

**MASTER RESIDENTIAL INTERIM CONSTRUCTION LOAN
DOCUMENTS WITH A TWIST OF E-RECORDING**

MICHAEL H. PATTERSON

PeirsonPatterson, LLP

2310 West Interstate 20, Suite 100

Arlington, Texas 76017-1668

Telephone: 817.461.5500

Fax: 817.856.6090

Email:mike@ppdocs.com

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CHAPTER 5

Michael H. Patterson

Michael H. Patterson, P.C. is a partner of PeirsonPatterson, L.L.P. Mike's practice focuses on residential loan documentation and the regulations relating thereto. His firm regularly represents and prepares loan documents for residential lenders. He graduated from the University of Texas School of Law in 1979.

Thanks to:

- 1) The State Bar for the invitation.
- 2) My partners, Chris and Bill Peirson, who always cover for me and so graciously correct me when I am wrong. I am seldom wrong, but never in doubt.
- 3) My office for tolerating me.
- 4) My wife, Debi, and our 4 sons (15, 19, 21 and 22) for sometimes tolerating me.
- 5) My clients that stand beside me as I learn from my mistakes.

Thank you all and God bless.

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- Exhibit E Short Form Deed of Trust, Security Instrument and Financing Statement
- Exhibit F Attorney Representation Notice and Document Correction Agreement
- Exhibit G E-Recorded Deed of Trust Sample
- Exhibit H Dallas County e-Recording Information
- Exhibit I Electronic Recording Memorandum of Understanding
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MASTER RESIDENTIAL CONSTRUCTION LOAN DOCUMENTS WITH A TWIST OF E-RECORDING

I. THE PROBLEM/CHALLENGE

I should have seen it coming. However, I was too busy looking down, doing a bunch of loan docs the old fashion way. It was a red hot real estate market. Why would it ever have to end? I was happy doing quality interim construction loan documents for \$200 a pop and turning them around in 2-4 hours. What lender client wouldn't be happy with that?

Then I get the call. "Mike we love you and your firm. [pause] We want to continue using your firm, [pause] BUT in order to be more competitive we have to reprice your service. [longer pause] We need to deliver your service at \$100 per package [even longer pause] **and the \$100 needs to include your attorney fee and the filing fees** [no pause], also we still want that automated internet assembly and e-recording stuff you do now for us. That stuff is great! BUT the good news is we are going to triple the volume to you!!!"

I thought "What a goofball this guy is." If it costs me \$150 to produce a set of docs, he thinks I can make up the difference in volume? I started to tell my good banker friend that I knew why the banking industry collapsed in the 80s, but I didn't. I bit my tongue. I owed him too much money. As I lapsed into unconsciousness I remembered what my partner Chris Peirson frequently tells me...."What doesn't kill you...makes you stronger."

II. POSSIBLE SOLUTION-DEED OF TRUST MASTER FORM

When I woke up I was glad I had only fainted and not died from that telephone call. That call hadn't killed me. However, I didn't feel any stronger.

Think Mike think. Then it hit me like a ton of bricks. What was that section of the Property Code that talked about "master recording"? I have seen it a hundred times, but never slowed down to read it. What was that all about? Who has a current copy of the Texas Property Code? Help. SOS.

Hmmm. After only the first reading it became all very clear. It will all be about master docs in the future and the future is now. I have only one thing to do now. No, not write a set of "master docs", but rather find a good set that someone smarter than me has written and make my computer guys program them.

A. Property Code §12.009 Mortgage or Deed of Trust Master Form

1. The Statute

§ 12.009. MORTGAGE OR DEED OF TRUST MASTER FORM.

- (a) A master form of a mortgage or deed of trust may be recorded in any county without acknowledgement or proof. The master form must contain on its face the designation: "Master form recorded by (name of person causing the recording)."
- (b) The county clerk shall index a master form under the name of the person causing the recording and indicate in the index and records that the document is a master mortgage.
- (c) The parties to an instrument may incorporate by reference a provision of a recorded master form with the same effect as if the provision were set out in full in the instrument. The reference must state:
 - (1) that the master form is recorded in the county in which the instrument is offered for record;
 - (2) the numbers of the book or volume and first page of the records in which the master form is recorded; and
 - (3) a definite identification of each provision being incorporated.
- (d) If a mortgage or deed of trust incorporates by reference a provision of a master form, the mortgagee shall give the mortgagor a copy of the master form at the time the instrument is executed. A statement in the mortgage or deed of trust or in a separate instrument signed by the mortgagor that the mortgagor received a copy of the master form is conclusive evidence of its receipt. On written request the mortgagee shall give a copy of the master form without charge to the mortgagor, the mortgagor's successors in interest, or the mortgagor's or a successor's agent.
- (e) The provisions of the Uniform Commercial Code prevail over this section.

Acts 1983, 68th Leg., p. 3492, ch. 576, § 1, eff. Jan. 1, 1984.

Comment: Several other states have master mortgage recording statutes.

- Arizona - Ariz. Rev. Stat. §33-415
- California - Cal. Civ. Code §2952
- Colorado - C.R.S. §38-35-109 (1.5)
- Connecticut - Conn. Gen. Stat. §49-5a and §7-34a
- Idaho - Idaho Code §45-1004

- Kentucky - Ky. Rev. Stat. Ann. §382.295
- Maine - 33 MRS §207
- Nevada - NRS §111.353, NRS §111.355
- New York - NY CLS Real P § 291-d
- North Dakota - N.D. Cent. Code §§47-29-01 through 04
- Ohio - ORC Ann. §§5302.15 and 5302.16
- Pennsylvania - 21 Pa. Stat. Ann. §§629 through 633
- Utah - Utah Code Ann. §§57-3-201 through 204
- Wyoming - Wyo. Stat. §§ 34-2-109 through 112

2. What's required to incorporate by reference

This is "incorporation by reference" on steroids. Where else can a three page Short Form Deed of Trust "incorporate by reference" another separate 35 page document? The tail can wag the dog.

Although there are no recorded cases that cite this Texas statute, it appears there are no limits regarding the amount of data that can be incorporated by reference. You can incorporate all or part of a prerecorded "master form". The lender must only give the mortgagor a copy of the master form at the time the short form instrument is executed. Wow!

3. What's not required

- a. No requirement for execution, notarization or jurat

This is hard to swallow for some county clerks. We have developed a transmittal letter to send out with our Master Deeds of Trust to minimize rejection and return. That letter is attached hereto "and incorporated by reference" ;-) as Exhibit A.

As an alternative, but not because it is required by statute, we have added a "chicken soup" (can't hurt you, but may get your master filed the first time you send it) signature line and acknowledgement to our Master Deed of Trust.

B. Advantages

1. Less attorney fees

Lender clients often have different attorney needs. Many are looking to only to outsource their loan document preparation and choose to train their staff to review "due diligence" matters, while others have their own proprietary doc prep systems and only need help with borrower and collateral due diligence.

- a. Document preparation

For those lenders looking only for doc prep and the skinniest doc prep fee, master documents can help them be more competitive. The preparation of the periodic (annual?) borrower documents can be automated and made available on line. There should be little or no attorney fee for that, assuming minimal negotiation and changes. The market price to complete a 3 page Short Form Deed of Trust, without collateral

or borrower due diligence, should be accomplished for \$75-100.

- b. Due diligence

Review of the title commitment, survey and borrower's entity documents still has to be done. However, there appears to be a trend to separate the doc preparation from that due diligence. Some firms do both, but many choose to partner to deliver branded doc prep services in the due diligence attorney's name. "Master docs" lends itself to this bifurcation. Lender personnel or other 3rd party attorneys often assume the due diligence duties leaving the doc assembly and internet delivery to other loan doc preparers with the necessary assembly, delivery and e-recording platforms.

2. Less filing fees

- a. Filing fees in the various counties

Effective September 1, 2005, H.B. No. 950 amended SECTION 1. Section 118.011(a), Local Government Code as follows:

- (a) A county clerk shall collect the following fees for services rendered to any person:

(1).....

- (2) Real Property Records Filing (Sec. 118.013):

for the first page \$ 5.00 [~~3.00~~] for each additional page or part of a page on which there are visible marks of any kind \$ 4.00 [~~2.00~~] for all or part of each 8-1/2" X 14" attachment or rider \$ 4.00 [~~2.00~~] for each name in excess of five names that has to be indexed in all records in which the document must be indexed \$ 0.25.

Comment: Additionally, if authorized, a Texas county clerk can collect up to an additional \$11 for the first page of each recorded document (\$5 for "Records Management Fee", \$1 for "Security Fee", and \$5 for "Records Archive Fee").

Link to all Texas counties (254) websites (if they have one): <http://www.county.org/counties/txcountries.asp>

- b. "The Filing Fee Perfect Storm"

The 80s. The 12/83 Fannie/FHLMC (nka Freddie) uniform deed of trust was 4 legal (you know 8 1/2x14) pages long. The Texas State Bar 3/1/82 "Long Form" deed of trust (remember the green/gray flat top loader, a real collector's item now!) was 3 pages legal pages long. Filing fees were \$3 for the first page and \$2 for

the other pages. Average filing fees for a deed of trust filing=\$8.

2006. The 1/01 Fannie /Freddie deed of trust is 17 pages (Not legal size. Although allowed, but not cool. Nothing more shows your age than whipping out your 8 1/2x 14 docs on someone. They don't make many folders and file cabinets for that stuff now anyway.) No one likes to use the State Bar Deed of Trust. It's too short. Everyone knows that smart lawyers use long redundant deeds of trust. We sell it by the pound. There is no downside for us. Say it 3 times, say it 10 times just make darn sure it cosmetically looks good! Willie Nelson knows..."pretty paper". The average deed of trust is now about 20 pages long and the filing fee cost has jumped to \$16 for the first page and \$4 for the rest. Average filing fees for a deed of trust filing=\$92

The "revolution"! Either because of 1) the proposed "RESPA reform" rules where it is proposed that closing costs are bundled and the cost of that bundle is compared to other bundlers, 2) Texas home equity lenders having to eat closing costs over 3%, or 3) some borrowers, like builders, are shopping "total closing costs", attorneys and lenders can not afford to take a cavalier attitude regarding filing fees.

The enclosed Master Deed of Trust costs \$128 to file in most Texas counties today, but it only has to cost that once per county. After the Master is recorded, the enclosed 3 page Short Form Deed of Trust will only cost \$24 per recording. Apples to apples that is a \$104 +/- savings per deal in filing fees alone before even considering the time and attorney fee savings.

3. Less documents at each individual closing

Builders are fed up with lenders and their lawyers overpapering every individual house start and lot closing. They have too many financial choices today. With the "master doc" approach annually (+/-) they can negotiate and sign their Master Note, Master Construction Loan Agreement, Guaranty and applicable resolutions and certifications. For each subsequent individual closing they need to only then sign:

- 3 page Short Form Deed of Trust
 - 2 page Attorney Notice and Agreement
 - simple borrower closing statement and whatever other docs the title company requires.
- Wham, bam, thank you....

4. Less parties at each individual closing

Just as important as less documents is who is required at each loan closing. There is no need for all the guarantors to sign a new guaranty for every deal. Nor do you need the president of the building company to sign off on every house start. The Loan Application which is Exhibit A to the Master Construction Loan

Agreement can be faxed to the lender and as long as the appropriate corporate resolution (or similar authorizing document) has been previously signed, there is no need for Mr.(or Mrs.) Big to have to go to the title company. Mr. Vice-President son can swing by for such a simple signing.

C. Disadvantages

There are some.

1. Advance planning

It easy enough to get the Master Deed of Trust recorded in the counties that accept recordings electronically. One day advance notice can be enough. But for those counties that take longer to return recorded documents, you have to wait on the Master to be returned in order to reference the recording information on each Short Form Deed of Trust. A lender or lawyer needs to establish early on what the anticipated market (which counties) the product will be eligible in, or if you are a big enough boy, record in all 254 Texas counties. The enclosed Master Deed of Trust would only cost you \$32,512.00!

2. Subsequent negotiation of pre-recorded master deed of trust

I guess it is possible, but it sure is messy.

3. Danger of closing in a county without pre-recorded deed of trust

If you are not careful you can find yourself up the creek without a Master Deed of Trust. You would much rather be up the creek without a paddle. We load prerecording of the Master Deed of Trust as a required condition and audit in our systems program. One of the first data items we ask for is "Property County_____". If we don't have the prerecorded Master Deed of Trust registered, scanned and viewable with applicable county specific recording information you do not pass "Go" and we do not collect \$200, I mean \$75.

4. Same interest rate for various collateral types

This is the biggest limitation. It is not so much a master document limitation as a lender system limitation. If the lender likes to have a different interest rate for pre-sold house, specs, models or lots we suggest multiple master doc sets. It is much easier for lender tracking. The multiple master sets don't increase the docs or dollars at the individual closings, but only the paper work for the Master Notes and Master Construction Loan Agreements.

D. The Documents

1. Where these documents came from

Isaac Newton famously remarked in a letter to Robert Hooke, dated 5 February 1676:

"If I have seen a little further it is by standing on the shoulders of giants."

Translated: In the world of real estate loan documentation, original thought and "thinking outside the box" is often not rewarded, but instead litigated. These documents are so good because the ones I borrowed were so good. I just tried to make them a little better.

a. Original source

My compliments to the original chief. I did not write the original master docs attached. I found a very good set and tweaked them for my purposes. My thanks to the original wordsmith, whomever he or she is.

To the unknown author: Please don't sue me for borrowing and using these documents. I am sure I am a big fan of yours. Let me know who you are and I will gladly share the comments and suggestions I get from this presentation.

To all others: Please send me comments and suggestions as a bargaining chit with the original drafter.

b. Download site

These documents and other related master documents can be found in Word format in our e-library at: <http://www.ppdocs.com/Library.aspx>

c. Mini-CD

The referenced documents are also available on the mini P&P compact disk provided to you at time of registration.

2. County specific

If you want to try to comport your firm interim construction deed of trust to a master deed of trust good luck and here are some reminders:

a. Master Deed of Trust

See attached Exhibit B.

b. County clerk offices

This is a link to the various county clerk websites. Unless they accept e-recordings you will need their mailing addresses. Filings fees will vary.

Link:

<http://www.tded.state.tx.us/guide/cntyclrklisting.html>

3. Borrower specific

a. Master Note

See attached Exhibit C.

- (1) Texas Finance Code § 346.004 as amended by HB 955 provides:

Sec. 346.004. APPLICATION OF CHAPTER TO REVOLVING CREDIT ACCOUNTS. (a) Unless the contract for the account provides otherwise, this chapter applies to a revolving credit account described by Section 346.003 if the loan or extension of credit is primarily for personal, family, or household use.

(b) Unless the contract for the account provides that this chapter applies [otherwise], this chapter does not apply [applies] to a revolving credit account described by Section 346.003 if [regardless of whether] the loan or extension of credit is for [consumer or] business, commercial, investment, or similar purposes.

Comment: We did not forget the 346.003 disclaimer in the attached Master Promissory Note. Now you must opt in instead of opting out.

b. Master Construction Loan Agreement

See attached Exhibit D.

- (1) Texas Business and Commerce Code §26.02 notice

§ 26.02. LOAN AGREEMENT MUST BE IN WRITING.

(e) In a loan agreement subject to Subsection (b) of this section, the financial institution shall give notice to the debtor or obligor of the provisions of Subsections (b) and (c) of this section. The notice must be in a separate document signed by the debtor or obligor or incorporated into one or more of the documents constituting the loan agreement. The notice must be in type that is boldface, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous. The notice must state substantially the following:

"This 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.

 "Debtor or Obligor

 Financial Institution"

Comment: Don't forget your "Notice of No Oral Agreements".

c. Ancillary loan documents

Look at your trash docs closely. What do we really need? We have got our "short package" down to the Short Form Deed of Trust (3 pages), a combined Attorney Notice and Document Correction Agreement (1page) and a simple Attorney Invoice (1page).

4. Loan specific

a. Short Form Deed of Trust
 See attached Exhibit E.

(1) Texas Business and Commerce Code §9.334(h) "construction mortgage" clause

(h) A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in Subsections (e) and (f), a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

Comment: Remember "construction mortgage" language in your Short Form Deed of Trust if for construction. Do not include for lot only purchases.

(2) Texas Business and Commerce Code §9.516(b) borrowing entity identification

§ 9.516(b).

(b) Filing does not occur with respect to a record that a filing office refuses to accept because:

- (1)...
- (2) ..
- (3) ..
- (4)...
- (5) in the case of an initial financing statement or an amendment that provides a name of a

debtor that was not previously provided in the financing statement to which the amendment relates, the record does not:

- (A) provide a mailing address for the debtor;
- (B) indicate whether the debtor is an individual or an organization; or
- (C) if the financing statement indicates that the debtor is an organization, provide:
 - (i) a type of organization for the debtor;
 - (ii) a jurisdiction of organization for the debtor; or
 - (iii) an organizational identification number for the debtor or indicate that the debtor has none;

Comment: If the borrower is an entity, then need entity information to qualify the Short Form Deed of Trust to be a financing statement.

(3) Texas Property Code §11.008(b) after SB 461 now provides:

(b) Notwithstanding Section 191.007(c), Local Government Code, an [An] instrument [executed on or after January 1, 2004,] transferring an interest in real property to or from an individual and disclosing that individual's social security number or driver's license number must include [may not be recorded unless] a notice that appears on the top of the first page of the instrument in 12-point boldfaced type or 12-point uppercase letters and reads substantially as follows:

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

Comment: We no longer need the "confidentiality notice" if the docs do not contain the borrower's or guarantor's social security or driver license numbers.

b. Combined Attorney Invoice with Notice & Document Correction Agreement
 See attached Exhibit F.

E. Title insurance**1. P-16. Mortgagee Title Policy Binder on Interim Construction Loan (Interim Binder)**

The Mortgagee Title Policy Binder on Interim Construction Loan (Interim Binder) shall be used only with respect to interim construction loans in which it is contemplated in good faith that the Company issuing the Interim Binder shall be asked to issue its Mortgagee Policy or Policies; issued simultaneously with Owner Policy or Policies of Title Insurance or at the basic rate, on a permanent loan or loans covering the identical property (in one or more parcels) when improvements are completed, but which permanent loan or loans may be made by a mortgagee or mortgagees other than the mortgagee named in the Interim Binder. The use of such Interim Binder shall be limited solely to interim construction loans and pledges of the interim construction notes and liens wherein: (i) the obligor on the indebtedness is an original contractor who is also the record owner of the land upon which improvements are to be constructed; and, (ii) the security document for the indebtedness is not in the form of a Mechanic's Lien contract.

Construction loans may include sums advanced for acquisition of land and/or to take up, renew or satisfy prior existing liens on land upon which construction is to occur.

Interim Binder shall not be issued on vacant lots or tracts, except in connection with the immediate construction of improvements thereon, nor shall such Interim Binder be issued after completion of improvements to which it relates, but this does not prohibit the issuance of Extensions after completion of improvements. In all cases not specifically enumerated in this rule, a Mortgagee Policy shall be used.

The Company shall be required to show all subordinate liens in Schedule B-Part 2 of the Interim Binder, but a statement may be made therein that such lien(s) is subordinate.

Comment: Interim binders can be used for construction of pre-sold houses (in the builder's name only), contract houses (in the builder's name only), models and to purchase vacant lots and parcels, but only if the vacant lots and parcels will be used in connection with the immediate construction of improvements. Lot inventory for speculation or other purposes does not qualify for an Interim Binder.

