Tenants receive or rely on any other rent-based assistance from any state or federal program.

ARTICLE V

Representations and Warranties of Owner

Section 5.1. Representations and Warranties. Owner represents and warrants to the Department that:

(a) **Valid Execution.** Owner has validly executed this Agreement and the same constitutes the binding obligation of Owner. Owner has full power, authority and capacity (i) to enter into this Agreement, (ii) to carry out Owner's obligations as described in this Agreement and (iii) to assume responsibility for compliance with all applicable State and Federal rules and regulations including, without limitation, the Regulations.

(b) No Conflict or Contractual Violation. To the best of Owner's knowledge, the making of this Agreement and Owner's obligations hereunder:

- (i) will not violate any contractual covenants or restrictions (A) between Owner or any third party or (B) affecting the Property;
- (ii) will not conflict with any of the instruments that create or establish Owner's authority;
- (iii) will not conflict with any applicable public or private restrictions;
- (iv) do not require any consent or approval of any public or private authority which has not already been obtained; and
- (v) are not threatened with invalidity or unenforceability by any action, proceeding or investigation pending or threatened, by or against (A) Owner, without regard to capacity, (B) any person with whom Owner may be jointly or severally liable, or (C) the Property or any part thereof.

(c) No Litigation. No litigation or proceedings are pending or, to the best of Owner's knowledge, threatened against Owner which, if adversely determined, could individually or in the aggregate have an adverse effect on title to or the use and enjoyment or value of the Property, or any portion thereof, or which could in any way interfere with the consummation of this Agreement.

(d) No Bankruptcy. There is not pending or, to Owner's best knowledge, threatened against Owner any case or proceeding or other action in bankruptcy, whether voluntary or otherwise, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for Owner under any federal, state or other statute, law, regulation relating to bankruptcy, insolvency or relief for debtors.

(e) Conflicting Agreements. Owner has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof. In any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

(f) Consideration. Owner has freely and without reservation placed itself under the obligations of this Agreement and acknowledges that the receipt of financial assistance from the Department is an essential part of the consideration for this Agreement.

Section 5.2. INDEMNIFICATION. OWNER AGREES TO INDEMNIFY AND HOLD HARMLESS THE DEPARTMENT FROM AND AGAINST ALL LIABILITIES, LOSSES, CLAIMS, DAMAGES, JUDGMENTS, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES) INCURRED BY THE DEPARTMENT AS A RESULT OF ANY MATERIAL INACCURACY OR MATERIAL

BREACH IN ANY OF THE REPRESENTATIONS AND WARRANTIES CONTAINED IN SECTION 5.1 HEREOF.

ARTICLE VI
Enforcement and Remedies

Section 6.1. Remedies of the Department.

(a) If Owner defaults in the performance of any of its obligations under this Agreement or breaches any covenant, agreement or restriction set forth herein, and if such default remains uncured for a period of thirty (30) days after written notice thereof shall have been given by the Department (or for an extended period approved by the Department if the default or breach stated in such notice can be corrected, but not within such 30-day period, unless Owner does not commence such correction or commences such correction within such 30-day period but thereafter does not diligently pursue the same to completion within such extended period), the Department in its sole discretion may (i) apply to any court having jurisdiction of the subject matter for specific performance of this Agreement, for an injunction against any violation of this Agreement, for the appointment of a receiver to take over and operate the Property in accordance with the terms of this Agreement, or (ii) take any and all other action at law, in equity or otherwise for such other relief as may be appropriate, it being acknowledged that the beneficiaries of Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of Owner's default. The Department shall be entitled to its reasonable attorneys' fees in any such judicial action in which the Department shall prevail. The Department shall also be compensated for fees associated with additional compliance monitoring during corrective periods of non-compliance upon default by Owner hereunder.

(b) Each right, power and remedy of the Department provided for in this Agreement now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the Department of any one or more of the rights, powers or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the Department of any or all such other rights, powers or remedies.