2. P-9(b)(8) Revolving credit promissory note endorsement to mortgagee title policy

P-9(b)(8) When a Mortgagee Policy of Title Insurance is to be issued to insure the validity and priority of a lien created by a mortgage or deed of trust which secures a revolving credit promissory note or other such indebtedness where: (1) a line of credit of a specific amount is extended to a borrower for the term of indebtedness, (2) the amount of indebtedness

actually outstanding at any particular time is subject to fluctuations up or down due to future disbursements of loan proceeds and/or future repayments thereof from time to time over the term of the indebtedness (which disbursements and repayments are contemplated by the parties at the time the indebtedness is created), and (3) repayments by the borrower neither reduce nor increase the original line of credit extended nor affect the borrower's liability to repay the principal sum of all outstanding disbursements plus all accrued interest thereon, the Company upon request and compliance with Rule R-11(f) shall attach to said Mortgagee Policy of Title Insurance the Revolving Credit Endorsement. The Revolving Credit Endorsement shall be available only where the mortgage or deed of trust creating the lien to be insured discloses to the satisfaction of the Company that the indebtedness secured thereby is a revolving type of indebtedness as set forth above. The Mortgagee Policy of Title Insurance shall show by endorsement that the lien being insured secures a revolving credit type of indebtedness.

Comment: If for some reason a mortgagee title policy was issued rather than an Interim Binder in order to qualify for a Revolving Credit Endorsement the note must clearly be disclosed as a "revolving type of indebtedness".

F. Fannie Mae and Freddie Mac

For the traditional conventional "permanent mortgages" Fannie Mae has approved (specific lender approval) the use of master form mortgages as a variance to their standard Selling Guide requirements in Arizona, California, Colorado, Connecticut, Idaho, Kentucky, Maine, Nevada, New York, North Dakota, Ohio, Texas, Utah and Wyoming. For a variance a lender would have to establish that they have adequate documents and procedures for the new process. Currently, there are no joint uniform master documents. If Fannie and Freddie developed a joint uniform master security instrument and related short form and if it was filed in each of our 254 counties in Texas (cost \$28,448 +/-), filing fees could decrease by about \$60 for each residential closing that normally closes using the current 17 page Texas uniform deed of trust. In the case of Texas home equity loans, filing fees are costs counted against the 3% cap on borrower paid closing costs. Less filing fees would \$ for \$ decrease lender subsidy of borrower closing costs.

III. E-RECORDING**A. What is e-recording?**

STOP!! Don't turn the channel now. I don't want to loose you here. This is not about SMART documents (objects containing the electronic version of the document in such a way that enables the electronic extraction of data from the objects). This is not about MISMO (the Mortgage Industry Maintenance

Organization, a non-profit subsidiary of the Mortgage Bankers Association [MBA]). This is not about E-Sign (the Electronic Signatures in Global and National Commerce Act). It is really not about UETA (Uniform Electronic Transactions Act). THIS IS MUCH SIMPLIER. This is about an easier way to record documents originally created and signed on PAPER. This is about the “dummy paper docs” we use every day. Even I understand e-recording. It is FUN. It is EASY!!! It makes you look smart to your clients. Let me explain.

B. How easy can it be?

It can be as easy as you handle it now. If your lender closes the transactions with a title co instruct the title company to e-record per their own capability and if not capable immediately return signed notarized recordable documents to yourself (attorney) or your client (lender) to scan and send 1)directly to county (see details below), 2)directly to e-recorder vendor (see details below), or 3)to vendor aggregator (see details below). Once scanned and sent, the county (varies slightly from county to county) returns image of recorded document with recording information either “same day” or next day if after a certain cutoff period ie 3pm. You are recorded. No original to wait for. See Exhibit G-E-Recorded Deed of Trust Sample.

C. SB 335-Texas Adoption of the Uniform Real Property Electronic Recording Act effective September 1, 2005.

Arguably SB 335 was not needed to authorize county clerks to open their real property records to e-recordings. The passage of UETA in Texas effective January 1,2002 did that. See (SB 393):

Link: <http://www.capitol.state.tx.us/cgi-bin/tlo/textframe.cmd?LEG=77&SESS=R&CHAMBER=S&BILLTYPE=B&BILLSUFFIX=00393&VERSION=5&TYPE=B>

However, with the passage of Uniform Real Property Electronic Recording Act the unanswered questions have been answered. All systems are go!!!

AN ACT

relating to the recording of electronic documents.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 3, Property Code, is amended by adding Chapter 15 to read as follows:

CHAPTER 15. UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

Sec. 15.001. SHORT TITLE. This chapter may be cited as the Uniform Real Property Electronic Recording Act.

Sec. 15.002. DEFINITIONS. In this chapter:

- (1) "Document" means information that is:
 - (A) inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and
 - (B) eligible to be recorded in the real property records maintained by a county clerk.
- (2) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (3) "Electronic document" means a document that is received by a county clerk in an electronic form.
- (4) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.
- (5) "Paper document" means a document that is received by a county clerk in a form that is not electronic.

Sec. 15.003. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to the subject matter of this chapter among states that enact a law substantially similar to this chapter.

Sec. 15.004. VALIDITY OF ELECTRONIC DOCUMENTS. (a) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document that complies with the requirements of this chapter.

- (b) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.
- (c) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.

Sec. 15.005. RECORDING OF DOCUMENTS. (a) A county clerk who implements any of the functions described by this section shall act in compliance with rules adopted by the Texas State Library and Archives Commission under Chapter 195, Local Government Code, and standards established by the Texas State Library and Archives Commission under Section 15.006.

- (b) A county clerk may:
 - (1) receive, index, store, archive, and transmit electronic documents;
 - (2) provide for access to, and for search and retrieval of, documents and information by electronic means;
 - (3) convert paper documents accepted for recording into electronic form;
 - (4) convert into electronic form information recorded before the county clerk began to record electronic documents;
 - (5) accept electronically any fee or tax that the county clerk is authorized to collect; and
 - (6) agree with other officials of a state, a political subdivision of a state, or the United States on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording and the electronic payment of fees and taxes.
- (c) A county clerk who accepts electronic documents for recording shall:
 - (1) continue to accept paper documents; and
 - (2) place entries for paper documents and electronic documents in the same index.

Sec. 15.006. UNIFORM STANDARDS.

- (a) The Texas State Library and Archives Commission by rule shall adopt standards to implement this chapter.
- (b) To keep the standards and practices of county clerks in this state in harmony with the standards and practices of recording offices in other jurisdictions that enact a law that is substantially similar to this chapter and to keep the technology used by county clerks in this state compatible with technology used by recording offices in other jurisdictions that enact a law that is substantially similar to this chapter, the Texas State Library and Archives Commission, so far as is consistent with the purposes, policies, and provisions of this chapter, in adopting, amending, and repealing standards shall consider:

- (1) standards and practices of other jurisdictions;
- (2) the most recent standards promulgated by national standard-setting bodies, such as the Property Records Industry Association;
- (3) the views of interested persons and governmental officials and entities; and
- (4) the needs of counties of varying size, population, and resources.

Sec. 15.007. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify, limit, or supersede Section 101(c) of that Act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that Act (15 U.S.C. Section 7003(b)).

Sec. 15.008. CONSTRUCTION WITH OTHER LAW. Except as otherwise provided by this chapter, Chapter 195, Local Government Code, and the rules adopted by the Texas State Library and Archives Commission under that chapter apply to electronic documents filed in accordance with this chapter.

SECTION 2. Section 191.009, Local Government Code, is amended to read as follows:

Sec. 191.009. ELECTRONIC FILING AND RECORDING.

- (a) A county clerk may accept electronic documents and other instruments by electronic filing and record the electronic documents and other instruments electronically if the filing or recording complies with the rules adopted by the Texas State Library and Archives Commission under Chapter 195. [~~Such an instrument is an electronic record, as defined by Section 43.002, Business & Commerce Code.~~]
- (b) An electronic document or other instrument that is filed electronically in compliance with the rules adopted under Chapter 195 is considered to have been filed in compliance with any law relating to the filing of instruments with a county clerk.
- (c) For purposes of this section:

- (1) an instrument is an electronic record, as defined by Section 43.002, Business & Commerce Code; and
- (2) "electronic document" has the meaning assigned by Section 15.002, Property Code.

SECTION 3. Section 195.001, Local Government Code, is amended by adding Subdivision (3) to read as follows:

- (3) "Electronic document" has the meaning assigned by Section 15.002, Property Code.

SECTION 4. Sections 195.002 through 195.007 and Section 195.009, Local Government Code, are amended to read as follows:

Sec. 195.002. ADOPTION OF RULES.

- (a) The commission shall adopt rules by which a county clerk may accept electronic documents and other instruments by electronic filing and record electronic documents and other instruments electronically under Section 191.009.
- (b) The rules must provide for:

- (1) the electronic filing with and recording by the county clerk of:
- (A) real property records; and
- (B) e xcept for records maintained under Section 192.006, other instruments filed with and recorded by the county clerk as determined by the commission;
- (2) the means by which an electronic document or other instrument may be electronically transmitted to a county clerk for filing;
- (3) the means by which a county clerk may electronically record an electronic document or other instrument filed electronically;
- (4) requiring that the means adopted under Subdivision (2) or (3) be generally available, nonproprietary technology; and
- (5) security standards to prevent the filing and recording of fraudulent electronic documents or other instruments or alteration of electronic documents or other instruments that were previously filed and recorded electronically.
- (c) Rules adopted by the commission under this section that permit the use of digital signatures in the electronic filing of electronic documents or other instruments with the county clerk must be, to the extent practicable, consistent with rules governing digital signatures adopted by the Department of Information Resources under Section 2054.060, Government Code [~~as added by Chapter 528, Acts of the 75th Legislature, Regular Session, 1997~~].
- (d) Before adopting or amending a rule under this section, the commission shall consider the recommendations of the Electronic Recording Advisory Committee established under Section 195.008.
- (e) Notwithstanding Sections 43.017 and 43.018, Business & Commerce Code, a county clerk may accept any filed electronic record, as defined by Section 43.002, Business & Commerce Code, or electronic document and may electronically record that electronic document or record if the filing and recording of that electronic document or record complies with rules adopted by the commission under this section.

Sec. 195.003. PERSONS AUTHORIZED TO FILE ELECTRONICALLY.

The following persons may file electronic documents or other documents electronically for recording with a county clerk that accepts electronic filing and recording under this chapter:

- (1) an attorney licensed in this state;
- (2) a bank, savings and loan association, savings bank, or credit union doing business under laws of the United States or this state;
- (3) a federally chartered lending institution, a federal government-sponsored entity, an instrumentality of the federal government, or a person approved as a mortgagee by the United States to make federally insured loans;
- (4) a person licensed to make regulated loans in this state;
- (5) a title insurance company or title insurance agent licensed to do business in this state; or
- (6) an agency of this state.

Sec. 195.004. NOTICE OF CONFIRMATION.

(a) A county clerk that accepts electronic filing and recording under this chapter shall confirm or reject an electronic filing of an electronic document or other instrument not later than the first business day after the date the electronic document or other ~~an~~ instrument is filed. Notice under this section must be made:

- (1) by electronic means if possible; or
 - (2) if notice under Subdivision (1) is not possible, by telephone or electronic facsimile machine.
- (b) If the county clerk fails to provide notice of rejection within the time provided by Subsection (a), the electronic document or other instrument is considered accepted for filing and may not subsequently be rejected.

Sec. 195.005. TIME ELECTRONIC DOCUMENT OR OTHER INSTRUMENT CONSIDERED FILED OR RECORDED. An electronic document or other instrument that is recorded electronically under this

chapter is considered to be recorded in compliance with a law relating to the recording of electronic documents or other instruments as of the county clerk's business day on which the electronic document or other instrument is filed electronically. An electronic document or other instrument filed electronically under this chapter must be recorded as timely as an instrument filed by any other means.

Sec. 195.006. ADDITIONAL FEE PROHIBITED. The fee to file or record an electronic document or other instrument electronically under this chapter is the same as the fee for filing or recording the instrument by other means, and a county clerk may not charge an additional fee for filing or recording an electronic document or other instrument electronically under this chapter.

Sec. 195.007. ACCESS TO ELECTRONIC DOCUMENT OR OTHER INSTRUMENT RECORDED ELECTRONICALLY.

- (a) An electronic document or other instrument filed or recorded electronically must be available for public inspection in the same manner and at the same time as an instrument filed or recorded by other means.
- (b) The county clerk shall provide a requestor, as defined by Section 552.003, Government Code, of an electronic document or other instrument filed or recorded electronically under this chapter with electronic copies of the electronic document or other instrument in a form that is capable of being processed by the use of technology that is generally available and nonproprietary in nature. The county clerk shall provide the copies to the requestor at the cost of producing the copies in accordance with Section 552.262, Government Code.

Sec. 195.009. FILING. For purposes of this chapter, an electronic document or other instrument is filed with the county clerk when it is received by the county clerk, unless the county clerk rejects the filing within the time and manner provided by this chapter and rules adopted under this chapter.

SECTION 5.

- (a) The change in law made by this Act applies only to a document that is filed for recording on or after the effective date of this Act. A document that is filed for recording before the effective date of this Act is covered by the law in effect at the time the document was filed, and that law is continued in effect for that purpose.
- (b) A rule adopted before the effective date of this Act by the Texas State Library and Archives Commission under Chapter 195, Local Government Code, applies to an electronic document filed for recording in accordance with Chapter 15, Property Code, as added by this Act, on or after the effective date of this Act.

SECTION 6. This Act takes effect September 1, 2005.

D. The “Need for Speed”

1. Inception date for mechanic liens

a. The “early start”.....

Sounds like something good, but it is far from that!

This section of my article is bolded on purpose. I believe it to be the most important portion of the paper. If you don’t have time to read any of the rest of it, please help your lender clients understand when their interim construction loan take effect against the liens of subcontractors. We are talking about “lien priority” and not “lien validity”. Help them understand, that if labor is performed or materials are delivered before the bank’s lien is RECORDED, not signed at the title company, all laborers and materialmen coming before or after the deed of trust RECORDING will have a superior lien to the bank’s. Some banks, with the best of intentions, perform “clear lot” inspections either the day of or the day after closing. This is better than a stick in the eye, but does not help at all if work starts 2 days after closing and the bank’s deed of trust is recorded the third day after closing. A day late can be more than a dollar short. To be safe (and remember the bank normally only has the protections of a interim construction binder which is only some evidence of lien validity, but no assurance regarding lien priority) the bank should not allow “work to be performed” or “materials to be delivered” until evidence of the deed of trust RECORDING is in hand. The Court in *First Federal Savings and Loan Association of Beaumont v. Stewart Title Company and Stewart Title Guaranty*

Company, 732 S.W. 2nd 98 (Tex. App. 1987) said it best:

“Under this case, if the fact finder below finds that First Federal’s deed of trust was actually filed for public record before the slabs were commenced or before any other permanent improvements that were ultimately incorporated into the houses were commenced then their deeds of trust liens are first and superior to the mechanics’ or materialmen’s liens that had their inception subsequent to the recording dates of the two deeds of trust.

If ,however, on the other hand, the mechanic’s, materialmen, craftsmen, and laborers, in our case, actually started, in a visible way, the slabs which apparently—though not conclusively—seemed to have been put in place and completed as much as a week prior to the time that First Federal’s deeds of trust liens actually were recorded in the public records, then they have priority. And, under the so-called “relation-back theory” , it has been argued by eminent, scholarly writers that the Texas courts have almost uniformly held that, for the purposes of determining lien priorities, each contractor or subcontractor or any holder of a valid mechanic’s lien or materialman’s lien attaches to the improved property at a time called “the inception of lien”. TEX. PROP. CODE ANN. Sec 53.154 (Vernan1984).

If I were a betting man, and I am, I would bet that at least a few construction starts get started a little before the construction deed of trust gets recorded ☺.

b. Affidavit of Commencement

I am aware of Property Code Sec. 53.124 and the option of the original contractor and owner to jointly file an affidavit within 30 days of the actual commencement of construction/delivery of materials to establish “prima facie evidence” of the actual commencement date, but come on. That might work on the gazillion dollar deals, but not in the world that I live in. I send out a ton of them; one in every package, but the typical builder and owners that I see do not come back after closing with their completed ready to be recorded Affidavit of Completion, nor do any residential lenders that I know require them as a condition for subsequent advance. In today’s very competitive lending market few (probably closer to none) residential construction lenders see the value if

they are only creating rebuttable “prima facie evidence”.

c. Exorcisms for “early starts”.....

Are “early starts” curable? We don’t have the time (and I certainly don’t have the expertise) to go much into “early start” cures. Let me just say, based upon my observations, the whole hocus pocus routine appears more like an exorcism than a Texas Property Code procedure. The magic spell varies from grand master underwriter to grandmaster underwriter and has apparently been handed down through the ages from grandmaster to grandmaster with little written documentation. Some favor lien waivers. Some like subordinations. Some require original contractor termination and rehiring. Some (with a wink and a smile) only want lender indemnification (ha!). But at the end of the day (if that day is before the job is complete, accepted by owner and the insurer has “satisfactory evidence to Company that all bills for labor and materials have been paid in full”) then they ALL MUST issue the mortgagee title policy with the following exception (emphasis):

P-8. Issuance of Policies Prior to Completion of Improvements

“**Any and all liens** arising by reason of unpaid bills or claims for work performed or materials furnished in connection with improvements **placed, or to be placed,** upon the subject land. However, the Company does insure the Insured against loss, if any, sustained by the Insured under this Policy if such liens **have been filed** with the County Clerk of _____ County, Texas, prior to the date hereof.”

If there later is an “early start” problem, I think the lender is up the creek without a paddle. The only uncertainty is whether the lender ends up going up the creek. He certainly has no paddle.

2. Avoidable technical exceptions for lenders

One of the largest technical exceptions a lender has are missing recorded liens and title policies that lag behind because lien recording information is not yet available.

E. Who is “Doing it NOW”

1. Counties in Texas

Denton County was first county in Texas to e-record in January 2004. Tarrant County came on line shortly thereafter in late February of 2004, followed by Fort Bend and Williamson Counties. Dallas County came on line in November 2005. Thanks in no small part to Dallas County Clerk Cynthia Calhoun, the

Dallas e-recording and retrieval routine is remarkable. Now when a real property document is hand delivered it is immediately scanned and returned to the provider. It is then immediately available online. Dallas County Clerk Calhoun is a lawyer and very available to discuss e-recording. She regularly makes e-filing presentations to interested organizations. See Exhibit H

F. Authorized filers

See Texas Local Government Code § 195.003 in III B above. Includes **Texas attorneys**, certain Texas lenders, Texas title companies and agencies of state.

G. How to “Get Hooked Up”

1. Directly to county

The cheapest, not necessarily the easiest, way to e-record is to hook up directly with the county or their appointed agent. Hart InterCivic was Denton and Tarrant Counties direct vendor. Through Hart InterCivic you can send directly to Denton and Tarrant Counties. There is some testing and qualification required and you must write your own “wrapper” containing the required “electronic indexing information” per that county’s specs. That “wrapper” computer interface is your responsibility to create and maintain.

a. No additional fee charged by the county

§ 195.006. ADDITIONAL FEE PROHIBITED. The fee to file or record an instrument electronically under this chapter is the same as the fee for filing or recording the instrument by other means, and a county clerk may not charge an additional fee for filing or recording an instrument electronically under this chapter.

b. Memorandum of Understanding (MOU)

Sample Tarrant County MOU is attached as Exhibit I.

Link to setting up Tarrant County MOU: <http://www.co.tarrant.tx.us/ecountyclerk/cwp/view.asp?A=735&Q=437048>

c. Hardware and software requirements

A \$200 scanner that can create a 300x300 dpi TIFF image, internet connection, and internet Explorer 5+.

d. Write “wrapper” for each transmitted image per that county’s specs

This is the hard part if your IT team is you.

e. An account to daily ACH from

Ooch! They are going to debit your account via ACH on the day the filing fees are incurred. No credit. Cash and carry only.

2. Directly to vendor

These are probably not all of vendors that provide e-recording services, but certainly the ones we have had an opportunity to look at.

Various vendors (in alphabetical order):

-ACS: <https://www.erxchange.com/erx/>

-Hart InterCivic:

<http://www.hartintercivic.com/innerpage.php?pageid=94>

-Image-X:

<http://www.imagexx.com/products/erecording/default.htm>

-Ingeo: <http://www.ingeo.com/default.asp>

-Landata: <http://www.landata.com/>

-Simplifile: <http://simplifile.com>

Transaction and annual subscriptions vary. The normal payment method is daily ACH. **Not all of them interface with all the counties that e-record.**

3. Directly to vendor aggregator

We are one. There may be others, but if there were I wouldn't tell you. Although we contracted directly with Tarrant County some time ago, we decided early on not to compete with the vendors tying directly to each county, but instead tie in to each of the vendors that are hooked up with each of the counties. Not being our core business, we are more interested in a broader platform at a higher price (\$10 per transaction) rather than hooking up directly with 254 Texas counties. We don't require annual subscriptions. We'll invoice you at the end of every month via email with a detailed transaction billing. Our "wrapper screens" are very simple. All a Texas attorney needs is a \$200 scanner and computer with internet access. You can impress all your friends and clients. It is FUN AND EXCITING. YOU CAN PLAY, TOO. All you have to do is if the property is in a county that e-records tell them to **JUST E-RECORD IT!**

Sample E-Recording Closing Instruction

e-Recording through PeirsonPatterson, LLP e-recording services.

DO NOT SEND FOR RECORDING/FILING THE ORIGINAL DOCUMENTS TO THE COUNTY CLERK IF YOU DO NOT e-RECORD. Return the original documents to be recorded (deed of trust and any deed or other documents to be recorded) immediately after required execution and notarization to Lender/Attorney via courier. Lender/Attorney will cause these documents to be e-recorded and an image(s) with recording information will be returned electronically to Settlement Agent. All recording fees

to e-record all said documents should be remitted to Lender if not net funded. Lender or Lender's agent will e-record and advance the required recording fees.

If you e-record, immediately after required execution and notarization, e-record the documents to be recorded and email to _____ the image(s) with recording information.

[Optional condition/instruction: **The loan draw to close this loan and any subsequent loan draw will not be advanced by Lender until Lender has recording evidence of its lien and subsequent to receiving that recording information Lender has performed a satisfactory "clear lot" inspection of the Property to confirm that neither labor has been performed or materials have been delivered to the Property prior to Lender's lien being recorded.**]

H. PP e-Recording Guide

See Exhibit J.

Link: <https://www.ppdocs.com/erecording.aspx>

IV. CONCLUSION

Effectively representing interim construction lenders is not just about delivering quality advise, but also requires a lawyer to have the tools necessary to make him/her and his/her client competitive. 20 years ago the required attorney tools to be competitive were a \$4000 fax, a Wang word processor and couple of IBM Selectric typewriters. Today, if you are representing those same lenders you need "master doc" forms, e-recording capability and two redundant T1 lines. Who knows what tomorrow will require? Just remember, "What doesn't kill you will make you stronger! HA!" ;-).

Exhibit A

Peirson Patterson, LLP

Attorneys at Law

A Registered Limited Liability Partnership
Including Professional Corporations

Michael H. Patterson, P.C.
Email mike@ppdocs.com

**2310 West Interstate 20, Suite 100
Arlington, Texas 76017-1668
Telephone 817.461.5500
Fax 817.856.6060**

_____, 20__

Re: Recording of Master Form Deed of Trust

Dear Sir/Madam,

Pursuant to Section 12.009 of the Texas Property Code, please find enclosed an original Master Deed of Trust to be recorded as:

“Master form recorded by Michael H. Patterson, Attorney”

Section 12.009 of the Texas Property Code provides:

§ 12.009. MORTGAGE OR DEED OF TRUST MASTER FORM.

(a) A master form of a mortgage or deed of trust may be recorded in any county without acknowledgement or proof. The master form must contain on its face the designation: "Master form recorded by (name of person causing the recording)."

(b) The county clerk shall index a master form under the name of the person causing the recording and indicate in the index and records that the document is a master mortgage.

(c) The parties to an instrument may incorporate by reference a provision of a recorded master form with the same effect as if the provision were set out in full in the instrument. The reference must state:

- (1) that the master form is recorded in the county in which the instrument is offered for record;
- (2) the numbers of the book or volume and first page of the records in which the master form is recorded;

and

- (3) a definite identification of each provision being incorporated.

(d) If a mortgage or deed of trust incorporates by reference a provision of a master form, the mortgagee shall give the mortgagor a copy of the master form at the time the instrument is executed. A statement in the mortgage or deed of trust or in a separate instrument signed by the mortgagor that the mortgagor received a copy of the master form is conclusive evidence of its receipt. On written request the mortgagee shall give a copy of the master form without charge to the mortgagor, the mortgagor's successors in interest, or the mortgagor's or a successor's agent.

(e) The provisions of the Uniform Commercial Code prevail over this section.

Acts 1983, 68th Leg., p. 3492, ch. 576, § 1, eff. Jan. 1, 1984.

Please find enclosed our firm check in the amount of \$_____ for your filing fees.

Please call me if you have any questions or need anything else regarding this matter.

Thank you for your assistance.

Sincerely,

Michael H. Patterson

Exhibit B

After recording return to:

_____ County, Texas

Master form recorded by _____
(Name of person causing the recording)

(Recorded Pursuant to Section 12.009 of the Texas Property Code)

MASTER DEED OF TRUST

This Master Deed of Trust (herein referred to as the "Master Deed of Trust"), is a master form deed of trust recorded pursuant to Section 12.009 of the Texas Property Code and may be incorporated by reference, in whole or in part, in any subsequent deed of trust executed hereafter and referencing it.

WITNESSETH

ARTICLE I

DEFINITIONS

1.1 Definitions. As used herein, the following terms shall have the following meanings:

Lender: 1) _____,
and whose address for notice is _____,
and 2) the subsequent holder or holders, from time to time, of the Note.

Code: The Uniform Commercial Code, as amended from time to time, in effect in the state in which the Mortgaged Property is located.

Constituent Party: Any signatory to any Short Form Deed of Trust that signs on Grantor's behalf that is a corporation, general partner, general partnership, limited partnership, joint venture, trust, or other type of business organization.

Construction Contracts: Any and all contracts, subcontracts, and agreements, written or oral, between Grantor and any other party, and between parties other than Grantor, in anyway relating to the construction of improvements on the Land or the supplying of material (specifically fabricated or otherwise) labor, supplies, or other services therefor.

Contracts: All of the right, title, and interest of Grantor in, to, and under any and all (i) contracts for the purchase and sale of all or any portion of the Mortgaged Property, whether such Contracts are now or at any time hereafter existing, including but without limitation, any and all earnest money or other deposits escrowed or to be escrowed or letters of credit provided or to be provided by the purchasers under the Contracts, including all amendments and supplements to and renewals and extensions of the Contracts at any time made, and together with all payments, earnings, income, and profits arising from sale of all or any portion of the Mortgaged Property or from the Contracts and all other sums due or to become due under and pursuant thereto and together with any and all earnest money, security, letters of credit or other deposits under any of the Contracts; (ii) contracts, licenses, permits, and rights relating to living unit equivalents for water,

wastewater, and other utility services whether executed, granted, or issued by a private person or entity or a governmental or quasi-governmental agency, which are directly or indirectly related to, or connected with, the development of the Mortgaged Property, whether such contracts, licenses, and permits are now or at any time thereafter existing, including without limitations, any and all rights of living unit equivalents with respect to water, wastewater, and other utility services, certificates, licenses, zoning variances, permits, and no-action letters from each governmental authority required: (a) to evidence compliance by Grantor and all improvements constructed or to be constructed on the Mortgaged Property with all legal requirements applicable to the Mortgaged Property, (b) for the construction of any improvements on the Mortgaged Property (including, without limitation, the Construction Contracts), and (c) to develop and/or operate the Mortgaged Property as a commercial and/or residential project; (iii) any and all right, title, and interest Grantor may have in any financing arrangements relating to the financing of or the purchase of all or any portion of the Mortgaged Property by future purchasers; and (iv) all other contracts which in any way relate to the use, enjoyment, occupancy, operation, maintenance or ownership of the Mortgaged Property (save and except any and all leases, subleases or other agreements pursuant to which Grantor is granted a possessory interest in the Land), including but not limited to maintenance agreements, and service contracts.

Debtor Relief Laws: Title II of the United States Code, as now or hereafter in effect, or any other application law, domestic or foreign, as now or hereafter in effect, relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement or composition, extension or adjustment of debts, or similar laws affecting the rights of creditors.

Default Rate: The rate of interest specified in the Note to be paid by the maker of the Note from and after the occurrence of a default in payment under the provisions of the Note and Loan Documents but not in excess of the Maximum Lawful Rate.

Disposition: Any sale, lease (except as permitted under this Master Deed of Trust), exchange, assignment, conveyance, transfer, trade, or other disposition of all or any portion of the Mortgaged Property (or any interest therein) or all or any part of the beneficial ownership interest in Grantor (if Grantor is a corporation, partnership, general partnership, limited partnership, joint venture, trust, or other type of business association or legal entity), except pursuant to a partial release of the lien of a Short Form Deed of Trust pursuant to the applicable provisions thereof and of other Loan Documents.

Event of Default: Any happening or occurrence described in Article 6 hereof.

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 Mortgaged Property, including without limitation, the Comprehensive Environment Response, Compensation, and Liability Act of 1980 ("CERCLA") as amended, 42 U.S.C. §9601 et seq. ("RCRA"), the Texas Water Code ("TWC"), and the Texas Solid Waste Disposal Act, Tex. Rev. Civ. Stat. Ann. art. 4477-7, and regulations, rules, guidelines, and standards are amended from time to time.

Fixtures: All materials, supplies, equipment, systems, apparatus, and other items now owned or hereafter acquired by Grantor and now or hereafter attached to, installed in, or used in connection with (temporarily or permanently) any of the Improvements or the Land, which are now owned or hereafter acquired by Grantor and are now or hereafter attached to the Land or the Improvements, and including but not limited to any and all partitions, dynamos, window screens and shades, draperies, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilation, refrigeration, plumbing, laundry, lighting, generating, cleaning, waste disposal, transportation (of people or things, including but not limited to, stairways, elevators, escalators, and conveyors), incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and waster, gas, electrical, storm and sanitary sewer facilities, and all other utilities whether or not situated in easements, together with all accessions, appurtenances, replacements, betterments, and substitutions for any of the foregoing and the proceeds thereof.

Governmental Authority: Any and all applicable 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.

Grantor: The individual or entity described as Grantor in any and all Short Form Deeds of Trust and any and all subsequent owners of the Mortgaged Property or any part thereof (without hereby implying Lender's consent to any Disposition of the Mortgaged Property).

Guarantor (individually and/or collectively, as the context may require): Those persons, firms, or entities, if any, described as Guarantor in the Guaranty.

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 to Lender guaranteeing the repayment of all or any part of the Indebtedness or the satisfaction of, or continued compliance with, the Obligations, or both.

Hazardous Substance: Hazardous Substance is any substance, product, waste, or other material which is or becomes listed, regulated, or addressed as being a toxic, hazardous, polluting, or similarly harmful substance under any Environmental Law, including without limitation: (i) any substance including within the definition of "hazardous waste" pursuant to Section 1004 of RCRA; (ii) any substance included within the definition of "hazardous substance" pursuant to Section 101 of CERCLA; and (iii) any substance included within (a) the definition of "waste" pursuant to Section 30.603(b) of the TWC or (b) the definition of "pollutant" pursuant to Section 26.001(13) of the TWC.

Impositions: (i) All real estate and personal property taxes, charges, assessments, standby fees, excises, and levies and any interest, costs, or penalties with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time prior to or after the execution hereof may be assessed, levied, or imposed upon the Mortgaged Property or the ownership, use, occupancy, or enjoyment thereof, or any position thereof, or the sidewalks, streets, or alleyways adjacent thereto; (ii) any charges, fees, license payments, or other sums payable for or under any easement, license, or agreement maintained for the benefit of the Mortgaged Property, (iii) waster, gas, sewer, electricity, and other utility charges and fees relating to the Mortgaged Property; and (iv) assessments and charges arising under any subdivision, condominium, planned unit development, or other declarations, restrictions, regimes, or agreements affecting the Mortgaged Property.

Improvements: Any and all buildings, garages, houses, walkways, driveways, structures and other improvements, and any and all additions, alterations, betterments or appurtenances thereto, now or at any time hereafter situated, placed, or constructed upon the Land or any part thereof.

Indebtedness: (i) The principal of, interest on, or evidenced by the Note, or the Loan Documents, (ii) any other amounts, payments, or premiums payable under the Loan Documents, (iii) such additional sums, with interest thereof, as may hereafter be borrowed from Lender, its successors or assigns, by the then record owner of the Mortgaged Property, when evidenced by a promissory note which, by its terms, is secured hereby (it being contemplated by Grantor and Lender that such future indebtedness may be incurred, and (iv) any and all other indebtedness, obligations, and liabilities of any kind or character of the Grantor to Lender, now or hereafter existing, absolute or contingent, due or not due, arising by operation of law or otherwise, or direct or indirect, primary or secondary, joint, several, joint and several, fixed or contingent, secured or unsecured by additional or different security or securities, including indebtedness, obligations, and liabilities to Lender of the Grantor as a member of any partnership, joint venture, trust or other type of business association, or other group, and whether incurred by Grantor as principal, surety, endorser, grantor, accommodation party or otherwise, it being contemplated by Grantor and Lender that Grantor may hereafter become indebted to Lender in further sum or sums.

Land: The real property or interest therein described in any and all Short Form Deeds of Trust, together with all right, title, interest, and privileges of Grantor in and to (a) all streets, ways, roads, alleys, easements, right-of-way, licenses, rights of ingress and egress, vehicle parting rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to such real property or the improvements thereon, (b) any strips or gores of real property between such real property and abutting or adjacent properties; (c) all water and water rights, timber, crops, pertaining to such real estates; and (d) all appurtenances and all reversions and remainders in or to such real property.

Leases: Any and all leases, master leases, subleases, licenses, concessions, or other agreements (written or oral, now or hereafter in effect) which grant to third parties 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 or payments made in connection therewith.

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 Grantor, any Guarantor or the Mortgaged Property, including, without limiting the generality of the foregoing, the ownership, use, occupancy, possession, operation, maintenance, alteration, repair, or reconstruction thereof, (ii) any and all covenants, conditions, and restrictions contained in any deeds, other forms of conveyance, or in any other instruments of any nature that relate in any way or are applicable to the Mortgaged Property or the ownership, use, or occupancy thereof, (iii) Grantor's or any

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) all material obligations under any and all Contracts, and (vi) any and all leases, other than those described in (iv) above, and other contracts (written or oral) of any nature that relate in any way to the Mortgaged Property and to which Grantor or any Guarantor may be bound, including, without limiting the generality of the foregoing, any lease or other contract pursuant to which Grantor is granted a possessory interest in and to the Land and/or the Improvements.

Loan Agreement: Any loan agreement between Grantor, as borrower, and Lender, as lender, governing the loan evidenced by a Note and secured, inter alia, by a Short Form Deed of Trust.

Loan Documents: The Note, the Loan Agreement, the Master Deed of Trust, the Short Form Deeds of Trust, the Guaranty, if any, and any and all other documents now or hereafter executed by the Grantor, Guarantor, or any other person or party in connection with the loan evidenced by a Note or in connection with the payment of the Indebtedness or the performance and discharge of the Obligations.

Lots: A portion of the Land as more particularly described and defined in Section 8.11 hereof.

Material Adverse Effect: The breach of, failure to comply with or failure to furnish, any financial covenants, ratio, statement or operating reports as required under any of the Loan Documents, or the occurrence of a claim, cause of action, lien, expense or liability which might, in Lender's sole judgment, have the effect of (i) decreasing the net worth of Grantor by ten percent (10%) or more, or (ii) causing, upon the giving of notice and/or passage of time or both, an Event of Default.

Maximum Lawful Rate: The rate utilized by Lender to either (i) the indicated (weekly) rate ceiling from time to time in effect as provided in Article 5069-1.04, as amended, or (ii) United States federal law which permits Lender to contract for, charge, or receive a greater amount of interest than that provided by Article 5069-1.04, as amended for the purpose of determining the maximum lawful rate allowed by applicable laws. Additionally, to the extent permitted by applicable law now or hereinafter in effect, Lender may, at its option and from time to time, implement any other method of computing the Maximum Lawful Rate under such Article 5069-1.04, as amended, or under other applicable law by giving notice, if required, to Grantor as provided by applicable law now or hereafter in effect.

Minerals: All of Grantor's interest whether now owned or hereafter acquired in and to all substances in, on, or under the Land which are now, or may become in the future, intrinsically valuable, that is, valuable in themselves, and which now or may be in the future enjoyed through extraction or removal from the Land, including without limitation, oil, gas, and all other hydrocarbons, coal, lignite, carbon dioxide and all other nonhydrocarbon gases, uranium and all other radioactive substances, and gold, silver, copper, iron and all other metallic substances or ores, upon extraction or removal from the Land.

Mortgaged Property: The Land, Minerals, Fixtures, Improvements, Personalty, Contracts, Leases and Rents, and any interest of Grantor now owned or hereafter acquired in and to the Land, Minerals, Fixtures, Personality, Plans, Leases and Rents, together with any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness or the performance and discharge of the Obligations. As used in this Master Deed of Trust, the term "Mortgaged Property" shall be expressly defined as meaning all or, where the context permits or requires, any portion of the above and all or, where the context permits or requires, any interest therein.

Note: Any and all promissory notes described in any and all Short Form Deeds of Trust, executed by Grantor and payable to the order of Lender in the principal amount(s) indicated in such Short Form Deed of Trust bearing interest as therein specified, containing an attorneys' fee clause, interest and principal being payable as therein specified, and finally maturing on the date therein specified, and secured by, among other things, such Short Form Deed of Trust; and any and all renewals, modifications, rearrangements, reinstatements, enlargements, or extensions of such promissory note or of any promissory note or notes given in renewal, substitution or replacement therefore.

Obligations: Any and all of the covenants, conditions, warranties, representations, and other obligations (other than to repay the Indebtedness) made or undertaken by Grantor, Guarantor, or any other person or party to the Loan Documents, Trustee, or others as set forth in the Loan Documents, the Leases, and in any deed, lease, sublease, or other form of conveyance, or any other agreement pursuant to which Grantor is granted a possessory interest in the Land.

Partial Release: A partial release of the lien of a Short Form Deed of Trust as more particularly defined and described in Section 8.11 hereof.

Partial Release Price: The amount to be paid by Grantor to Lender to obtain a Partial Release of any of the Lots, which amount is more particularly established in the Short Form Deed of Trust; subject, however, to adjustment as provided in Section 8.11 hereof.