Section 6.2. Remedies of Other Parties. The occupancy and maximum rent requirements set forth in Section 2.2 and Section 3.1, respectively, and Section 4.7 of this Agreement also shall inure to the benefit of, and may be judicially enforced against Owner by, affected Extremely Low Income Families, Very Low Income Families and Low Income Families or affected Special Needs Individuals or Families. As used herein, the term "affected Extremely Low Income Families, Very Low Income Families, and Low Income Families or affected Special Needs Individuals or Families" shall mean families or individuals who are renting a Qualifying Unit or who are eligible to rent a Qualifying Unit in the Project. Any of the persons or entities described above shall be entitled to judicially enforce Section 2.2, Section 3.1, or Section 4.7 of this Agreement in the same manner that the Department may seek judicial

enforcement in accordance with Section 6.1, and any such party that prevails in any such judicial action shall be entitled to its reasonable attorneys' fees

Section 6.3. Reliance Upon Information In carrying out its obligations hereunder, Owner shall be entitled to rely upon information provided by the Department with respect to (i) income limits applicable to Extremely Low Income Families, Very Low Income Families, and Low Income Families (ii) the method for calculating the incomes of such individuals and families, and (iii) the maximum rents which may be charged to such families pursuant to Section 3.1 hereof.

ARTICLE VII **Miscellaneous**

Section 7.1. Amendments. This Agreement may not be amended or modified except by written instrument signed by Owner and the Department, or their respective heirs, successors or assigns, which instrument shall not be effective until it is recorded in the Real Property Records of the county in which the Property is located. Owner agrees to enter into such amendments to this Agreement as Department may reasonably request from time to time.

Section 7.2. Notices. All notices required or permitted to be given under this Agreement must be in writing. Notice will be deemed effective three (3) days after deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, and properly addressed to the party to be notified. Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

Department: 507 Sabine, Suite 400
 P.O. Box 13941
 Austin, Texas 78711-3941
 Attention: Housing Trust Fund Program Manager

with copy to: Texas Department of Housing and
 Community Affairs
 507 Sabine, Suite 400
 P.O. Box 13941
 Austin, Texas 78711-3941
 Attention: Director of Compliance

Owner: ■
 Attention: ■

Any party may change its address for notice purposes by giving notice to the other parties in accordance with this Section 7.2.

Section 7.3. Entire Agreement. This Agreement contains the entire understanding between the parties hereto with respect to the subject matter hereof. There are no

representations, oral or otherwise, other than those expressly set forth herein. Time is of the essence of this Agreement.

Section 7.4. Cooperation. Should any claims, demands, suits or other legal proceedings be made or instituted by any person against the Department which arise out of any of the matters relating to this Agreement, Owner shall cooperate fully by giving Department all pertinent information and reasonable assistance in the defense or other disposition thereof.

Section 7.5. Confidence. To the extent permitted by law, Owner agrees to maintain in confidence the dealings, negotiations and agreements of the parties with respect to the Property and Project, this Agreement, and any affidavits, and will not make public release of information regarding those matters unless the Department approves such disclosure.

Section 7.6. Choice of Law. In the event the enforceability or validity of any provision of this Agreement is challenged or questioned, such provision shall be governed by, and shall be construed in accordance with, the laws of the State of Texas or the federal laws, whichever may be applicable.

Section 7.7. Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

Section 7.8. Binding Effect; Covenants Running with the Land. During the Term, this Agreement and the covenants, reservations and restrictions contained herein shall be deemed covenants running with the land for the benefit of the Department and its successors, and shall pass to and be binding on Owner's heirs, assigns and successors in title to the Property, or if the Property shall not include title to land, but shall include a leasehold interest in land, this Agreement and the covenants, restrictions and reservations shall bind the leasehold interest as well as the Property and shall pass to and be binding upon all heirs, assigns and successors to such interests; provided, however, that upon expiration of the Term in accordance with the terms hereof said covenants, reservations and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. If a portion or portions of the Property are conveyed, all of such covenants, reservations and restrictions shall run to each portion of the Property. Owner, at its cost and expense, shall cause this Agreement to be duly recorded or filed and re-recorded or refiled in such places, and shall pay or cause to be paid all recording, filing, or other taxes, fees and charges, and shall comply with all such statutes and regulations as may be required by law, in the opinion of qualified counsel, in order to establish, preserve and protect the ability of the Department to enforce this Agreement.

Section 7.09. Counterparts. This Agreement and any amendments hereto may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

Section 7.10. Section Titles. Section titles and the table of contents are for descriptive purposes only and shall not control or limit the meaning of this Agreement as set forth in the text.

Section 7.11 Other Statutes. In addition to the requirements of this Agreement and the Act, Owner shall comply with the requirements of Title VI of the Civil Rights Act of 1964, the Fair Housing Act, Executive Order 11063 and HUD regulations issued pursuant thereto, and all other federal, state and local statutes, regulations, rules and ordinances pertaining to the use and occupancy of the Property.

Section 7.12. Change in Neighborhood. A substantial or radical change in the character of the neighborhood surrounding the Property will not extinguish the restrictive covenants of this Agreement. The restrictive covenants shall survive any and all changed circumstances, including but not limited to the following: housing pattern changes; zoning amendments; the issuance of variances affecting the immediate or surrounding area; increased traffic or road conditions; enhancement of the value of the Land or Property; growing industrial activity; encroachment of business areas; development of natural resources; financial downturn of the Owner; or commercialization of the neighborhood in question.

EXECUTED to be effective this ____ day of ■, 2003.

■

By: _____
Name:
Title:

**TEXAS DEPARTMENT OF HOUSING AND
COMMUNITY AFFAIRS**

By: _____
Name: Edwina P. Carrington
Title: Executive Director

THE STATE OF TEXAS §
 §
COUNTY OF ■ §

This instrument was acknowledged before me on this _____ day of ■, 2003, by ■, ■ of ■, a ■ corporation, on behalf of said corporation.

Notary Public, State of Texas

OR, IF IN OR OUT-OF-STATE CORPORATION IS GENERAL PARTNER TO LIMITED PARTNERSHIP

THE STATE OF ■ §
 §
COUNTY OF ■ §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared ■, known to me to be the ■ of ■, a ■ corporation, general partner of ■, the limited partnership that executed the foregoing instrument, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said limited partnership, and that he executed the same as the act of such limited partnership for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of ■, 2003.

Notary Public in and for _____ County, _____.

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Edwina P. Carrington, Executive Director of the Texas Department of Housing and Community Affairs, a public and official department of the State of Texas, on behalf of such department.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of *, 2003.

Notary Public in and for Travis County, Texas

PREPARED BY:

Texas Department of Housing
and Community Affairs
Legal Division
507 Sabine St.
Austin, Texas 78701

AFTER RECORDING RETURN TO:

Texas Department of Housing
and Community Affairs
Housing Trust Fund Division
P.O. Box 13941
Austin, Texas 78711-3941
Attention: Carolyn Kelly

EXHIBIT "A"

LAND

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this "Agreement") is entered into his ____ day of _____, _____ by and among (i) _____, a _____ (the "Senior Lender"), (ii) _____, a _____ (the "Subordinate Lender"), and (iii) _____, a _____ (the "Borrower").

Recitals

A. The Senior Lender has made or is making a loan (the "First Mortgage Loan") to the Borrower in the original principal amount of _____. The First Mortgage Loan is or will be secured by a first mortgage lien (the "First Mortgage") on a multifamily housing project located in _____(the "Property"). The Property is more fully described in Exhibit A attached hereto. The Borrower's obligation to repay the First Mortgage Loan is evidenced by a Multifamily Note dated _____(the "First Mortgage Note"), and is due in full on _____.

B. The Borrower has requested the Senior Lender to permit the Subordinate Lender to make a subordinate loan to Borrower in the amount of _____ (the "Subordinate Loan") and to secure the Subordinate Loan by, among other things, placing a mortgage lien against the Property.

C. The Senior Lender has agreed to permit the Subordinate Lender to make the Subordinate Loan and to place a subordinate mortgage lien against the Property subject to all of the conditions contained in this Agreement.

D. The Senior Lender intends to sell, transfer and deliver the First Mortgage Note and assign the First Mortgage to Fannie Mae.

NOW, THEREFORE, in order to induce the Senior Lender to permit the Subordinate Lender to make the Subordinate Loan to the Borrower and to place a subordinate mortgage lien against the Property, and in consideration thereof, the Senior Lender, the Subordinate Lender and the Borrower agree as follows:

1. Definitions.

In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

"Affiliate" means, when used with respect to a Person, any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual

controlled by, under common control with, or which controls such Person (the term "control" for these purposes shall mean the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity, and control shall be conclusively presumed in the case of the ownership of 50% or more of the equity interests).

"Borrower" means the Person named as such in the first paragraph of this Agreement and any other Person (other than the Senior Lender) who acquires title to the Property after the date of this Agreement.

"Business Day" means any day other than Saturday, Sunday or a day on which the Senior Lender is not open for business.

"Default Notice" means: (a) a copy of the written notice from the Senior Lender to the Borrower stating that a First Mortgage Loan Default has occurred under the First Mortgage Loan; or (b) a copy of the written notice from the Subordinate Lender to the Borrower stating that a Subordinate Loan Default has occurred under the Subordinate Loan. Each Default Notice shall specify the default upon which such Default Notice is based.

"First Mortgage Loan Default" means the occurrence of an "Event of Default" as that term is defined in the First Mortgage Loan Documents.