Permitted Exceptions: The liens, easements, restrictions, security interests, and other matters (if any) as specified in a Short Form Deed of Trust and the liens and security interests created by the Loan Documents.

Personalty: All of the right, title, and interest of Grantor in and to (i) the Plans; (ii) all building and construction materials and equipment; (iii) furniture, furnishings, equipment, machinery, goods (including, but not limited to, crops, farm products, timber and timber to be cut, and extracted Minerals); (iv) general intangibles (other than trademarks and trade names), insurance proceeds, accounts, contract and subcontract rights, inventory; (v) all refundable, returnable, or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Grantor with any governmental agencies, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable, or reimbursable tap fees, utility deposits, commitment fees and development costs, any awards, remunerations, reimbursements, settlements, or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Land, Improvements, Fixtures, Contracts, or Personalty, including but not limited to those for any vacation of, or change of grade in, any streets affecting the Land or the Improvements and those for municipal utility district or other utility costs incurred or deposits made in connection with the Land; and (vi) all other personal property of any kind of character as defined in and subject to the provisions of the Code (Article 9 - Secured Transactions); any and all of which are now owned or hereinafter acquired by Grantor, and which are now or hereafter situated in, on, or about the Land or the Improvements, or used in or necessary to the complete and proper planning, development, construction, financing, use, occupancy, or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use in or on the Land or the Improvements together with all accessions, replacements, and substitutions thereto or therefor and the proceeds thereof.

Plans: Any and all plans, specifications, shop drawings and other technical descriptions prepared for construction of the Improvements on the Land, and all supplements thereto and amendments and modifications thereof.

Release: "Release", "removal", "environment", and "disposal" shall have the meanings given such terms in CERCLA, and the term "disposal" shall also have the meaning given it in RCRA, provided that in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment, and provided further that to the extent the laws of the state of Texas establish a meaning or "release", "removal", "environment", or "disposal", which is broader than that specified in either CERCLA and RCRA, such broader meaning shall apply.

Remedial Work: Any investigation, site monitoring, containment, cleanup, removal, restoration, or other work of any kind or nature reasonably necessary or desirable under any applicable Environmental Law in connection with the current or future presence, suspected presence, release, or suspected release of a Hazardous Substance in or into the air, soil, ground water, surface water, or soil vapor at, on, about, under or within the Mortgaged Property, or any part thereof.

Rents: All of the rents, revenues, income, proceeds, profits, security and other types of deposits (after Grantor acquires title thereto), and other benefits paid or payable by parties to the Contracts and/or Leases, other than Grantor for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying all or any portion of the Mortgaged Property.

Subordinate Mortgage: Any mortgage, deed of trust, pledge, lien (statutory constitutional, or contractual), security interest, encumbrance or charge, or conditional sale or other title retention agreement, covering all of any portion of the Mortgage Property executed and delivered by Grantor, the lien of which is subordinate and inferior to the lien of the Short Form Deed of Trust.

Short Form Deed of Trust: Any and all deeds of trust which incorporate therein by reference all or any part of the terms and provisions of this Master Deed of Trust.

Trustee: The individual described as Trustee in any Short Form Deed of Trust which incorporates by reference all or any part of this Master Deed of Trust.

1.2 Additional Definitions: As used herein, the following terms shall have the following meanings:

(a) "Hereof," "hereby," "hereto," "hereunder," "herewith," and similar terms mean of, by, to, under and with respect to, this Master Deed of Trust or to the other documents or matters being referenced.

(b) "Heretofore" means before, "hereafter" means after, and "herewith" means concurrently with, the date of the Short Form Deed of Trust.

(c) All pronouns, whether in masculine, feminine or neuter form, shall be deemed to refer to the object of such pronoun whether same is masculine, feminine or neuter in gender, as the context may suggest or require.

(d) All terms used herein, whether or not defined in Section 1.1 hereof, and whether used in singular or plural form, shall be deemed to refer to the object of such term whether such is singular or plural in nature, as the context may suggest or require.

ARTICLE II

GRANT

2.1 **Grant.** To secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations, Grantor has GRANTED, BARGAINED, SOLD and CONVEYED, and by these presents does GRANT, BARGAIN, SELL and CONVEY, unto Trustee, in trust, the Mortgaged Property, subject, however, to the Permitted Exceptions, TO HAVE AND TO HOLD the Mortgaged Property unto Trustee, forever, and Grantor does hereby bind itself, its successors, and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Trustee against every person whomsoever lawfully claiming or to claim the same or any part thereof; provided, however, that if Grantor shall pay (or cause to be paid) the Indebtedness as and when the same shall become due and payable and shall fully perform and discharge (or cause to be fully performed and discharged) and Obligations on or before the same are to be performed and discharged, then the liens, security interests, estate, and rights granted by the Loan Documents shall terminate, in accordance with the provisions of Section 12.1 hereof, otherwise same shall remain in full force and effect. A certificate or other written statement executed on behalf of Trustee or Lender confirming that the Indebtedness has not been fully paid or the Obligations have not been fully performed or discharged shall be sufficient evidence thereof for the purpose of reliance by third parties on such fact.

2.2 **Cross Collateralization.** Each grantor who executes a Short Form Deed of Trust acknowledges and agrees that the liens, assignments, pledges and security interests of each of such Short Form Deeds of Trust shall secure all the Indebtedness, which includes (without limitation) any and all of the Notes which are secured by any and all of the Short Form Deeds of Trust, and any and all renewals, increases, modifications, rearrangements and extensions of such Notes and Short Form Deeds of Trust. Each Grantor acknowledges and agrees that any and all collateral under each of the Short Form Deeds of Trust and the other Loan Documents shall further secure the repayment of all the Indebtedness and the performance of all the Obligations, regardless of whether or not the Indebtedness or Obligations arose out of or with respect to the applicable Short Form Deed of Trust.

ARTICLE III

WARRANTIES AND REPRESENTATIONS

Grantor hereby unconditionally warrants and represents to Lender, as of the date hereof and at all times during the term of the Short Form Deed of Trust, as follows:

3.1 **Organization and Power.** If Grantor or any Constituent Party is a corporation, general partnership, limited partnership, joint venture, trust or other type of business association, as the case may be, Grantor and any Constituent Party, if any, (a) is either a corporation duly incorporated with a legal status separate from its affiliates, or a partnership or trust, joint venture or other type of business association duly organized, validly existing and in good standing under the laws of the state of its formation or existence, and has complied with all conditions prerequisite to its doing business in the state in which the Mortgaged Property is located, and (b) has all requisite power and all governmental certificates of authority, licenses, permits, qualifications, and documentation to own, lease, and operate its properties and to carry on its business as now being, and as proposed to be, conducted.

3.2 Validity of Loan Documents. The execution, delivery, and performance by Grantor of the Loan Documents (other than the Guaranty) (a) if Grantor or any signatory who signs on its behalf is a corporation, general partnership, limited partnership, joint venture, trust, or other type of business association, as the case may be, are within Grantor's and each Constituent Party's powers and have been duly authorized by Grantor's and each Constituent Party's board of directors, shareholders, partners, venturers, trustees, or other necessary parties, and all other requisite action for such authorization has been taken, (b) have received any and all requisite prior governmental approvals in order to be legally binding and enforceable in accordance with the terms thereof, and (c) will not violate, but in conflict with, result in a breach of, or constitute (with due notice or lapse of time, or both) a default under or violation of any Legal Requirement or result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of Grantor's and any Constituent Party's or Guarantor's property or assets, except as contemplated by the provisions of the Loan Documents. The Loan Documents constitute the legal, valid, and binding obligations of Grantor, Guarantor, and others obligated under the terms of the Loan Documents, enforceable in accordance with their respective terms.

3.3 Information. All information, financial statements, reports, papers, and data given or to be given to Lender with respect to Grantor, each Constituent Party, Guarantor, others obligated under the terms of the Loan Documents, or the Mortgaged Property are, or at the time of delivery will be, accurate, complete, and correct in all material respects and do not, or will not, omit any fact, the inclusion of which is necessary to prevent the facts contained therein from being materially misleading. Since the data of the financial statements of Grantor, any Constituent Party, or of any Guarantor or other party liable for payment of the Indebtedness or performance of the Obligations or any part thereof heretofore furnished to Lender, to Material Adverse Effect has occurred, and except as heretofore disclosed in writing to Lender, Grantor, each Constituent Party, each Guarantor, or any other such party has not incurred any material liability, direct or indirect, fixed or contingent.

3.4 Title and Lien. Grantor has good and indefeasible title to the Land (in fee simple, if the lien created hereunder be on the fee, or a first and prior leasehold estate, if it be created on the leasehold estate) and Improvements, and good and marketable title to the Fixtures and Personalty, free and clear of any liens, charges, encumbrances, security interests, claim, easements, restrictions, options, leases (other than the Leases), covenants, and other rights, titles, interests, or estates of any nature whatsoever, except the Permitted Exceptions. Each Short Form Deed of Trust constitutes a valid, subsisting first lien on the applicable Land, the Improvements, and the Fixtures, a valid, subsisting first priority security interest in and to the applicable Personalty, Contracts, and to the extent that the terms Leases and Rents include items covered by the Code, in and to the applicable Leases and Rents; and a valid, subsisting first priority assignment of the applicable Leases and Rents not covered by of the Code, all in accordance with the terms hereof.

3.5 Business Purposes. The loan evidenced by the Note is solely for the purpose of carrying on or acquiring a business of Grantor, and is not for personal, family, household, or agricultural purposes.

3.6 Taxes. Grantor, each Constituent Party, and Guarantor have filed all federal, state, county, municipal, and city income and other tax returns required to have been filed by them and have paid all taxes and related liabilities which have been due pursuant to such returns or pursuant to any assessments received by them. Neither Grantor, any Constituent Party, nor Guarantor knows of any basis for any additional assessment in respect of any taxes and related liabilities.

3.7 Mailing Address. Grantor's mailing address, as set forth in the Short Form Deed of Trust, or as changed pursuant to the provisions hereof, is true and correct.

3.8 Relationship of Grantor and Lender. The relationship Grantor and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with the Grantor, and no term or condition of any of the Loan Documents shall be construed so as to deem the relationship between Grantor and Lender to be other than that of debtor and creditor.

3.9 No Reliance by Lender. Grantor is experienced in the ownership and operation of properties similar to the Mortgaged Property, and Grantor and Lender have and are relying solely upon Grantor's expertise and business plan in connection with the ownership and operation of the Mortgaged Property. Grantor is not relying on Lender's expertise or business acumen in connection with the Mortgaged Property.

3.10 Environmental and Hazardous Substances.

(a) The Mortgaged Property and the operations conducted thereon do not violate any applicable law, statute, ordinance, rule, regulation, order, or determination of any Governmental Authority or any restrictive covenant or

deed restriction (recorded or otherwise), including without limitation all applicable zoning ordinances and building codes, flood disaster laws and Environmental Laws.

- (b) Without limitation of Section 3.10(a) immediately preceding, the Mortgaged Property and operations conducted thereon by the current owner or operator of such Mortgaged Property, are not in violation of or subject to any existing, pending, or threatened action, suit, investigation, inquiry, or proceeding by any governmental or nongovernmental entity or person or to any remedial obligations under any Environmental Law.
- (c) All notices, permits, licenses, or similar authorizations, if any, required to be obtained or filed in connection with the ownership, operation, or use of the Mortgaged Property, including, without limitations, the past or present generation, treatment, storage, disposal, or release of a Hazardous Substance (as hereinafter defined) into the environment, have been duly obtained or filed.
- (d) The Mortgaged Property does not contain any Hazardous Substance.
- (e) Grantor has taken all steps reasonably necessary to determine and has determined that no Hazardous Substances have been generated, treated, placed, held, located, or otherwise released on, under, from, or about the Mortgaged Property.
- (f) Grantor has not undertaken, permitted, authorized, or suffered and will not undertake, permit, authorize, or suffer the presence, use, manufacture, handling, generation, transportation, storage, treatment, discharge, release, burial, or disposal on, under, from or about the Mortgaged Property of any Hazardous Substance or the transportation to or from the Mortgaged Property of any Hazardous Substance.
- (g) There is no pending or threatened litigation, proceedings, or investigations before or by any administrative agency in which any person or entity alleges, or is investigating any alleged presence, release, threat of release, placement on, under, from or about the Mortgage Property, or the manufacture, handling, generation, transportation, storage, treatment, discharge, burial, or disposal on, under, from or about the Mortgaged Property, or the transportation to or from the Mortgaged Property, of any Hazardous Substance.
- (h) Grantor has not received any notice, and has no actual or constructive knowledge, that any Governmental Authority or any employee or agent thereof has determined, or threatens to determine, or is investigating any allegation that there is a presence, release, threat of release, placement on, under, from or about the Mortgaged Property, or the use, manufacture, handling, generation, transportation, storage, treatment, discharge, burial or disposal on, under, from or about the Mortgaged Property, or the transportation to or from the Mortgaged Property, of any Hazardous Substance.
- (i) There have been no communications or agreements with any Governmental Authority thereof or any private entity, including, but not limited to, any prior owners or operators of the Mortgage Property, relating in any way to the presence, release, threat of release, placement on, under or about the Mortgaged Property, or the use, manufacture, handling, generation, transportation, storage, treatment, discharge, burial, or disposal on, under or about the Mortgaged Property, or the transportation to or from the Mortgaged Property, of any Hazardous Substance.
- (j) Neither Grantor nor, to the best knowledge of Grantor, any other person; including, but not limited, to any predecessor owner, tenant, licensee, occupant, user, or operator of all or any portion of the Mortgaged Property, has ever caused, permitted, authorized or suffered, and Grantor will not cause, permit, authorize, or suffer, any Hazardous Substance to be placed, held, located, or disposed of, on, under or about any other real property, all or any portion of which is legally or beneficially owned (or any interest or estate therein which is owned) by Grantor in any jurisdiction now or hereafter having in effect a so-called "superlien" law or ordinance or any part thereof, the effect of which law or ordinance would be to create a lien on the Mortgaged Property to secure any obligation in connection with the "superlien" law of such other jurisdiction.
- (k) Grantor has been issued all required federal, state, and local licenses, certificates, or permits relating to, and Grantor and its facilities, business assets, property, leaseholds, and equipment are in compliance in all respects with all applicable federal, state, and local laws, rules, and regulations relating to, air emissions, water discharge, noise emissions, solid or liquid waste disposal, hazardous waste or materials, or other environmental health, or safety matters.

3.11 No Litigation. Except as disclosed in writing to Lender, there are no (i) actions, suits, or proceedings, at law or in equity, before any Governmental Authority or arbitrator pending or threatened against or affecting Grantor, Guarantor, or any Constituent Party which might cause a Material Adverse Effect or which involve the Mortgaged Property, (ii) outstanding or unpaid judgment against the Grantor, any guarantor, any Constituent Party which might cause a Material Adverse Effect, or against the Mortgaged Property; or (iii) defaults by Grantor with respect to any order, writ, injunction, decree, or demand of any Governmental Authority or arbitrator which might cause a Material Adverse Effect.

ARTICLE IV

AFFIRMATIVE COVENANTS

Grantor hereby unconditionally covenants and agrees with Lender, until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged, as follows:

4.1 Payment and Performance. Grantor will pay the Indebtedness as and when specified in the Loan Documents, and will perform and discharge all of the Obligations, in full and on or before the dates same are to be performed.

4.2 Existence. Grantor will and will cause each Constituent Party to preserve and keep in full force and effect its existence (separate and apart from its affiliates), rights, franchises, and trade names.

4.3 Compliance with Legal Requirements. Grantor will promptly and faithfully comply with, conform to, and obey all Legal Requirements, whether the same shall necessitate structural changes in, improvements to, or interfere with the use or enjoyment of, the Mortgaged Property.

4.4 First Lien Status. Grantor will protect the first lien and security interest status of the Short Form Deed of Trust and the other Loan Documents and will not permit to be created or to exist in respect of the Mortgaged Property or any part thereof any lien or security interest on a parity with, superior to, or inferior to any of the liens or security interest hereof, except for the Permitted Exceptions.

4.5 Payment of Impositions. Grantor will duly pay and discharge, or cause to be paid and discharged, the Impositions not later than the earlier to occur of (i) the due date thereof, (ii) the day any fine, penalty, interest, or cost may be added thereto or imposed, or (iii) the day any lien may be filed for the nonpayment thereof (if such day is used to determine the due date of the respective item), and, upon Lender's request, Grantor shall deliver to Lender a written receipt evidencing the payment of the respective Imposition.

4.6 Repair. Grantor will keep the Mortgaged Property in first-class order and condition and will make all repairs, replacements, renewals, additions, betterments, improvements, and alterations thereof and thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, which are necessary or reasonably appropriate to keep same in such order and condition. Grantor will prevent any act, occurrence, or neglect which might impair the value or usefulness of the Mortgaged Property for its intended usage. In instances where repairs, replacements, renewals, additions, betterments, improvements, or alterations are required in and to the Mortgaged Property in an emergency basis to prevent loss, damage, waste, or destruction thereof, Grantor shall proceed to repair, replace, add to, better, improve, or alter same, or cause same to be repaired, replaced, added to, bettered, improved, or altered, notwithstanding anything to the contrary contained in Section 5.2 hereof, provided, however, that in instances where such emergency measures are to be taken, Grantor will notify Lender in writing of the commencement of same and the measures to be taken, and, when same are completed, the completion date and the measures actually taken.

4.7 Insurance. Grantor will obtain and maintain insurance upon and relating to the Mortgaged Property with such insurers, in such amounts and covering such risks as shall be satisfactory to Lender, from time to time, including but not limited to: (i) owner's and contractors' policies of comprehensive general public liability insurance (including automobile coverage); (ii) hazard insurance against all risks of loss, including collapse, in an amount not less than the full replacement cost of all Improvements, including the cost of debris removal, with annual agreed amount endorsement and sufficient at all times to prevent Grantor from becoming a coinsurer, (iii) if the Mortgaged Property is in a "Flood Hazard Area," a flood insurance policy, or binder therefor, in an amount equal to the principal amount of the note or the maximum amount available under the Flood Disaster Protection Act of 1973, and regulations issued pursuant thereto, as amended from time to time, whichever is less, in form complying with the "insurance purchase requirement" of the act; and (iv) such other insurance, if any, as Lender may require from time to time. Each insurance policy issued in connection herewith shall provide by way of endorsements, riders or otherwise that (a) with respect to liability insurance, it shall name Lender as an additional insured, with respect to the other insurance, it shall be payable to Lender as a mortgagee and not as a coinsured, and with respect to all policies of insurance carried by each Lessee for the benefit of the Grantor, it shall be payable to Lender as Lender's interest may appear, (b) the coverage of Lender shall not be terminated, reduced, or affected in any manner regardless of any breach or violation by Grantor of any warranties, declarations, or conditions in such policy; (c) no such insurance policy shall be canceled, endorsed, altered, or reissued to effect a change in coverage for any reason and to any extent whatsoever unless such insured shall have first given Lender thirty (30) days' prior written notice thereof, and (d) Lender may, but shall not be obligated to, make premium payments to prevent any cancellation, endorsement, alteration, or reissuance, and such payments shall be accepted by the insurer to prevent same. Lender shall be furnished with a copy of each such initial policy and an original certificate as to same coincident with the execution of the Short Form Deed of Trust and a copy of each renewal policy and an original certificate as to same not less than ten (10) days' prior to the expiration of the initial, or each immediately preceding renewal policy, together with receipts or other evidence that the premiums thereon have been paid for one (1) year.

4.8 Inspection. Grantor will permit Trustee and Lender, and their agents, representatives, and employees, to inspect the Mortgaged Property at all reasonable times.

4.9 Hold Harmless. Grantor will defend, at its own cost and expense, and hold Trustee and Lender harmless from any action, proceeding, or claim affecting the Mortgaged Property or the Loan Documents, and all costs and expenses incurred by Lender in protecting its interests hereunder in such as even t(including all court costs and attorneys' fees) shall be borne by Grantor. If Grantor is a partnership or joint venture, each partner or venturer of Grantor jointly and severally agrees that in the event any dispute whatsoever arises among any or all of the partners or venturers, each partner or venturer will indemnify Trustee and Lender and any corporation controlling, controlled by, or under common control with either Trustee or Lender, and any shareholder, officer, director, employee and agent of either Trustee or Lender or any such corporation, and will hold Trustee and Lender and any such corporation and any such shareholder, officer, director, employee and agent of such corporation or Lender, harmless from and against all expenses, including without limiting the generality of the foregoing, all legal fees, damages, and other liabilities of any type whatsoever (including but not limited to, any liabilities arising out of demands by any of the partners for undisbursed loan funds) suffered or incurred as a result of or in connection with any such dispute. This indemnity provision shall survive repayment of the Indebtedness, shall be binding upon the respective heirs, legal representatives, successors, and assigns of Grantor, and if Grantor is a partnership or joint venture, each partner or venturer of Grantor, and shall inure to the benefit of Trustee and Lender, their successors, and assigns, any corporation controlling, controlled by, or under common control with either Trustee or Lender and the corporation's shareholders, directors, officers, employees and agents.

4.10 Payment for Labor and Materials. Grantor will promptly pay all bills for labor, materials, and specifically fabricated materials incurred in connection with the Mortgaged Property and never permit to exist in respect of the Mortgage Property or any part thereof any lien or security interest, even though inferior to the liens and security interests hereof, for any such bill, and in any event never permit to be created or exist in respect of the Mortgaged Property or any part thereof any other or additional lien or security interest on a parity with, superior, or inferior to any of the liens or security interests hereof, except for the Permitted Exceptions.

4.11 Further Assurance and Corrections. From time to time, at the request of Lender, Grantor will (i) promptly correct any defect, error, or omission which may be discovered in the contents hereof or in any other Loan Document or in the execution or acknowledgment thereof, (ii) execute, acknowledge, deliver, record and/or file such further instruments (including, without limitation, further deeds of trust, security agreements, financing statements, continuation statements and assignments or rents or leases) and perform such further acts and provide such further assurances as may be necessary, desirable, or proper, in Lender's opinion, to carry out more effectively the purposes hereof and of the Loan Documents and to subject to the liens and security interests hereof and thereof any property intended by the terms hereof or thereof to be covered hereby or thereby, including without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Mortgaged Property; (iii) execute, acknowledge, deliver, procure, file, and/or record any document or instrument (including without limitation, any financing statement) deemed advisable by Lender to protect the liens and the security interests herein granted against the rights or interests of third persons; and (iv) pay all costs connected with any of the foregoing.

4.12 Tax on Deed of Trust. At any time any law shall be enacted imposing or authorizing the imposition of any tax upon a Short Form Deed of Trust, or upon any rights, titles, liens, or security interests created hereby, or upon the Indebtedness or any part thereof, Grantor will immediately pay all such taxes, provided that if such law as enacted makes it unlawful for Grantor to pay such tax, Grantor shall not pay nor be obligated to pay such tax. Nevertheless, if a law is enacted making it unlawful for Grantor to pay such taxes, then Grantor must repay the Indebtedness in full within sixty (60) days after demand therefor by Lender.

4.13 Statement of Unpaid Balance. At any time and from time to time, Grantor will furnish promptly, upon the request of Lender, a written statement or affidavit, in form satisfactory to Lender, stating the unpaid balance of the indebtedness and that there are no offsets or defenses against full payment of the Indebtedness and the terms hereof, or if there are any such offsets or defenses, specifying them.

4.14 Expenses. Subject to the provisions of Section 12.11 hereof, and except as otherwise limited in the Loan Agreement, Grantor will pay on demand all reasonable and bona fide out of pocket costs, fees, and expenses and other expenditures, including, but not limited to, reasonable attorneys' fees and expenses, paid or incurred by Lender or Trustee to third parties incident to a Short Form Deed of Trust or any other Loan Document (including without limitation, reasonable attorneys fees and expenses in connection with the negotiation, preparation, and execution thereof and of any other Loan Document and any amendment hereto to thereto, any release thereof, any consent, approval or waiver there under or under any other Loan Document, the making of any advance under the Note, and any suite to which Lender or Trustee is a party involving the Short Form Deed of Trust or the Mortgaged Property) or incident to the enforcement of the Indebtedness or the exercise of any right or remedy of Lender under any Loan Document.

4.15 Address. Grantor shall give written notice to Lender and Trustee of any change of address of Grantor at least five (5) days prior to the effective date of such change of address. Absent such official written notice of a change in address for Grantor, then Lender and Trustee shall be entitled for all purposes under the Loan Documents to rely upon Grantee's address as set forth in the initial paragraph of the Short Form Deed of Trust, as same may have been changed in accordance with the provisions hereof.

4.16 Environment and Hazardous Substances. Grantor will:

- (a) not use, generate, manufacture, produce, store, release, discharge, treat, or dispose of on, under, from or about the Mortgaged Property or transport to or from the Mortgaged Property any Hazardous Substance or allow any other person or entity to do so;
- (b) keep and maintain the Mortgaged Property in compliance with, and shall not cause or permit the Mortgaged Property to be in violation of, any Environmental Law;
- (c) give prompt written notices to Lender of: (i) any proceeding or inquiry by any governmental or nongovernmental entity or person with respect to the presence of any Hazardous Substance on, under, from or about the Mortgaged Property, the migration thereof from or to other property, the disposal, storage or treatment of any Hazardous Substance generated or used on, under or about the Mortgaged Property, (ii) all claims made or threatened by any third party against Grantor or the Mortgage Property or any other owner or operator of the Mortgaged Property relating to any loss or injury resulting from any Hazardous Substance, and (iii) Grantor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Mortgaged Property that could cause the Mortgaged Property or any part thereof to be subject to any investigation or cleanup of the Mortgaged Property pursuant to any Environmental Law;

- (d) permit Lender to join and participate in, as a party if it so elects, any legal proceedings or actions initiated with respect to the Mortgaged Property in connection with any Environmental Law or Hazardous Substance, and Grantor shall pay all attorneys' fees incurred by Lender in connection therewith;
- (e) protect, indemnify, and hold harmless Trustee and Lender, their parents, subsidiaries, directors, officers, employees, representatives, agents, successors, and assigns from and against any and all loss, damage, costs, expense, action, causes of action, or liability (including attorney's fees and costs) directly or indirectly arising from or attributable to the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under or about the Mortgaged Property, whether known or unknown at the time of the execution hereof, including without limitation (i) all foreseeable consequential damages of any such use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence, and (ii) the costs of any required or necessary environmental investigation or monitoring, any repair, cleanup, or detoxification of the Mortgaged Property, and the preparation and implementation of any closure, remedial, or other required plans. This covenant and the indemnity contained herein shall survive the release of the lien of the Short Form Deed of Trust or the extinguishment of the lien by foreclosure or action in lieu thereof, and
- (f) in the event that ny Remedial Work is reasonably necessary or desirable, Grantor shall commence and thereafter diligently prosecute to completion of such Remedial Work with in thirty (30) days after written demand by Lender for performance interest (or such shorter period of time as may be required under any Legal Requirement). All Remedial Work shall be performed by contractors approved in advance by Lender, and under the supervision of a consulting engineer approved by Lender. All costs and expenses of such Remedial Work shall be paid by Grantor including, without limitation, Lender's reasonable attorneys' fees and costs incurred in connection with monitoring or review of such Remedial Work. In the event Grantor shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Lender may, but shall not be required to cause such Remedial Work to be performed, and all costs and expenses thereof, or incurred in connection therewith, shall become part of the Indebtedness.

ARTICLE V

NEGATIVE COVENANTS

Grantor hereby unconditionally covenants and agrees with Lender, until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged, as follows:

5.1 Use Violations. Grantor will not use, maintain, operate, or occupy, or allow the use, maintenance, operation, or occupancy of, the Mortgaged Property in any manner which (a) violates any Legal Requirement, (b) may be dangerous unless safeguarded as required by law and/or appropriate insurance, (c) constitutes a public or private nuisance, or (d) makes void, voidable, or cancelable, or increases the premium of, any insurance then in force with respect thereto.

5.2 Waste; Alterations. Grantor will not commit or permit any waste or impairment of the Mortgaged Property and will not (subject to the provisions of Sections 4.3 and 4.6 hereof), without the prior written consent of Lender, make or permit to be made any alterations or additions to the Mortgaged Property of a material nature, except in accordance with the Plans.

5.3 Replacement of Fixtures and Personalty. Grantor will not, without the prior written consent of Lender, permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is replaced by an article of equal suitability and value, owned by Grantor, free and clear of any lien or security interest except as may be approved in writing by Lender.

5.4 Change in Zoning. Grantor will not seek or acquiesce in a zoning reclassification of all or any portion of the Mortgaged Property or grant or consent to any easement, dedication, plat, or restriction (or allow any easement to become enforceable by prescription), or any amendment or modification thereof, covering all or any portion of the Mortgaged Property, without Lender's prior written consent.

5.5 No Drilling. Grantor will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any Minerals from the surface or the Land regardless of the depth thereof or the

method of mining on extraction thereof. Grantor, to the extent it has the authority to do so, shall further not permit any drilling or exploration for or extraction, removal or production of, any Minerals from the subsurface of the Land to the extent such extraction, removal or production has the effect of being disruptive to service operations and development or potential dangerous to the structural integrity of the surface of the Land and/or the Improvements.

5.6 No Disposition. Grantor will not make a Disposition without obtaining Lender's prior written consent to a Disposition.

5.7 No Subordinate Mortgages. Grantor will not create, place, or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of or allow to remain any Subordinate Mortgage regardless of whether such Subordinate Mortgage is expressly subordinate to the liens or security interests of the Loan Documents with respect to the Mortgaged Property, other than the Permitted Exceptions.

ARTICLE VI

EVENTS OF DEFAULT

The term "Event of Default," as used herein and in the Loan Documents, shall mean the occurrence or happening, at any time and from time to time, of any one or more of the following:

6.1 Payment of Indebtedness. If Grantor 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 Loan Documents, upon acceleration or otherwise.

6.2 Performance of Obligations. If Grantor shall fail, refuse or neglect or cause others to fail, refuse or neglect to comply with, perform and discharge fully and timely any of the Obligations as and when called for, and same remains uncured thirty (30) days following written notice thereof from Lender or its agents, or such longer period of time (but in any event not exceeding an aggregate period of ninety (90) days) as may be reasonably necessary to effectuate such cure and so long as Grantor is diligently and consistently pursuing such cure.

6.3 False Representation. If any representation, warranty, or statement made by Grantor, Guarantor, or others in, under, or pursuant to the Loan Documents or any affidavit or other instrument executed or delivered with respect to the Loan Documents or the Indebtedness is determined by Lender to be false or misleading in any material respect as of the date hereof or thereof or shall become so at any time prior to the repayment in full of the Indebtedness.

6.4 Default Under Other Lien Document. If Grantor shall default or commit an event of default under and pursuant to any other mortgage or security agreement which covers or affects any part of the Mortgaged Property.

6.5 Insolvency; Bankruptcy. If Grantor (i) shall execute an assignment for the benefit of creditors or an admission in writing by Grantor of Grantor's inability to pay, or Grantor's failure to pay, debts generally as the debts become due; or (ii) shall allow the levy against the Mortgaged Property or any part thereof, of any execution, attachment, sequestration or other writ which is not vacated within sixty days after the levy; or (iii) shall allow the appointment of a receiver, trustee or custodian of Grantor or of the Mortgaged Property or any part thereof, which receiver, trustee or custodian is not discharged within sixty days after the appointment; or (iv) files as a debtor a petition, case, proceeding or other action pursuant to, or voluntarily seeks of the benefit or benefits of any Debtor Relief Law, or takes any action in furtherance thereof, or (v) files either a petition, complaint, answer or other instrument which seeks to effect a suspension of, or which has the effect of suspending any of the rights or powers of Lender or Trustee granted in the Note, herein or in any Loan Document, or (vi) allows the filing of a petition, case, proceeding or other action against Grantor as a debtor under any Debtor Relief Law or seeks appointment of a receiver, trustee, custodian or liquidator of Grantor or of the Mortgaged Property, or any part thereof, or of any significant portion of Grantor's other property; and (a) Grantor admits, acquiesces in or fails to contest diligently the material allegations thereof, or (b) the petition, case, proceeding or other action results in the entry of an order for relief or order granting the relief sought against Grantor, or (c) the petition, case, proceeding or other action is not permanently dismissed or discharged on or before the earlier of trial thereon or thirty days next following the date of filing.

6.6 Dissolution; Disability. If Grantor, any Constituent Party, or any Guarantor, shall die, dissolve, terminate or liquidate, or merge with or be consolidated into any other entity, or become permanently disabled.

6.7 No Further Encumbrances. If Grantor creates, places, or permits to be created or placed, or through any act or failure to act, acquiesces in the placing on or allows to remain, any Subordinate Mortgage, regardless of whether such Subordinate Mortgage is expressly subordinate to the liens or security interests of the Loan Documents, with respect to the Mortgaged Property, other than the Permitted Exceptions.

6.8 Disposition of Mortgaged Property and Beneficial Interest in Grantor. If Grantor makes a Disposition, without the prior written consent of Lender.

6.9 Condemnation. If any condemnation proceeding is instituted or threatened which would, in Lender's sole judgment, materially impair the use and enjoyment of the Mortgaged Property for its intended purposes. Notwithstanding the foregoing, such condemnation proceeding will not constitute an Event of Default to the extent Grantor, within thirty (30) days of Grantor's being made aware of such proceeding, satisfying each and all of the requirements of Section 8.11 hereof (including without limitation, the payment of the Partial Release Price to Lender) so as to effectuate a Partial Release of that portion of the Mortgaged Property which is subject or threatened by such condemnation proceeding.

6.10 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. Notwithstanding the foregoing, such demolition, destruction, or damage shall not constitute as Event of Default to the extent Grantor, within thirty (30) days of such occurrence, satisfying each and all of the requirements of Section 8.11 hereof (including, without limitation, the payment of the Partial Release Price to Lender) so as to effectuate a Partial Release of that portion of the Mortgaged Property which is subject to such demolition, destruction or damage.

6.11 Abandonment. If Grantor abandons all or any portion of the Mortgaged Property.

6.12 Event of Default in Loan Documents. Any Event of Default as defined in any of the Loan Documents.

6.13 Cross Default. Any Event of Default under any of the Short Form Deeds of Trust, which shall also constitute an Event of Default under any and all of the Short Form Deeds of Trust and any and all of the other Loan Documents, at Lender's election.

ARTICLE VII

REMEDIES

7.1 Lender's Remedies Upon Default. Upon the occurrence of an Event of Default, Lender may, at Lender's option, and by or through Trustee, by Lender itself or otherwise, do any one or more of the following:

- (a) Right to Perform Grantor's Covenants. If Grantor has failed to keep or perform any covenant whatsoever contained in the Short Form Deed of Trust or the other Loan Documents, Lender may, but shall not be obligated to any person to do so, perform or attempt to perform said covenant, and any payment made or expense incurred in the performance or attempted performance of any such covenant shall be and become a part of the Indebtedness, and Grantor promises, upon demand to pay to Lender, at the place where the Note is payable, all sums so advanced or paid by Lender, with interest from the date when paid or incurred by Lender at the Default Rate. No such payment by Lender shall constitute a waiver of any Event of Default. In addition to the liens and security interests hereof, Lender shall be subrogated to all rights, titles, liens, and security interests securing the payment of any debt, claim, tax, or assessment for the payment of which Lender may make an advance, or which Lender may pay.
- (b) Right of Entry. Lender may, prior or subsequent to the institution of any foreclosure proceedings, enter upon the Mortgaged Property, or any part thereof, and take exclusive possession of the Mortgaged Property and of all books, records, and accounts relating thereto and to exercise without interference from Grantor any and all rights which Grantor has with respect to the development, construction, management, possession, operation, protection, or preservation of the Mortgaged Property, including without limitation the right to complete such development and/or construction as may be underway or not yet begun and otherwise manage, operate, maintain, protect, or preserve the Mortgaged Property to the extent Lender, in its sole discretion, deems desirable. All such costs, expenses, and liabilities incurred by the Lender in effectuating such construction or in managing, operating, maintaining, protecting, or preserving the Mortgage Property, shall constitute a demand obligation owing by

Grantor and shall bear interest from the date of expenditure until paid at the Default Rate, all of which shall constitute a portion of the Indebtedness. If necessary to obtain the possession provided for above, the Lender may invoke any and all legal remedies to dispossess Grantor, including specifically one or more actions for forcible entry and detainer, trespass to try title, and restitution. In connection with any action taken by the Lender pursuant to this subsection, the Lender shall not be liable for any loss sustained by Grantor resulting from any failure to further develop or negligently develop the Mortgaged Property, or any part thereof, or from any other act or omission of the Lender in managing the Mortgaged Property unless such loss is caused by the willful misconduct of the Lender, nor shall the Lender be obligated to perform or discharge any obligation, duty, or liability under any Contract or under or by reason hereof or the exercise of rights or remedies hereunder. Grantor shall and does hereby agree to indemnify the Lender for, and to hold the Lender harmless from, any and all liability, loss, or damage, which may or might be incurred by the Lender under any such Contract or under or by reason hereof or the exercise of rights or remedies hereunder, and from any and all claims and demands whatsoever which may be asserted against the Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any such Contract. Should the Lender incur any such liability, the amount thereof, including without limitation costs, expenses, and reasonable attorneys' fees, together with interest thereon from the date of expenditure until paid at the Default Rate, shall be secured hereby, and Grantor shall reimburse the Lender therefor immediately upon demand. Nothing in this subsection shall impose any duty, obligation, or responsibility upon the Lender for the development, construction, control, care, management, leasing, or repair of the Mortgaged Property, nor for the carrying out of any of the terms and conditions of any such Contract; nor shall it operate to make the Lender responsible for liable for any waste committed on the Mortgaged Property by any parties, or for any Hazardous Substance on or under the Mortgaged Property, or for any dangerous or defective condition of the Mortgaged Property or for any negligence in the construction, development, management, leasing, upkeep, repair, or control of the Mortgaged Property resulting in loss or injury or death to any licensee, employee, or stranger. Grantor hereby assents to, ratifies, and confirms any and all actions of the Lender with respect to the Mortgaged Property taken under this subsection.

The remedies in this subsection are in addition to other remedies available to the Lender and the exercise of the remedies in this subsection shall not be deemed to be an election of nonjudicial or judicial remedies otherwise available to the Lender. The remedies in this Article VII are available under and governed by the real property laws of Texas and are not governed by the personal property laws of Texas, including but not limited to, the power to dispose of personal property in a commercially reasonable manner under Section 9.504 of the Code. No action by Lender, taken pursuant to this subsection, shall be deemed to be an election to dispose of personal property under Section 9.505 of the Code. Any receipt of consideration received by Lender pursuant to this subsection shall be immediately credited against the Indebtedness (in the inverse order of maturity) and the value of said consideration shall be treated like any other payment against the Indebtedness.