"First Mortgage Loan Documents" means the First Mortgage Note and all other documents evidencing, securing or otherwise executed and delivered in connection with the First Mortgage Loan.

"Person" means an individual, estate, trust, partnership, corporation, limited liability company, limited liability partnership, governmental department or agency or any other entity which has the legal capacity to own property.

"Senior Lender" means the Person named as such in the first paragraph on page 1 of this Agreement. When any other Person becomes the legal holder of the First Mortgage Note, such other Person shall automatically become the Senior Lender.

"Subordinate Lender" means the Person named as such in the first paragraph on page 1 of this Agreement and any other Person who becomes the legal holder of the Subordinate Note after the date of this Agreement.

"Subordinate Loan Default" means a default by the Borrower in performing or observing any of the terms, covenants or conditions in the Subordinate Loan Documents to

be performed or observed by it, which continues beyond any applicable period provided in the Subordinate Loan Documents for curing the default.

"Subordinate Loan Documents" means the Subordinate Note, the Subordinate Mortgage, and all other documents evidencing, securing or otherwise executed and delivered in connection with the Subordinate Loan.

"Subordinate Mortgage" means the mortgage or deed of trust encumbering the Property as security for the Subordinate Loan, which the Subordinate Lender will cause to be recorded among the applicable land records immediately before this Agreement.

"Subordinate Note" means the promissory note of even date herewith issued by the Borrower to the Subordinate Lender, or order, to evidence the Subordinate Loan.

2. Permission to Place Mortgage Lien Against Property.

The Senior Lender agrees, notwithstanding the prohibition against inferior liens on the Property contained in the First Mortgage Loan Documents and subject to the provisions of this Agreement, to permit the Subordinate Lender to record the Subordinate Mortgage and other recordable Subordinate Loan Documents against the Property (which are subordinate in all respects to the lien of the First Mortgage) to secure the Borrower's obligation to repay the Subordinate Note and all other obligations, indebtedness and liabilities of the Borrower to the Subordinate Lender under and in connection with the Subordinate Loan. Such permission is subject to the condition that each of the representations and warranties made by the Borrower and the Subordinate Lender in Section 3 is true and correct on the date of this Agreement and on the date on which the proceeds of the Subordinate Loan are disbursed to the Borrower. If any of the representations and warranties made by the Borrower and the Subordinate Lender in Section 3 is not true and correct on both of those dates, the provisions of the First Mortgage Loan Documents applicable to unpermitted liens on the Property shall apply.

3. Borrower's and Subordinate Lender's Representations and Warranties.

The Borrower and the Subordinate Lender each makes the following representations and warranties to the Senior Lender:

(a) Subordinate Note. The Subordinate Note contains the following provision:

The indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of the indebtedness evidenced by a Multifamily Note of even date herewith in the original principal amount of _____ issued by _____ and payable to _____ ("Senior Lender"), or order, to the extent and in the manner provided in that certain Subordination Agreement of even date herewith between the payee of this Note, and the Senior Lender and _____ (the "Subordination Agreement"). The Mortgage

securing this Note is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Multifamily Mortgage securing the Multifamily Note as more fully set forth in the Subordination Agreement. The rights and remedies of the payee and each subsequent holder of this Note under the Mortgage securing this Note are subject to the restrictions and limitations set forth in the Subordination Agreement. Each subsequent holder of this Note shall be deemed, by virtue of such holder's acquisition of the Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by the Subordinate Lender under the Subordination Agreement.

(b) Relationship of Borrower to Subordinate Lender and Senior Lender.

The Subordinate Lender is not an Affiliate of the Borrower and is not in possession of any facts which would lead it to believe that the Senior Lender is an Affiliate of the Borrower.

(c) Term. The term of the Subordinate Note does not end before the term of the First Mortgage Note.

(d) Subordinate Loan Documents. The executed Subordinate Loan Documents are substantially in the same forms as those submitted to, and approved by, Senior Lender prior to the date of this Agreement. Upon execution and delivery of the Subordinate Loan Documents, Borrower shall deliver to Senior Lender an executed copy of each of the Subordinate Loan Documents, certified to be true, correct and complete.

(e) Senior Loan Documents. The executed Senior Loan Documents are substantially in the same forms as, when applicable, those submitted to, and approved by, Senior Lender prior to the date of this Agreement. Upon execution and delivery of the Senior Loan Documents, Borrower shall deliver to Subordinate Lender an executed copy of each of the Senior Loan Documents, certified to be true, correct and complete.

4. Terms of Subordination.

(a) Agreement to Subordinate. The Senior Lender and the Subordinate Lender agree that: (i) the indebtedness evidenced by the Subordinate Loan Documents is and shall be subordinated in right of payment, to the extent and in the manner provided in this Agreement to the prior payment in full of the indebtedness evidenced by the First Mortgage Loan Documents, and (ii) the Subordinate Mortgage and the other Subordinate Loan Documents are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the First Mortgage and the other First Mortgage Loan Documents and to all advances heretofore made or which may hereafter be made pursuant to the First Mortgage and the other First Mortgage Loan Documents (including but not limited to, all sums advanced for the purposes of (1) protecting or further securing the lien of the First Mortgage, curing defaults by the Borrower under the First Mortgage Loan Documents or for any other purpose expressly permitted by the First Mortgage, or (2) constructing, renovating, repairing, furnishing, fixturing or equipping the Property).

(b) Subordination of Subrogation Rights. The Subordinate Lender agrees that if, by reason of its payment of real estate taxes or other monetary obligations of the Borrower, or by reason of its exercise of any other right or remedy under the Subordinate Loan Documents, it acquires by right of subrogation or otherwise a lien on the Property which (but for this subsection) would be senior to the lien of the First Mortgage, then, in that event, such lien shall be subject and subordinate to the lien of the First Mortgage.

(c) Payments Before First Mortgage Loan Default. Until the Subordinate Lender receives a Default Notice of a First Mortgage Loan Default from the Senior Lender, the Subordinate Lender shall be entitled to retain for its own account all payments made under or pursuant to the Subordinate Loan Documents.

(d) Payments After First Mortgage Loan Default. The Borrower agrees that, after it receives notice (or otherwise acquires knowledge) of a First Mortgage Loan Default, it will not make any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) without the Senior Lender's prior written consent. The Subordinate Lender agrees that, after it receives a Default Notice from the Senior Lender with written instructions directing the Subordinate Lender not to accept payments from the Borrower on account of the Subordinate Loan, it will not accept any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) without the Senior Lender's prior written consent. If the Subordinate Lender receives written notice from the Senior Lender that the First Mortgage Loan Default which gave rise to the Subordinate Lender's obligation not to accept payments has been cured, waived, or otherwise suspended by the Senior Lender, the restrictions on payment to the Subordinate Lender in this Section 4 shall terminate, and the Senior Lender shall have no right to any subsequent payments made to the Subordinate Lender by the Borrower prior to the Subordinate Lender's receipt of a new Default Notice from the Senior Lender in accordance with the provisions of this Section 4(d).

(e) Remitting Subordinate Loan Payments to Senior Lender. If, after the Subordinate Lender receives a Default Notice from the Senior Lender in accordance with subsection (d) above, the Subordinate Lender receives any payments under the Subordinate Loan Documents, the Subordinate Lender agrees that such payment or other distribution will be received and held in trust for the Senior Lender and unless the Senior Lender otherwise notifies the Subordinate Lender in writing, will be promptly remitted, in kind to the Senior Lender, properly endorsed to the Senior Lender, to be applied to the principal of, interest on and other amounts due under the First Mortgage Loan Documents in accordance with the provisions of the First Mortgage Loan Documents. By executing this Agreement, the Borrower specifically authorizes the Subordinate Lender to endorse and remit any such payments to the Senior Lender, and specifically waives any and all rights to have such

payments returned to the Borrower or credited against the Subordinate Loan. Borrower and Senior Lender acknowledge and agree that payments received by the Subordinate Lender, and remitted to the Senior Lender under this Section 4, shall not be applied or otherwise credited against the Subordinate Loan, nor shall the tender of such payment to the Senior Lender waive any Subordinate Loan Default which may arise from the inability of the Subordinate Lender to retain such payment or apply such payment to the Subordinate Loan.

(f) **Agreement Not to Commence Bankruptcy Proceeding.** The Subordinate Lender agrees that during the term of this Agreement it will not commence, or join with any other creditor in commencing any bankruptcy reorganization, arrangement, insolvency or liquidation proceedings with respect to the Borrower, without the Senior Lender's prior written consent.