- (c) Right to Accelerate. Lender may, without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action, all of which are hereby waived by Grantor and all other parties obligated in any manner whatsoever on the Indebtedness, declare the entire unpaid balance of the indebtedness immediately due and payable, and upon such declaration, the entire unpaid balance of the Indebtedness shall be immediately due and payable. The failure to exercise any remedy available to the Lender shall not be deemed to be a waiver of any rights or remedies of the Lender under the Loan Documents, at law or in equity.
- (d) Foreclosure-Power of Sale. Lender may request Trustee to proceed with foreclosure under the power of sale which is hereby conferred, such foreclosure to be accomplished in accordance with the following provisions:
 - (i) Public Sale. Trustee is hereby authorized and empowered, and it shall be Trustee's special duty, upon such request of Lender, to sell the Mortgaged Property, or any part thereof, at public action to the highest bidder for cash, with or without having taken possession of same. Any such sale (including notice thereof) shall comply with the applicable requirements, at the time of the sale, of Section 51.802 of the Texas Property Code or, if and to the extent such statute is not then in force, with the applicable requirements, at the time of the sale, of the successor statute or statutes, if any, governing sales of Texas real property under power of sale conferred by deeds of trust. If there is no statute in force at the time of the sale governing sales of Texas real property under powers of sale conferred by deeds of trust, such sale shall comply with applicable law, at the time of the sale, governing sales of Texas real property under power of sale conferred by deeds of trust.

- (ii) Right to Require Proof of Financial Ability and/or Cash Bid. At any time during the bidding, the Trustee may require a bidding party (A) to disclose its full name, state and city of residence, occupation, and specific business office location, and the name and address of the principal the bidding party is representing (if applicable), and (B) to demonstrate reasonable evidence of the bidding party's financial ability (or, if applicable, the financial ability of the principal of such bidding party), as a condition to the bidding party submitting bids at the foreclosure sale. If any such bidding party (the "Questioned Bidder") declines to comply with the Trustee's requirement in this regard, or if such Questioned Bidder does respond but the Trustee, in Trustee's sole and absolute discretion, deems the information or the evidence of the financial ability of the Questioned Bidder (or, if applicable, the principal of such bidding party) to be inadequate, then the Trustee may continue the bidding with reservation; and in such event (1) the Trustee shall be authorized to caution the Questioned Bidder concerning the legal obligations to be incurred in submitting bids, and (2) if the Questioned Bidder is not the highest bidder at the sale, or if having been the highest bidder the Questioned Bidder fails to deliver the cash purchase price payment promptly to the Trustee, all bids by the Questioned Bidder shall be null and void. The Trustee may, in Trustee's sole and absolute discretion, determine that a credit bid may be in the best interest of the Grantor and Lender, may elect to sell the Mortgaged Property for credit or for a combination of cash and credit; provided, however, that the Trustee shall have no obligation to accept any bid except an all cash bid. In the event the Trustee requires a cash bid and cash is not delivered within a reasonable time after conclusion of the bidding process, as specified by the Trustee, but in no event later than 3:45 p.m. local time on the day of the sale, then said contingent sale shall be null and void, the bidding process may be recommenced, and any subsequent bids or sale shall be made as if no prior bids were made or accepted.
- (iii) Sale Subject to Unmatured Indebtedness. In addition to the rights and powers of sale granted under the preceding provisions of this subsection, if default is made in the payment of any installment of the Indebtedness, Lender may, at Lender's option, at once or at any time thereafter while any matured installment remains unpaid, without declaring the entire Indebtedness to be due and payable, orally or in writing direct Trustee to enforce this trust and to sell the Mortgaged Property subject to such unmatured Indebtedness and to the rights, powers, liens, security interests, and assignments securing or providing recourse for payment of such unmatured Indebtedness, in the same manner, all as provided in the preceding provisions of this subsection. Sales made without maturing the Indebtedness may be made hereunder whenever there is a default in the payment of any installment of the Indebtedness, without exhausting the power of sale granted hereby, and without affecting in any way the power of sale granted under this subsection, the unmatured balance of the Indebtedness of the rights, powers, liens, security interests, and assignments securing or providing recourse for payment of the Indebtedness.
- (iv) Partial Foreclosure. Sale of a part of the Mortgaged Property shall not exhaust the power of sale, but sales may be made from time to time until the Indebtedness is paid and the Obligations are performed and discharged in full. It is intended by each of the foregoing provisions of this subsection that Trustee may, after any request or direction by Lender, sell not only the Land and the Improvements, but also the Fixtures and Personalty and other interests constituting a part of the Mortgaged Property or any part thereof, along with the Land and the Improvements or any part thereof, as a unit and as a part of a single sale, or may sell at any time or from time to time any part of parts of the Mortgaged Property separately from the remainder of the Mortgaged Property. It shall not be necessary to have present or to exhibit at any sale any of the Mortgaged Property.
- (v) Trustee's Deeds. After any sale under this subsection, Trustee shall make good and sufficient deeds, assignments, and other conveyances to the purchaser or purchasers thereunder in the name of Grantor, conveying the Mortgaged Property or any part thereof so sold to the purchaser or purchasers with general warranty of title by Grantor. It is agreed that in any deeds, assignment or other conveyances given by Trustee, any and all statements off fact or other recitals therein made as to the identify of Lender, the occurrence or existence of any Event of Default, the notice of intention to accelerate, or acceleration of, the maturity of the Indebtedness, the request to sell notice of sale, time, place, terms and manner of sale, and receipt, distribution, and application of the money realized therefrom, the due and proper appointment of a substitute trustee and without being limited by the foregoing any other act or thing having been duly done by or on behalf of Lender or by or on behalf of Trustee, shall be taken by all courts of law and equity as prima facie evidence that such statements or recitals state true, correct, and complete facts and are without further question to be so accepted, and Grantor does hereby ratify and confirm any and all acts that Trustee may lawfully do in the premises by virtue hereof.

- (e) Lender's Judicial Remedies. Lender, or Trustee, upon written request of Lender, may proceed by suit or suits, at law or in equity, to enforce the payment of the Indebtedness and the performance and discharge of the obligations in accordance with the terms hereof, of the Note, and the other Loan Documents, to foreclose the liens and security interests of the Short Form Deed of Trust as against, all or any part of the Mortgaged Property, and to have all or any part of the Mortgaged Property sold under the judgment or decree of a court of competent jurisdiction. This remedy shall be cumulative of any other nonjudicial remedies available to the Lender with respect to the Loan Documents. Proceeding with a request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available nonjudicial remedy of the Lender.
- (f) Lender's Right to Appointment of Receiver. Lender, as a matter of right and without regard to the sufficiency of the security for repayment of the Indebtedness and performance and discharge of the Obligations, without notice to Grantor and without any showing of insolvency, fraud, or mismanagement on the part of Grantor, and without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, shall be entitled to the appointment of a receiver or receivers of the Mortgaged Property or any part thereof, and of the Rents and Grantor hereby irrevocably consents to the appointment of a receiver or receivers. Any receiver appointed pursuant to the provisions of this subsection shall have the usual powers and duties of receivers in such matters.
- (g) Lender's Uniform Commercial Code Remedies. The Lender may exercise its rights of enforcement with respect to Fixtures and Personalty under the Code, and in conjunction with, in addition to or in substitution for the rights and remedies under the Code the Lender may:
- (i) without demand or notice to Grantor, enter upon the Mortgaged Property to take possession of, assemble, receive, and collect the Personalty, or any part thereof, or to render it unusable, and
 - (ii) The Lender may require Grantor to assemble the Personalty and make it available at a place the Lender designates which is mutually convenient to allow the Lender to take possession or dispose of the Personalty, and
 - (iii) written notice mailed to Grantor as provided herein at least ten (10) days prior to the date of public sale of the Personalty or prior to the date after which private sale of the Personalty will be made shall constitute reasonable notice; and
 - (iv) any sale made pursuant to the provisions of this subsection shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of the other Mortgaged Property under power of sale as provided herein upon giving the same notice with respect to the sale of the Personalty hereunder as is required for such sale of the other Mortgaged Property under power of sale, and such sale shall be deemed to be pursuant to a security agreement covering both real and personal property under 9.501(d) of the Code, and
 - (v) in the event of & foreclosure sale, whether made by the Trustee under the terms hereof, or under judgment of a court, the Personalty and the other Mortgaged Property may, at the option of the Lender, be sold as a whole; and
 - (vi) it shall not be necessary that the Lender take possession of the Personalty, or any part thereof, prior to the time that any sale pursuant to the provisions of this subsection is conducted, and it shall not be necessary that the Personalty or any part thereof be present at the location of such sale; and
 - (vii) prior to application of proceeds of disposition of the Personalty to the Indebtedness, such proceeds shall be applied to the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like, and the reasonable attorneys' fees and legal expenses incurred by the Lender; and
 - (viii) after notification, if any, hereafter provided in this subsection, Lender may sell, lease, or otherwise dispose of the Personalty, or any part thereof, in one or more parcels at public or private sale or sales, at Lender's offices or elsewhere, for cash, on credit, or for future delivery. Upon the request of Lender, Grantor shall assemble the Personalty and make it available to Lender at any place designated by Lender that is reasonably convenient to Grantor and Lender. Grantor agrees that Lender shall not be obligated to give more than the (10) days' written notice of the time and place of any public sale or of the time after which any private sale may take place and that such notice shall constitute reasonable notice of

such matters. Grantor shall be liable for all expenses of retaking, holding, preparing for sale, or the like, and all attorneys' fees, legal expenses, and all other costs and expenses incurred by Lender in connection with the collection of the Indebtedness and the enforcement of Lender's rights under the Loan Documents. Lender shall apply the proceeds of the sale of the Personalty against the Indebtedness in accordance with the provisions of Section 7.4 of this Master Deed of Trust. Grantor shall remain liable for any deficiency if the proceeds off any sale or disposition of the Personalty are insufficient to pay the Indebtedness in full. Grantor waives all rights of marshalling in respect of the Personalty; and

- (ix) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder, the nonpayment of the Indebtedness, the occurrence of any Event of Default, the Lender having declared all or a portion of such Indebtedness to be due and payable, the notice of time, place, and terms of sale and of the properties to be sold having been duly given, or any other act or thing having been duly done by the Lender, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and
- (x) the Lender may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by the Lender, including the sending of notices and the conduct of the sale, but in the name and on behalf of the Lender.
- (h) Rights Relating to Leases and Rents. Grantor has, pursuant to Article IX of this Master Deed of Trust, assigned, as collateral, to Lender all Rents under each of the Leases covering all or any portion of the Mortgaged Property. Lender, or Trustee on Lender's behalf, may at any time, and without notice, either in person, by agent, or by receiver to be appointed by a court, enter and take possession of the Mortgaged Property or any part thereof, and in its own name, sue for or otherwise collect the Rents. Grantor hereby agrees with Lender, upon notice from Trustee or Lender to Grantor of the occurrence of an Event of Default, terminate the limited license granted to Grantor in Section 9.2 hereof, and thereafter direct the lessees under the Leases to pay direct to Lender the Rents due and to become due under the Leases and attorn in respect of all other obligations thereunder direct to Lender, or Trustee on Lender's behalf, without any obligation on their part to determine whether an Event of Default does in fact exist or has in fact occurred. All Rents collected by Lender, or Trustee acting on Lender's behalf, shall be applied as provided for in Section 7.4 of this Master Deed of Trust; provided, however, that if the costs, expenses, and attorneys fees shall exceed the amount of Rents collected, the excess shall be added to the Indebtedness, shall bear interest at the Default Rate, and shall be immediately due and payable. The entering upon and taking possession of the Mortgaged Property, the collection of Rents, and the application thereof as aforesaid shall not cure or waive any Event of Default or notice of default, if any, hereunder nor invalidate any act done pursuant to such notice, except to the extent any such default is fully cured. Failure or discontinuance by Lender, or Trustee on Lender's behalf, at any time or from time to time, to collect said Rents shall not in any manner impair the subsequent enforcement by Lender, or Trustee on Lender's behalf, of the right, power and authority herein conferred upon it. Nothing contained herein, nor the exercise of any right, power or authority herein granted to Lender, or Trustee on Lender's behalf, shall be, or shall be construed to be, an affirmation by it of any tenancy, lease, or option, nor an assumption of liability under, nor the subordination of, the lien or charge of the Short Form Deed of Trust, to any such tenancy, lease, or option, nor an election of judicial relief, if any such relief is requested or obtained as to Leases or Rents, with respect to the Mortgaged Property or any other collateral given by Grantor to Lender. In addition, from time to time Lender may elect, and notice hereby is given to each lessee under any Lease, to subordinate the lien of the Short Form Deed of Trust to any Lease by unilaterally executing and recording an instrument of subordination, and upon such election the lien of the Short Form Deed of Trust shall be subordinate to the Lease identified in such instrument of subordination provided, however, in each instance such subordination will not affect or be applicable to, and expressly excludes any lien, charge, encumbrance, security interest, claim, easement, restriction, option covenant and other rights, titles, interests or estates of the nature whatsoever with respect to all or any portion of the Mortgaged Property to the extent that the same may have arisen or intervened during the period between the recordation of the Short Form Deed of Trust and the execution of the Lease identified in such instrument of subordination.
- (i) Lender as Purchaser. Lender may be the purchaser of the Mortgaged Property or any part thereof, at any sale thereof, whether such sale be under the power of sale herein vested in Trustee or upon any other foreclosure of the liens and security interests hereof, or otherwise, and Lender shall, upon any such purchase, acquire good title to the Mortgaged Property so purchased, free of the liens and security interests hereof, unless the sale was made subject to an unmaturing portion of the Indebtedness. The Lender, as purchaser, shall be treated in the same manner as any third party purchaser and the proceeds of the Lender's purchase shall be applied in accordance with Section 7.4 of this Master Deed of Trust.

7.2 Other Rights of Lender. Should any part of the Mortgaged Property come into the possession of Lender, whether before or after default, Lender may (for itself or by or through other persons, firms, or entities) hold, lease, manage, use, or operate the Mortgaged Property for such time and upon such terms as Lender may deem prudent under the circumstances (making such repairs, alterations, additions, and improvements thereto and taking such other action as Lender may from time to time deem necessary or desirable) for the purpose of preserving the Mortgaged Property or its value, pursuant to the order of a court of appropriate jurisdiction or in accordance with any other rights held by Lender in respect of the Mortgaged Property. Grantor covenants to promptly reimburse and pay to Lender on demand, at the place where the Note is payable, the amount of all reasonable expenses (including without limitation the cost of any insurance, Impositions, or other charges) incurred by Lender in connection with Lender's custody, preservation, use, or operation of the Mortgaged Property, together with interest thereon from the date incurred by Lender at the Default Rate; and all such expenses, costs, taxes, interest, and other charges shall be and become a part of the Indebtedness. It is agreed, however, that the risk of loss or damage to the Mortgaged Property is on Grantor, and Lender shall have no liability whatsoever for decline in value of the Mortgaged Property, for failure to obtain or maintain insurance, or for failure to determine whether insurance in force is adequate as to amount or as to the risks insured. Possession by the Lender shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Mortgaged Property or collateral not in Lender's possession.

7.3 Possession After Foreclosure. If the liens or security interests hereof shall be foreclosed by power of sale granted herein, by judicial action, or otherwise, the purchase at any such sale shall receive, as an incident to purchaser's ownership, immediate possession of the property purchased, and if Grantor or Grantor's successors shall hold possession of said property or any part thereof subsequent to foreclosure, Grantor and Grantor's successors shall be considered as tenants at sufferance of the purchaser at foreclosure sale (without limitation of other rights or remedies, at a reasonable rental per day, due and payable daily, based upon the value of the portion of the Mortgaged Property so occupied and sold to such purchaser), and anyone occupying such portion of the Mortgaged Property, after demand is made for possession thereof, shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages by reason thereof are hereby expressly waived.

7.4 Application of Proceeds. The proceeds from any sale, lease, or other disposition made pursuant to this Article VII, or the proceeds from the surrender of any insurance policies pursuant hereto, or any Rents collected by Lender from the Mortgaged Property, or the reserve for taxes, assessments and insurance premiums, if any, required by the provisions of this Master Deed of Trust or sums received pursuant to Section 8.1 hereof, or proceeds from insurance which Lender elects to apply to the Indebtedness pursuant to Section 8.2 hereof, shall be applied by Trustee, or by Lender, as the case may be, to the Indebtedness in the following order and priority: (1) to the payment of all expenses of advertising, selling, and conveying the Mortgaged Property or part thereof, and/or prosecuting or otherwise collecting Rents, proceeds, premiums or other costs including reasonable attorneys' fees and a reasonable fee or commission to Trustee, not to exceed five percent of the proceeds thereof or costs so received; (2) to that portion, if any, of the Indebtedness or Obligations with respect to which no person or entity has personal or entity liability for payment (the "Exculpated Portion"), and with respect to the Exculpated Portion as follows: first, to accrued but unpaid interest, second, to matured principal, and third, to unmatured principal in inverse order of maturity; (3) to the remainder of the Indebtedness as follows: first, to the remaining accrued but unpaid interest, second, to the matured portion of principal of the Indebtedness, and third, to prepayment of the unmatured portion, if any, of principal of the Indebtedness applied to installments of principal in inverse order of maturity; (4) the balance, if any or to the extent applicable; remaining after the full and final payment of the Indebtedness and full performance and discharge of the Obligations to the holder or Lender of any inferior liens covering the Mortgaged Property, if any in order of the priority of such inferior liens (Trustee and Lender shall hereby be entitled to rely exclusively on a commitment for title insurance issued to determine such priority); and (5) the cash balance, if any, to the Grantor. The application of proceeds of sale or other proceeds as otherwise provided herein shall be deemed to be a payment of the Indebtedness like any other payment. The balance of the Indebtedness remaining unpaid, if any, shall remain fully due and owing in accordance with the terms of the Note or the other Loan Documents.

7.5 Abandonment of Sale. In the event a foreclosure hereunder is commenced by Trustee in accordance with Subsection 7.1(d) hereof, at any time before the sale, Trustee may abandon the sale, and Lender may then institute suit for the collection of the Indebtedness and for the foreclosure of the liens and security interests hereof and of the Loan Documents. If Lender should institute a suit for the collection of the Indebtedness and for a foreclosure of the liens and security interests, Lender may, at any time before the entry of a final judgment in said suit, dismiss the same and require Trustee to sell the Mortgaged Property or any part thereof in accordance with the provisions of this Master Deed of Trust.

7.6 Payment of Fees. If the Note or any other part of the Indebtedness shall be collected or if any of the Obligations shall be enforced 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 an option given to the Lender to mature same, or if Lender becomes a party to any suit where this Master Deed of Trust, the Short Form Deed of Trust or the Mortgaged Property or any part thereof is involved, Grantor agrees to pay Lender's attorneys' fees and expenses incurred, and such fees shall be and become a part of the Indebtedness and shall bear interest from the date such costs are incurred at the Default Rate.