5. Default Under Subordinate Loan Documents.

(a) **Notice of Default and Cure Rights.** The Subordinate Lender shall deliver to the Senior Lender a Default Notice within five Business Days in each case where the Subordinate Lender has given a Default Notice to the Borrower. Failure of the Subordinate Lender to send a Default Notice to the Senior Lender shall not prevent the exercise of the Subordinate Lender's rights and remedies under the Subordinate Loan Documents, subject to the provisions of this Agreement. The Senior Lender shall have the right, but not the obligation, to cure any Subordinate Loan Default within 60 days following the date of such notice; provided, however that the Subordinate Lender shall be entitled, during such 60-day period, to continue to pursue its rights and remedies under the Subordinate Loan Documents to the extent permitted under Section 5(b). All amounts paid by the Senior Lender in accordance with the First Mortgage Loan Documents to cure a Subordinate Loan Default shall be deemed to have been advanced by the Senior Lender pursuant to, and shall be secured by the lien of, the First Mortgage.

(b) **Subordinate Lender's Agreement to Standstill.** If a Subordinate Loan Default occurs and is continuing, the Subordinate Lender agrees that, without the Senior Lender's prior written consent, it will not accelerate the Subordinate Loan, commence foreclosure proceedings with respect to the Property, collect rents, appoint (or seek the appointment of) a receiver or institute any other collection or enforcement action.

(c) **Cross Default.** The Borrower and the Subordinate Lender agree that a Subordinate Loan Default shall constitute a First Mortgage Loan Default under the First Mortgage Loan Documents and the Senior Lender shall have the right to exercise all rights or remedies under the First Mortgage Loan Documents in the same manner as in the case of any other First Mortgage Loan Default. If the Subordinate Lender notifies the Senior Lender in writing that any Subordinate Loan Default of which the Senior Lender has received a Default Notice has been cured or waived, as determined by the Subordinate Lender in its sole discretion, then provided that Senior Lender has not conducted a sale of the Property pursuant to its rights under the First Mortgage Loan Documents, any First

Mortgage Loan Default under the First Mortgage Loan Documents arising solely from such Subordinate Loan Default shall be deemed cured, and the First Mortgage Loan shall be reinstated, provided, however, that the Senior Lender shall not be required to return or otherwise credit for the benefit of the Borrower any default rate interest or other default related charges or payments received by the Senior Lender during such First Mortgage Loan Default.

6. Default Under First Mortgage Loan Documents.

(a) Notice of Default and Cure Rights. The Senior Lender shall deliver to the Subordinate Lender a Default Notice within five Business Days in each case where the Senior Lender has given a Default Notice to the Borrower. Failure of the Senior Lender to send a Default Notice to the Subordinate Lender shall not prevent the exercise of the Senior Lender's rights and remedies under the First Mortgage Loan Documents, subject to the provisions of this Agreement. The Subordinate Lender shall have the right, but not the obligation, to cure any such First Mortgage Loan Default as provided below. Subordinate Lender may have up to 30 days from the date of the Default Notice to cure any monetary default under the First Mortgage Loan Documents; provided, however, that the Senior Lender shall be entitled during such 30-day period to continue to pursue its remedies with respect to the Property. Subordinate Lender may have up to 60 days from the date of the Default Notice to cure a non-monetary default if during such 60-day period Subordinate Lender keeps current all payments required by the First Mortgage Loan Documents. In the event that such a non-monetary default creates an unacceptable level of risk relative to the Property, or Senior Lender's secured position relative to the Property, as determined by Senior Lender in its sole discretion, then Senior Lender may exercise during such 60-day period all available rights and remedies to protect and preserve the Property and the rents, revenues and other proceeds from the Property. All amounts paid by the Subordinate Lender to the Senior Lender to cure a First Mortgage Loan Default shall be deemed to have been advanced by the Subordinate Lender pursuant to, and shall be secured by the lien of, the Subordinate Mortgage.

(b) Cross Default. The Subordinate Lender agrees that, notwithstanding any contrary provision contained in the Subordinate Loan Documents, a First Mortgage Loan Default shall not constitute a default under the Subordinate Loan Documents if no other default occurred under the Subordinate Loan Documents until either (i) the Senior Lender has accelerated the maturity of the First Mortgage Loan, or (ii) the Senior Lender has taken affirmative action to exercise its rights under the First Mortgage to collect rent, to appoint (or seek the appointment of) a receiver or to foreclose on (or to exercise a power of sale contained in) the First Mortgage. At any time after a First Mortgage Loan Default is determined to constitute a default under the Subordinate Loan Documents, the Subordinate Lender shall be permitted to pursue its remedies for default under the Subordinate Loan Documents, subject to the restrictions and limitations of this Agreement. If at any time the Borrower cures any First Mortgage Loan Default to the satisfaction of the Senior Lender, as evidenced by written notice from the Senior lender to the Subordinate Lender, any default

under the Subordinate Loan Documents arising from such First Mortgage Loan Default shall be deemed cured and the Subordinate Loan shall be retroactively reinstated as if such First Mortgage Loan Default had never occurred.

7. Conflict.

The Borrower, the Senior Lender and the Subordinate Lender each agrees that, in the event of any conflict or inconsistency between the terms of the First Mortgage Loan Documents, the Subordinate Loan Documents and the terms of this Agreement, the terms of this Agreement shall govern and control solely as to the following: (a) the relative priority of the security interests of the Senior Lender and the Subordinate Lender in the Property; (b) the timing of the exercise of remedies by the Senior Lender and the Subordinate Lender under the First Mortgage and the Subordinate Mortgage, respectively; and (c) solely as between the Senior Lender and the Subordinate Lender, the notice requirements, cure rights, and the other rights and obligations which the Senior Lender and the Subordinate Lender have agreed to as expressly provided in this Agreement. Borrower acknowledges that the terms and provisions of this Agreement shall not, and shall not be deemed to: extend Borrower's time to cure any First Mortgage Loan Default or Subordinate Loan Default, as the case may be; give the Borrower the right to notice of any First Mortgage Loan Default or Subordinate Loan Default, as the case may be other than that, if any, provided, respectively under the First Mortgage Loan Documents or the Subordinate Loan Documents; or create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

8. Rights and Obligations of the Subordinate Lender Under the Subordinate Loan Documents and of the Senior Lender under the First Mortgage Loan Documents.

Subject to each of the other terms of this Agreement, all of the following provisions shall supersede any provisions of the Subordinate Loan Documents covering the same subject matter:

(a) Protection of Security Interest. The Subordinate Lender shall not, without the prior written consent of the Senior Lender in each instance, take any action which has the effect of increasing the indebtedness outstanding under, or secured by, the Subordinate Loan Documents, except that the Subordinate Lender shall have the right to advance funds to cure First Mortgage Loan Defaults pursuant to Section 6(a) above and advance funds pursuant to the Subordinate Mortgage for the purpose of paying real estate taxes and insurance premiums, making necessary repairs to the Property and curing other defaults by the Borrower under the Subordinate Loan Documents.

(b) Condemnation or Casualty. In the event of: a taking or threatened taking by condemnation or other exercise of eminent domain of all or a portion of the Property (collectively, a "Taking"); or the occurrence of a fire or other casualty resulting in damage to all or a portion of the Property (collectively, a "Casualty"), at any time or times when the First Mortgage remains a lien on the Property the following provisions shall apply:

(1) The Subordinate Lender hereby agrees that its rights (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Taking and/or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Taking or a Casualty shall be and remain subordinate in all respects to the Senior Lender's rights under the First Mortgage Loan Documents with respect thereto, and the Subordinate Lender shall be bound by any settlement or adjustment of a claim resulting from a Taking or a Casualty made by the Senior Lender; provided, however, this subsection and/or anything contained in this Agreement shall not limit the rights of the Subordinate Lender to file any pleadings, documents, claims or notices with the appropriate court with jurisdiction over the proposed Taking and/or Casualty; and

(2) all proceeds received or to be received on account of a Taking or a Casualty, or both, shall be applied (either to payment of the costs and expenses of repair and restoration or to payment of the First Mortgage Loan) in the manner determined by the Senior Lender in its sole discretion; provided, however, that if the Senior Lender elects to apply such proceeds to payment of the principal of, interest on and other amounts payable under the First Mortgage Loan, any proceeds remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the First Mortgage Loan shall be paid to, and may be applied by, the Subordinate Lender in accordance with the applicable provisions of the Subordinate Loan Documents, provided however, the Senior Lender agrees to consult with the Subordinate Lender in determining the application of Casualty proceeds, provided further however that in the event of any disagreement between the Senior Lender and the Subordinate Lender over the application of Casualty proceeds, the decision of the Senior Lender, in its sole discretion, shall prevail.

(c) **No Modification of Subordinate Loan Documents.** The Borrower and the Subordinate Lender each agrees that, until the principal of, interest on and all other amounts payable under the First Mortgage Loan Documents have been paid in full, it will not, without the prior written consent of the Senior Lender in each instance, increase the amount of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise amend the Subordinate Loan terms in a manner that creates an adverse effect upon the Senior Lender under the First Mortgage Loan Documents. Any unauthorized amendment of the Subordinate Loan Documents or assignment of the Subordinate Lender's interest in the Subordinate Loan without the Senior Lender's consent shall be void ab initio and of no effect whatsoever and Subordinate Lender agrees that it shall not transfer or assign the Subordinate Loan or the Subordinate Loan Documents without the prior written consent of the Senior Lender.