7.7 Miscellaneous

- (a) In case Lender shall have proceeded to invoke any right, remedy, or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon same for any reason, Lender shall have the unqualified right so to do and, in such event, Grantor and Lender shall be restored to their former positions with respect to the Indebtedness, the Loan Documents, the Mortgaged Property or otherwise, and the rights, remedies, recourses and powers of Lender shall continue as if same had never been involved.
- (b) In addition to the remedies set forth in this Article, upon the occurrence of an Event of Default, the Lender and Trustee shall, in addition, have all other remedies available to them at law or in equity.
- (c) All rights, remedies, and recourses of Lender granted in the Note, this Master Deed of Trust, the other Loan Documents, any other pledge of collateral, or otherwise available at law or equity; (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively, or concurrently against Grantor, the Mortgaged Property, or any one or more of them, all the sole discretion of Lender; (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Grantor that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse (iv) shall be nonexclusive; (v) shall not be conditioned upon Lender exercising or pursuing any remedy in relation to the Mortgaged Property prior to Lender bringing suit to recover the Indebtedness or suit on the Obligations; and (vi) in the event Lender elects to bring suit on the Indebtedness and/or the Obligations and obtains a judgment against Grantor prior exercising any remedies in relation to Mortgaged Property, all liens and security interests, including the lien of the Short Form Deed of Trust, shall remain in full force and effect and may be exercised at Lender's option.
- (d) Lender may release, regardless of consideration, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating, or releasing the lien or security interests evidenced by the Short Form Deed of Trust or the other Loan Documents or affecting the obligations of Grantor or any other party to pay the Indebtedness or perform and discharge the Obligations. For payment of the Indebtedness, Lender may resort to any of the collateral therefor in such order and manner as Lender may elect. No collateral heretofore, herewith, or hereafter taken by Lender shall in any manner impair or affect the collateral given pursuant to the Loan Documents, and all collateral shall be taken, considered, and held as cumulative.
- (e) Grantor hereby irrevocably and unconditionally waives and releases: (i) all benefits that might accrue to Grantor by virtue of any present or future law exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay or execution, exemption from civil process, redemption, or extension of time for payment; (ii) all notices of any Event of Default or of Trustee's exercise of any right, remedy, or recourse provided for under the Loan Documents; and (iii) any right to a marshalling of assets or a sale in inverse order of alienation.
- (f) Grantor and Lender mutually agree that there are no, nor shall there be any, implied covenants of good faith and fair dealing or other similar covenants or agreements in this Master Deed of Trust, the Short Form Deeds of Trust and the other Loan Documents. All agreed contractual duties are set forth in this Master Deed of Trust, the Short Form Deeds of Trust, the Note, and the other Loan Documents.
- (g) The remedies in this Article VII are available under and governed by the real property laws of Texas and are not governed by the personal property law of Texas, including but not limited to, the power to dispose of personal property in a commercially reasonable manner under Section 9.504 of the Code.

ARTICLE VIII

SPECIAL PROVISIONS

8.1 Condemnation Proceeds. Lender shall be entitled to receive any and all sums which may be awarded and become payable to Grantor for condemnation of the Mortgaged Property or any part hereof, for public or quasi-public use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to Grantor for damages caused by public works or construction on or near the Mortgaged Property. All such sums are hereby assigned to Lender, and Grantor shall, upon request of Lender, make, execute, acknowledge, and deliver any and all additional assignments and documents as may be necessary from time to time to enable Lender to collect and receipt for any such sums. Lender shall not be, under any circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any of such sums. Any sums received by Lender as a result of condemnation shall be applied to the Indebtedness in accordance with the provision of Section 7.4 hereof.

8.2 Insurance Proceeds. The proceeds of any and all insurance upon the Mortgaged Property (other than proceeds of general public liability insurance) shall be collected by Lender, and Lender shall have the option, in Lender's sole discretion, to apply any proceeds so collected either to the restoration of the Mortgaged Property, in the amounts, manner, method and pursuant to such requirements and documents as Lender may require, or to the liquidation of the Indebtedness in accordance with the provisions of Section 7.4 hereof.

8.3 Reserve for Impositions and Insurance Premiums. Following an Event of Default, at Lender's request, Grantor shall create a fund or reserve for the payment of all insurance premiums and Impositions against or affecting the Mortgaged Property by paying to Lender, on the first day of each calendar month prior to the maturity of the Note, a sum equal to the premiums that will next become due and payable on the insurance policies covering Grantor, the Mortgaged Property or any part thereof or such other insurance policies covering required hereby or by the Loan Documents, plus all sums paid previously to Lender therefore, divided by the number of months to elapse before one month prior to the date when each of such premiums and Impositions will become due, such sums to be held by Lender without interest to Grantor, unless interest is required by applicable law, for the purposes of paying such premiums and Impositions. Any excess reserve shall, at the discretion of Lender, be credited by Lender on subsequent reserve payments or subsequent payments to be made on the Note by the maker thereof, and any deficiency shall be paid by Grantor to Lender on or before the date when Lender demands such payment to be made, but in no event after the date when such premiums and Impositions shall become delinquent. In the event there exists a deficiency in such fund or reserve at any time when Impositions or insurance premiums are due and payable, Lender may, but shall not be obligated to, advance the amount of such deficiency on behalf of Grantor and such amounts so advanced shall become a part of the Indebtedness, shall be immediately due and payable, and shall bear interest at the Default Rate from the date of such advance through and including the date of repayment. Transfer of legal title to the Mortgaged Property shall automatically transfer to the holder of legal title to the Mortgaged Property the interest of Grantor in all sums deposited with Lender under the provisions hereof or otherwise.

8.4 Indemnity. If Lender is made a party defendant to any litigation concerning this Master Deed of Trust, a Short Form Deed of Trust or the Mortgaged Property or any interest therein, or the occupancy thereof by Grantor, then Grantor shall indemnify, defend, and hold harmless Lender from all liability, claim, loss, cost, or expense by reason of such litigation, including without limitation attorneys' fees and expenses incurred by Lender in any such litigation whether or not any such litigation is prosecuted to judgment. If Lender brings an action against Grantor hereunder and is the prevailing party in such action, Grantor shall pay to Lender, Lender's attorneys' fees and expenses. If Grantor breaches any term of this Master Deed of Trust or a Short Form Deed of Trust or if Lender believes it is necessary or desirable to take any action to protect or enforce the lien or security interest hereby created in the Mortgaged Property or the covenants herein or in the other Loan Documents, Lender may employ an attorney or attorneys to protect its rights hereunder and thereunder, and in the event of such employment, Grantor shall pay Lender the attorneys' fees and expenses incurred by Lender, whether or not an action is actually commenced against Grantor by reason of such breach and including, without limitation, a judicial foreclosure action or a foreclosure proceeding pursuant to the power of sale provided herein.

8.5 Subrogation. Grantor waives any and all right to claim, recover, or subrogation against Lender or its officers, director, employees, agents, attorneys, or representatives for loss or damage to Grantor, the Mortgaged Property, Grantor's property or the property of others under Grantor's control from any cause insured against or required to be insured against by the provisions of the Loan Documents.

8.6 Waiver of Setoff. The Indebtedness, or any part thereof, shall be paid by Grantor without notice, demand, counterclaim, setoff, deduction, or defense and without abatement, suspension, deferment, diminution, or reduction by

reason of: (i) any damage to, destruction of, or any condemnation or similar taking of the Mortgaged Property; (ii) any restriction or prevention of or interference with any use of the Mortgaged Property; (iii) any title defect or encumbrance or any eviction from the Mortgaged Property by superior title or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, or other like proceeding relating to Trustee, Lender, or Grantor, or any action taken with respect to the Short Form Deed of Trust by any trustee or receiver of Lender or Grantor, or by any court, in any such proceeding; (v) any claim which Grantor has or might have against Trustee or Lender; (vi) any default or failure on the part of Lender to perform or comply with any of the terms hereof or of any other agreement with Grantor, or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Grantor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Grantor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of the Indebtedness.

8.7 Setoff. Lender shall be entitled to exercise both the rights of setoff and banker's lien, if applicable, against the interest of Grantor in and to each and every account and other property of Grantor which are in the possession of Lender to the full extent of the outstanding balance of the Indebtedness.

8.8 Consent to Disposition. It is expressly agreed that Lender may predicate Lender's decision to grant or withhold consent to a Disposition on such terms and conditions as Lender may require, in Lender's sole discretion, including without limitation (i) consideration of the creditworthiness of the party of whom such Disposition will be made and its management ability with respect to the Mortgaged Property, (ii) consideration of whether the security for repayment of the Indebtedness and the performance and discharge of the Obligations, or Lender's ability to enforce its rights, remedies, and recourses with respect to such security, will be impaired in any way by the proposed Disposition, (iii) an increase in the rate of interest payable under the Note or any other change in the terms and provisions of the Note and other Loan Documents, (iv) reimbursement of Lender for all costs and expenses incurred by Lender in investigating the creditworthiness and management ability of the party to whom such Disposition will be made and in determining whether Lender's security will be impaired by the proposed Disposition, (v) payment to Lender of the transfer fee to cover the cost of documenting the Disposition in its records, (vi) payment of Lender's reasonable attorney's fees in connection with such Disposition, (vii) the express assumption of payment of the Indebtedness and performance and discharge of the Obligations by the party to whom such Disposition will be made (with or without the release of Grantor from liability for such Indebtedness and Obligations), (viii) the execution of assumption agreements, modification agreements, Short Form loan documents, and financing statements, satisfactory in form and substance to Beneficial (ix) endorsements (to the extent available under applicable law) to any existing mortgage title insurance policies insuring Lender's liens and security interests covering the Mortgaged Property, and (x) require additional security for the payment of the Indebtedness and performance and discharge of the Obligations.

8.9 Consent to Subordinate Mortgage. In the event of consent by Lender to the granting of a Subordinate Mortgage, or in the event the above-described right of Lender to declare the Indebtedness to be immediately due and payable upon the granting of a Subordinate Mortgage without the prior written consent of Lender is determined by a court of competent jurisdiction to be unenforceable under the provisions of any applicable law, Grantor will not execute or deliver any Subordinate Mortgage unless (i) it shall contain express covenants to the effect: (a) that the Subordinate Mortgage is in all respects unconditionally subject and subordinate to the lien and security interest evidenced by the Short Form Deed of Trust and each term and provision hereof; (b) 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 Lender; (c) that the rents and profits, if collected through a receiver or by the holder of the Subordinate Mortgage, shall be applied first to the Indebtedness, next to the payment of the Impositions, and then to the performance and discharge of the Obligations; and (d) that if any action or proceeding shall be brought to foreclose the Subordinate Mortgage (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), written notice of the commencement thereof will be given to Lender contemporaneously with the commencement of such action or proceeding; and (ii) a copy thereof shall have been delivered to Lender not less than ten (10) days prior to the date of the execution of such Subordinate Mortgage.

8.10 Contest of Certain Claims. Notwithstanding the provisions of Subsections 4.5 or 4.11 hereof, Grantor shall not be in default for failure to pay or discharge any Imposition or mechanic's or materialman's lien asserted against the Mortgaged Property if, and so long as, (a) Grantor shall have notified Lender of same within five (5) days of obtaining knowledge thereof; (b) Grantor shall diligently and in good faith contest the same by appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same and the sale of the Mortgaged Property or any part thereof, to satisfy the same; (c) Grantor shall have furnished to Lender a cash deposit, or an indemnity bond satisfactory to

Lender with a surety satisfactory to Lender, in the amount of the Imposition or mechanic's or materialman's lien claim, plus a reasonable additional sum to pay all costs, interest and penalties that may be imposed or incurred in connection therewith, to assure payment of the matters under contest and to prevent any sale or forfeiture of the Mortgaged Property or any part thereof, (d) Grantor shall promptly upon final determination thereof pay the amount of any such Imposition or claim so determined, together with all costs, interest and penalties which may be payable in connection therewith; (e) the failure to pay the Imposition or mechanic's or materialman's lien claim does not constitute a default under any other deed of trust, mortgage or security interest covering or affecting any part of the Mortgaged Property; and (f) notwithstanding the foregoing, Grantor shall immediately upon request of Lender pay (and if Grantor shall fail so to do, Lender may, but shall not be required to, pay or cause to be discharged or bonded against) any such Imposition or claim notwithstanding such contest, if in the reasonable opinion of Lender the Mortgaged Property shall be in jeopardy or in danger of being forfeited or foreclosed. Lender may pay over any such cash deposit or part thereof to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established.

8.11 Partial Release. Subject to the terms of the Loan Agreement, Lender agrees to release (a "Partial Release"), from time to time, one or more of the lots ("Lots") as shown on the duly recorded subdivision plat of the Land, the location and configuration of which shall be reasonably satisfactory to Lender, upon request by Grantor and payment, in cash, by Grantor to Lender with respect to each Lot to be released the Partial Release Price; to be applied against the Indebtedness as more particularly described in the Loan Agreement; provided, however, that such release will not result in any remaining Lot being without access to a public street. Any and all Partial Releases shall be in accordance with the following procedures:

- (a) Grantor's request for a Partial Release shall be given to Lender and accompanied by (i) the legal description of the Lot or Lots to be released, and (ii) information necessary to process the request for Partial Release, including the name and address of the title company, if any, to whose attention the Partial Release should be directed numbers that should be referenced (order number, loan number, etc.) and the date when such Partial Release is to be made. Grantor shall also supply such other documents and information concerning such Partial Release as Lender may reasonably request.
- (b) Within ten (10) business days after receipt of such request, and in accordance with and pursuant to the terms and conditions of this Section and the applicable provisions of the Loan Agreement, Lender shall execute and deliver such Partial Release instrument to the title company so specified; provided that all costs and expenses of Lender associated with such Partial Release (including, but not limited to, reasonable legal fees) shall be paid by Grantor. Grantor shall also obtain all title insurance endorsements reasonably required by Lender in connection with such Partial Release.
- (c) The execution and delivery of such Partial Release shall not affect Grantor's obligations hereunder or under the Loan Agreement, Note or other Loan Documents, except that the payment of the Partial Release Price must be actually received by Lender. Regardless of the time such Partial Release is executed, delivered and recorded, the payment made by Grantor to Lender in respect to such Partial Release shall be credited against the Indebtedness only upon receipt by Lender of the Partial Release Price. The Partial Release shall be delivered, in escrow, by Lender to the title company so designated, to be held, released, delivered and recorded in accordance with Lender's escrow instructions, which shall require payment, in cash, of the Partial Release Price to Lender prior to delivery and recordation of the Partial Release.
- (d) The Partial Release Price shall be calculated in accordance with the terms of the Loan Agreement.

ARTICLE IX

ASSIGNMENT OF LEASES AND RENTS

9.1 Assignment. For Ten Dollars (\$10.00) and other good and valuable consideration, including the indebtedness evidenced by the Note, the receipt and sufficiency of which are hereby acknowledged and confessed, Grantor has GRANTED, BARGAINED, SOLD, and CONVEYED, and by these presents does GRANT, BARGAIN, SELL and CONVEY unto Lender, as security for the payment of the Indebtedness and the performance and discharge of the Obligations, the Leases and the Rents subject only to the Permitted Exceptions applicable thereto and the License (herein defined); TO HAVE AND TO HOLD the Leases and the Rents unto Lender, forever, and Grantor does hereby bind itself, its successors, and assigns to warrant and forever defend the title to the Leases and the Rents unto Lender against every person whomsoever lawfully claiming or to claim the same or any part thereof; provided, however, that if Grantor shall pay or cause to be paid the Indebtedness as and when same shall become due and payable and shall perform and discharge or

cause to be performed and discharge the Obligations on or before the date same are to be performed and discharged, then this assignment shall terminate and be off no further force and effect, and all rights, titles, and interests conveyed pursuant to this assignment shall become vested in Grantor without the necessity of any further act or requirement by Grantor, Trustee, or Lender.

9.2 Limited License. Lender hereby grants to Grantor a limited license (the "License"), nonexclusive with the rights of Lender reserved in Section 9.4 hereof, to exercise and enjoy all incidences of the status of a lessor of the Leases and the Rents, including without limitation, the right to collect, demand, sue for, attach, levy, recover, and receive the Rents, and to give proper receipts, releases, and acquittances therefor. Grantor hereby agrees to receive all Rents and hold the same as a trust fund to be applied, and to apply the Rents so collected, first to the payment of the Indebtedness, next to the payment of the Impositions, and then to the performance and discharge of the Obligations. Thereafter, Grantor may use the balance of the Rent collected in any manner not inconsistent with the Loan Documents.

9.3 Enforcement of Leases. So long as the License is in effect, Grantor shall (i) submit any and all proposed Leases to Lender for approval prior to the execution thereof, (ii) duly and punctually perform and comply with any and all representations, warranties, covenants, and agreements expressed as binding upon the lessor under any Lease, (iii) maintain each of the Leases in full force and effect during the term thereof, (iv) appear in and defend any action or proceeding in any manner connected with any of the Leases, (v) deliver to Lender copies of all Leases, and (vi) deliver to Lender such further information, and execute and deliver to Lender such further assurances and assignments, with respect to the Leases as Lender may from time to time request. Without Lender's prior written consent, Grantor shall not (i) do or knowingly permit to be done anything to impair the value of any of the Leases, (ii) except for security or similar deposits, collect any of the Rent more than one month in advance of the time when the same becomes due under the terms of any Lease, (iii) discount any future accruing Rents, (iv) amend, modify, or terminate any of the Leases, or (v) assign or grant a security interest in or to the License of any of the Leases and/or Rents.

9.4 No Merger of Estates. So long as any part of the Indebtedness and the Obligations secured hereby remain unpaid and unperformed or undischarged, the fee and leasehold estates to the Mortgaged Property shall not merge but rather shall remain separate and distinct, notwithstanding the union of such estates either in Grantor, Lender, any lessee, or any third party purchaser or otherwise.

9.5 Grantor's Indemnities. So long as the License is in effect, Grantor shall indemnify and hold harmless Lender and Trustee from and against any and all liability, loss, cost, damage, or expense which Lender may incur under or by reason of this assignment, or for any action taken by Lender and/or Trustee hereunder, or by reason of or in defense of any and all claims and demands whatsoever which may be asserted against Lender and/or Trustee arising out of the Leases or with respect to the Rents. In the event Lender and/or Trustee incurs any such liability, loss, cost, damage, or expense, the amount thereof together with all reasonable attorneys fees and interest thereon at the Default Rate shall be payable by Grantor to Lender and/or Trustee immediately, without demand, and shall be deemed a part of the Indebtedness and secured under Article 2 hereof.

ARTICLE X

SECURITY AGREEMENT

10.1 Security Interest. The Short Form Deed of Trust (a) shall be construed as a deed of trust on real property, and (b) shall also constitute and serve as "Security Agreement" on personal property within the meaning of, and shall constitute until the grant of the Short Form Deed of Trust shall terminate as provided in Article II hereof, a first and prior security interest under the Code as to property within the scope thereof and in the state where the Mortgaged Property is located with respect to the personalty, Fixtures, Contracts, Leases and Rents. To this end, Grantor has GRANTED, BARGAINED, CONVEYED, ASSIGNED, TRANSFERRED and SET OVER, and by these presets does GRANT, BARGAIN, CONVEY, ASSIGN, TRANSFER and SET OVER, unto Trustee and Lender, a first and prior security interest and all of Grantor's right, title and interest in, to, under and with respect to the personalty, Fixtures, Contracts, Leases, and Rents to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations. It is the intent of Grantor, Lender, and Trustee that the Short Form Deed of Trust encumber all Leases and Rents, that all items contained in the definition of "Leases" and "Rents" which are included within the Code be covered by the security interest granted in this Article X, and that all items contained in the definition of "Leases" and "Rents" which are excluded from the Code be covered by the provisions of Article II and Article IX hereof.

10.2 Financing Statements. Grantor hereby agrees with Lender to execute and deliver to Lender, in form and substance satisfactory to Lender, such "Financing Statements" and such further assurances as Lender may, from time to time, reasonably consider necessary to create, perfect, and preserve Lender's security interest herein granted, and Lender may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect, and preserve such security interest.