9. Modification or Refinancing of First Mortgage Loan.

The Subordinate Lender consents to any agreement or arrangement in which the Senior Lender waives, postpones, extends, reduces or modifies any provisions of the First Mortgage Loan Documents, including any provision requiring the payment of money. Subordinate Lender further agrees that its agreement to subordinate hereunder shall extend to any new mortgage debt which is for the purpose of refinancing all or any part of the First Mortgage Loan (including reasonable and necessary costs associated with the closing and/or the refinancing) and Subordinate Lender shall execute and deliver to Senior Lender a new subordination agreement on the same terms and conditions as this Subordination Agreement; and that all the terms and covenants of this Agreement shall inure to the benefit of any holder of any such refinanced debt; and that all references to the First Mortgage Loan, the First Mortgage Note, the First Mortgage, the First Mortgage Loan Documents and Senior Lender shall mean, respectively, the refinance loan, the refinance note, the mortgage securing the refinance note, all documents evidencing securing or otherwise pertaining to the refinance note and the holder of the refinance note.

10. Default by the Subordinate Lender or Senior Lender.

If the Subordinate Lender or Senior Lender defaults in performing or observing any of the terms, covenants or conditions to be performed or observed by it under this Agreement, the other, non-defaulting lender shall have the right to all available legal and equitable relief.

11. Notices.

Each notice, request, demand, consent, approval or other communication (hereinafter in this Section referred to collectively as "notices" and referred to singly as a "notice") which the Senior Lender or the Subordinate Lender is required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if: (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered); or (b) sent by Federal Express (or other similar national overnight courier) designating early morning delivery (any notice so delivered shall be deemed to have been received on the next Business Day following receipt by the courier); or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received two days after mailing in the United States), addressed to the respective parties as follows:

SENIOR LENDER:

Attention: _____

With a copy to:

Fannie Mae
Attention: Multifamily Operations - Asset Management
Drawer AM
3900 Wisconsin Avenue, N.W.
Washington, DC 20016

SUBORDINATE LENDER:

Attention: _____

Either party may, by notice given pursuant to this Section, change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses for its notices, but notice of a change of address shall only be effective upon receipt.

13. General.

(a) **Assignment/Successors.** This Agreement shall be binding upon the Borrower, the Senior Lender and the Subordinate Lender and shall inure to the benefit of the respective legal successors and assigns of the Senior Lender and the Subordinate Lender.

(b) **No Partnership or Joint Venture.** The Senior Lender's permission for the placement of the Subordinate Loan Documents does not constitute the Senior Lender as a joint venturer or partner of the Subordinate Lender. Neither party hereto shall hold itself out as a partner, agent or Affiliate of the other party hereto.

(c) **Senior Lender's and Subordinate Lender's Consent.** Wherever the Senior Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by the Senior Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement. Wherever the Subordinate Lender's consent or approval is required by any provision of this Agreement,

such consent or approval may be granted or denied by the Subordinate Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement.

(d) Further Assurances. The Subordinate Lender, the Senior Lender and the Borrower each agree, at the Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to evidence that the Subordinate Mortgage is subordinate to the lien, covenants and conditions of the First Mortgage, or to further evidence the intent of this Agreement.

(e) Amendment. This Agreement shall not be amended except by written instrument signed by all parties hereto.

(f) Governing Law. This Agreement shall be governed by the laws of the State in which the Property is located.

(g) Severable Provisions. If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

(h) Term. The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (i) the payment of all of the principal of, interest on and other amounts payable under the First Mortgage Loan Documents; (ii) the payment of all of the principal of, interest on and other amounts payable under the Subordinate Loan Documents, other than by reason of payments which the Subordinate Lender is obligated to remit to the Senior Lender pursuant to Section 4 hereof; (iii) the acquisition by the Senior Lender of title to the Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the First Mortgage; or (iv) the acquisition by the Subordinate Lender of title to the Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Subordinate Mortgage, but only if such acquisition of title does not violate any of the terms of this Agreement.

(i) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

SENIOR LENDER:

By: _____

Name: _____

Title: _____

SUBORDINATE LENDER:

By: _____

Name: _____

Title: _____

BORROWER:

By: _____

Name: _____

Title: _____

[Jurats to be added]

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