10.3 Construction Mortgage and Fixture Filing. The Short Form Deed of Trust secures future advances to be used for construction of improvements on the Land pursuant to the Loan Agreement. Accordingly, the Short Form Deed of Trust constitutes a "construction mortgage" under the Code. The Short Form Deed of Trust shall also constitute a "fixture filing" for the purposes of the Code. All or part of the Mortgaged Property are or are to become fixtures; information concerning the security interest granted herein may be obtained from the parties at the addresses of the parties set forth on the first page hereof. For purposes of the security interest herein granted, the address of debtor (Grantor) is set forth in the first paragraph of the Short Form Deed of Trust and the address of the secured party (Lender) is set forth in Article I hereof.

ARTICLE XI

CONCERNING THE TRUSTEE

11.1 No Required Action. Trustee shall not be required to take any action toward the execution and enforcement of the trust hereby created or to institute, appear in, or defend any action, suit, or other proceeding in connection therewith where, in his opinion, such action would be likely to involve him in expense or liability, unless requested so to do by a written instrument signed by Lender and if Trustee so requests, unless Trustee is tendered security and indemnity satisfactory to Trustee against any and all cost, expense, and liability arising therefrom. Trustee shall not be responsible for the execution, acknowledgment, or validity of the Loan Documents, or for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and Trustee makes no representation in respect thereof or in respect of the rights, remedies, and recourses of Lender.

11.2 Certain Rights. With the approval of Lender, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Lender) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel; (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his agents or attorneys, (iii) to select and employ, in and about the execution of his duties hereunder, suitable accountants, engineers and other experts, agents and attorney-in-fact, either corporation or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith, and (iv) any and all other lawful action as Lender may instruct Trustee to take to protect or enforce Lender's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Mortgaged Property for debts contracted for or liability or damages incurred in the management or operation of the Mortgaged Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered. Grantor will, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save Trustee harmless against, any and all liability and expenses which may be incurred by Trustee in the performance of Trustee's duties.

11.3 Retention of Money. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

11.4 Successor Trustees. Trustee may resign by the giving of notice of such resignation in writing or verbally to Lender. If Trustee shall die, resign, or become disqualified from acting in the execution of this trust, or if, for any reason, Lender shall prefer to appoint a substitute trustee or multiple substitute trustees, or successive substitute trustees or successive multiple substitute trustees, to act instead of the aforementioned Trustee, Lender shall have full power to appoint a substitute trustee (or, if preferred, multiple substitute trustees) in succession who shall succeed (and if multiple substitute trustees are appointed, each of such multiple substitute trustees shall succeed) to all the estates, rights, powers, and duties

of the aforementioned Trustee. Such appointment may be executed by any authorized agent of Lender, and if such Lender be a corporation and such appointment be 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. Grantor hereby ratifies and confirms any and all acts which the aforementioned Trustee, or his successor or successors in this trust, shall do lawfully by virtue hereof. If multiple substitute Trustees are appointed, each of such multiple substitute Trustees shall be empowered and authorized to act alone without the necessity of the joinder of the other multiple substitute trustees, whenever any action or undertaking of such substitute trustees is requested or required under or pursuant to the Short Form Deed of Trust or applicable law.

11.5 Perfection of Appointment. Should any deed, conveyance, or instrument of any nature be required from Grantor by any Trustee or substitute Trustee to more fully and certainly vest in and confirm to the Trustee or substitute Trustee such estates, rights, powers, and duties, then, upon request by the Trustee or substitute Trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Grantor.

11.6 Succession Instruments. Any substitute Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Lender or of the substitute Trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute Trustee so appointed in the Trustee's place.

11.7 No Representation by Trustee or Lender. By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee or Lender pursuant to the Loan Documents, including without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, neither Trustee nor Lender shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee or Lender.

ARTICLE XII

MISCELLANEOUS

12.1 Release. If the Indebtedness is paid in full in accordance with the terms of the Short Form Deed of Trust, the Note, and the other Loan Documents, and if Grantor shall well and truly perform each and every of the Obligations to be performed and discharged in accordance with the terms of the Short Form Deed of Trust, the Note and the other Loan Documents, then this conveyance shall become null and void and be released at Grantor's request and expense, and Lender shall have no further obligation to make advances under and pursuant to the provisions hereof or in the other Loan Documents.

12.2 Performance at Grantor's Expense. Subject to the provisions of Section 12.12 hereof, Grantor shall (i) pay all legal fees incurred by Lender in connection with the preparation of the Loan Documents (including any amendments thereto or consents, releases, or waivers granted thereunder); (ii) reimburse Lender, promptly upon demand, for all amounts expended, advanced, or incurred by Lender to satisfy any obligation of Grantor under the Loan Documents, which amounts shall include all court costs, attorneys' fees (including, without limitations, for trial, appeal, or other proceedings), fees of auditors and accountants and other investigation expenses reasonably incurred by Lender in connection with any such matters; and (iii) any and all other costs and expenses of performing or complying with any and all of the Obligations. Except to the extent that costs and expenses are included within the definitions of "Indebtedness," the payment of such costs and expenses shall not be credited, in any way and to any extent, against any installment on or portion of the Indebtedness.

12.3 Survival of Obligations. Each and all of the Obligations shall survive the execution and delivery of the Loan Documents and the consummation of the loan called for therein and shall continue in full force and effect until the Indebtedness shall have been paid in full; provided, however, that nothing contained in this Section 12.2 shall limit the obligations of Grantor as otherwise set forth herein.

12.4 Recording and Filing. Grantor will cause the Loan Documents (requested by the Lender) and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded, and refiled in such manner and in

such places as Trustee or Lender shall reasonably request, and will pay all such recording, filing, re-recording and refiling taxes, documentary stamp taxes, fees, and other charges.

12.5 Notices. All notices or other communications required or permitted to be given pursuant to the Short Form Deed of Trust shall be in writing and shall be considered as properly given if (i) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, or (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent by such a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the designated address of the intended addressee. For purposes of notice, the addresses of the parties shall be as set forth on page 1 of the Short Form Deed of Trust, provided, however, that 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.

12.6 Covenant Running with the Land. All Obligations contained in the Short Form Deed of Trust and the other Loan Documents are intended by Grantor, Lender, and Trustee to be, and shall be construed as, covenants running with the Mortgaged Property until the lien of the Short Form Deed of Trust has been fully released by Lender.

12.7 Successors and Assigns. Subject to the provisions of Section 6.8 hereof, all of the terms of the Loan Documents shall apply to, be binding upon, and inure to the benefit of the parties thereto, their successors, assigns, heirs, and legal representatives, and all other persons claiming by, through, or under them.

12.8 No Waiver; Severability. Any failure by Trustee or Lender to insist, or any election by Trustee or Lender not to insist, upon strict performance by Grantor or others of any of the terms, provisions, or conditions of the Loan Documents shall not be deemed to be a waiver of same or of any other terms, provisions, or conditions thereof, and Trustee or Lender shall have the right at any time or times thereafter to insist upon strict performance by Grantor or others of any and all of such terms, provisions, and conditions. The Loan Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. If any provision of any of the Loan Documents or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, then neither the remainder of the instrument in which such provision is contained nor the application of such provision to other persons or circumstances nor the other instruments referred to herein shall be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

12.9 Counterparts. To facilitate execution, the Short Form Deed of Trust may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of the Short Form Deed of Trust to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the parties hereto. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgements thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages.

12.10 Applicable Law. The Loan Documents shall be governed by and construed according to the laws of the state of Texas from time to time in effect except to the extent preempted by United States federal law.

12.11 Controlling Agreement. It is expressly stipulated and agreed to be the intent of Grantor, Trustee and Lender at all times to comply with applicable Texas law 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) and that this section shall control every other covenant and agreement in the Short Form Deed of Trust and the other Loan Documents. If the applicable law is every judicially interpreted so as to render usurious any amount called for under the Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Indebtedness, or if Lender's exercise of the option to accelerate the maturity of the Note, or if any prepayment by Grantor results in Grantor having paid any interest in excess of that permitted by applicable law, then it is Grantor's, Trustee's and Lender's express intent that all excess amounts theretofore collected by Lender shall be credited on the principal balance of the Note, and all other Indebtedness (or, if the Note and all other Indebtedness have been and would thereby be paid in full refunded to Grantor), and the provisions of the Note and the other Loan Documents immediately be deemed reformed and the amounts

thereafter collectible hereunder and thereunder reduced, with 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 or 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 stated term of the Indebtedness until payment in full so that the rate or amount of interest on account of the Indebtedness does not exceed the Maximum Lawful Rate from time to time in effect and applicable to the Indebtedness for so long as the Indebtedness is outstanding. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Trustee and/or Lender 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.

12.12 Subrogation. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Mortgaged Property, then, to the extent of such funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Mortgaged Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Indebtedness and the performance and discharge of the Obligations.

12.13 Rights Cumulative. Lender shall have all rights, remedies, and recourses granted in the Loan Documents and available at law or in equity (including with limitation, those granted by the Code and applicable to the Mortgaged Property or any portion thereof), and the same (i) shall be cumulative and concurrent, (ii) may be pursued separately, successively, or concurrently against Grantor or others obligated for the Indebtedness or any part thereof, or against any one or more of them, or against the Mortgaged Property, at the sole discretion of Lender, (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Grantor that the exercise, discontinuance of the exercise of or failure to exercise any of the same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse, and (iv) are intended to be, and shall be, nonexclusive. All rights and remedies of Lender hereunder and under the other Loan Documents shall extend to any period after the initiation of foreclosure proceedings, judicial or otherwise, with respect to the Mortgaged Property.

12.14 Payments. Remittances in payment of any part of the Indebtedness other than in the required amount in funds immediately available at the place where the Note is payable shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Lender in funds immediately available at the place where the Note is payable (or such other place as Lender, in Lender's sole discretion, may have established by delivery of written notice thereof to Grantor) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Lender of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be an Event of Default.

12.15 Exceptions to Covenants. Grantor shall not be deemed to be permitted to take any action or to fail to take any action, notwithstanding (i) that the action or omission may be permitted as an exception to any of the covenants or conditions contained herein, or (ii) that obligations of Grantor or rights of Lender are provided herein with respect to the action or omission (or the result thereof), if the action or omission would result in the breach of any other covenant or condition contained herein or in any of the Loan Documents, nor shall Lender be deemed to have consented to any such act or omission if the same would provide cause for acceleration of the Indebtedness.

12.16 Reliance. Grantor recognizes and acknowledges that in entering into the loan transaction evidenced by the Loan Documents and accepting the Short Form Deed of Trust, Lender is expressly and primarily relying on the truth and accuracy of the foregoing warranties and representations set forth in Article III hereof without any obligation to investigate the Mortgaged Property and notwithstanding any investigation of the Mortgaged Property by Lender; that such reliance exists on the part of Lender prior hereto; that such warranties and representations are a material inducement to Lender in making the loan evidenced by the Loan Documents and accepting of the Short Form Deed of Trust; and that Lender would not be willing to make the loan evidenced by the Loan Document and accept the Short Form Deed of Trust in the absence of any of such warranties and representations.

12.17 Change of Security. Any part of the Mortgaged Property may be released, regardless of consideration, by Lender from time to time without impairing, subordinating, or affecting in any way the lien, security interest, and other rights hereof against the remainder. The lien, security interest, and other rights granted hereby shall not be affected by any other security taken for the Indebtedness or Obligations, or any part thereof. The taking of additional collateral, or the amendment, extension, renewal, or rearrangement of the Indebtedness or Obligations, 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 or guarantor or improve the right of any junior lienholder; and the Short Form Deed of Trust, as well as any instrument given to secure any amendment, extension, renewal, or rearrangement of the Indebtedness or Obligations, 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 is fully paid and the Obligations are fully performed and discharged.

12.18 Headings. The Article, Section, and Subsection entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify, or define, or be used in construing the text of such Articles, Sections, or Subsections.

12.19 Entire Agreement; Amendment. THIS MASTER DEED OF TRUST AND THE OTHER LOAN DOCUMENTS EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES THERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES THERETO. THERE ARE NO ORAL AGREEMENTS AMONG THE PARTIES TO THE LOAN DOCUMENTS. The provisions of this Master Deed of Trust and the other Loan Documents may be amended or waived only by an instrument in writing signed by the Grantor and Lender.

12.20 Waiver of Right to Trial by Jury. GRANTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM THAT RELATES TO OR ARISES OUT OF ANY OF THE LOAN DOCUMENTS OR THE ACTS OR FAILURE TO ACT OF OR BY LENDER IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS MASTER DEED OF TRUST OR THE OTHER LOAN DOCUMENTS.

Pursuant to Section 12.009 of the Texas Property Code this master form deed of trust is recorded by:

(Name of person causing the recording)

STATE OF TEXAS §
COUNTY OF _____ §

This instrument was acknowledged before me on ____ day of _____, 20____, by _____.

[S E A L]

Notary Public, State of Texas

My Commission Expires: _____

Printed Name of Notary Public

Exhibit C

MASTER PROMISSORY NOTE

1. **Promise to Pay.** _____ ("Borrower", whether one or more), promises to pay to the order of _____ ("Lender"), the principal sum of _____ Dollars (_____) or so much thereof as may actually be outstanding under this Note, together with interest on the unpaid principal balance from time to time outstanding at the rate specified below and otherwise in strict accordance with the terms and provisions of this Note.

2. **Loan Agreement.** This Note is executed and delivered pursuant to, and is subject to certain terms and conditions set forth in, a Master Construction Loan Agreement executed by Borrower and Lender dated _____. The Master Construction Loan Agreement as it may be amended from time to time is referred to in this Note as the "Loan Agreement". This Note evidences all outstanding and unpaid Loans made under the Loan Agreement and is the Note referred to in the Loan Agreement. The Loan Agreement governs advances on this Note. As used in this Note the terms "Loan", "Loan Documents", "Short Form Deed of Trust", "Vacant Lot", "Spec House", "Pre-Sold House", and "Model House" have the meanings ascribed to them in the Loan Agreement.

3. **Interest**

a. Definitions. As used in this Note, the following terms have the following meanings:

(i) **"Applicable Rate"** means, at any time, a rate of interest per annum equal to the Prime Rate in effect from time to time plus ____%.

(ii) **"Prime Rate"** means, on any day, the rate announced [_____ as the Prime Rate of _____.] [_____ in the Money Rates section of the Wall Street Journal from time to time and designated as the "Prime Rate" therein. If more than one Prime Rate is published the highest shall be used.]

The Prime Rate is the index agreed upon by Borrower and Lender to determine the rate of interest for this Note. Fluctuations in the Prime Rate become effective immediately, without necessity for any notice whatsoever. Use of the Prime Rate is not to be construed as a warranty or representation that the Prime Rate is more favorable than another rate or index, that rates on other loans or credit facilities may not be based on indices other than the Prime Rate, or that rates on loans to others may not be made below the Prime Rate. If this Prime Rate ceases to be published or made available, Lender shall select another index to determine the Applicable Rate. Thereafter this alternative index shall be used to calculate the rate of interest that will be charged on this Note.

(iii) **"Charges"** means all fees and charges, if any, contracted for, charged, received, taken, or reserved by Lender in connection with the transactions relating to this Note, the Loan Documents, and the indebtedness evidenced and secured by them which are treated as interest under applicable law.

(iv) **"Default Rate"** means the Maximum Lawful Rate or, if no Maximum Lawful Rate exists, 18.00% per annum.

(v) **"Initial Interest Period"** means the period of time commencing on the date of this Note and ending on and including the last day of the calendar month immediately preceding the due date of the first scheduled monthly interest payment on this Note.

(vi) **"Interest Period"** means (a) the Initial Interest Period and (b) each period of time (after the Initial Interest Period) commencing on the 1st day of each calendar month and ending on and including the last day of that calendar month.

(vii) **"Maximum Lawful Rate"** means the maximum lawful rate of interest which may be contracted for, charged, taken, received, or reserved by Lender in accordance with the applicable laws of the State of Texas (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, receive, or reserve a greater amount of interest than under Texas law), taking into account all Charges made in connection with the loan evidenced by this Note and the Loan Documents.

b. **Interest Rate.** Except as otherwise provided in this Note, simple interest on the principal balance of this Note, outstanding from time to time, shall accrue at the lesser of (i) the Applicable Rate or (ii) the Maximum Lawful Rate.

c. **Default Rate.** Upon the occurrence and during the continuance of an Event of Default under this Note or any of the other Loan Documents that continues past any applicable cure period, at the option of the Lender, the principal balance of this Note then outstanding shall bear interest at the Default Rate for the period beginning with the date of occurrence of such Event of Default and ending on the date the Event of Default is cured.

d. **Interest Limitation Recoupment.** Notwithstanding anything contained in this Note to the contrary, if at any time (1) interest at the Applicable Rate, (ii) interest at the Default Rate, if applicable, and (iii) the Charges computed over the full term of this Note, exceed the Maximum Lawful Rate, then the rate of interest payable on this Note, together with all Charges, shall be limited to the Maximum Lawful Rate; provided however, that any subsequent reduction in the Applicable Rate shall not cause a reduction of the rate of interest payable on this Note below the Maximum Lawful Rate until the total amount of interest earned on this Note, together with all Charges, equals the total amount of interest which would have accrued at the Applicable Rate if such interest rate had at all times been in effect. Changes in the Applicable Rate resulting from a change in the Prime Rate shall be subject to the provisions of this paragraph.

e. **Computation Period.** Except for the computation of the Maximum Lawful Rate which shall be undertaken on the basis of a 365 or 366-day year, interest on the indebtedness evidenced by this Note shall be computed on the basis of a 360-day year and shall accrue on the actual number of days any principal balance on this Note is outstanding.

4. **Payment.** This Note shall be due and payable as follows:

a. **Monthly/Quarterly Interest Payments.** [Monthly/Quarterly] payments of interest shall be due and payable on the _____ day of each [calendar month/quarter], beginning on _____ and continuing regularly thereafter until _____ (the "Maturity Date"), when the entire amount of unpaid principal and all accrued but unpaid interest shall be due and payable. The amount of each [monthly/quarterly] payment of interest will be equal to the interest which accrued during the Interest Period immediately preceding the date the payment is due.

b. **Principal Payments.**

(i) The entire unpaid principal balance of each Loan made pursuant to the Loan Agreement to finance the purchase of a Pre-Sold House, together with all accrued but unpaid interest with respect to that Loan, shall be due and payable on (1) the 1st day of the first calendar month immediately following the expiration of ___ months after the date of the Short Form Deed of Trust executed in connection with that Loan or (2) the Maturity Date, whichever is the first to occur.

(ii) The entire unpaid principal balance of each Loan made pursuant to the Loan Agreement to finance the construction of a Spec House, together with all accrued but unpaid interest with respect to that Loan, shall be due and payable on (1) the 1st day of the first calendar month immediately following the expiration of ___ months after the date of the Short Form Deed of Trust executed in connection with that Loan or (2) the Maturity Date, whichever is the first to occur.

(iii) The entire unpaid principal balance of each Loan made pursuant to the Loan Agreement to finance the construction of a Model House, together with all accrued but unpaid interest with respect to that Loan, shall be due and payable on (1) the 1st day of the first calendar month immediately following the expiration of ___ months after the date of the Short Form Deed of Trust executed in connection with that Loan or (2) the Maturity Date, whichever is the first to occur.

(iv) The entire unpaid principal balance of each Loan made pursuant to the Loan Agreement to finance the construction of a Vacant Lot, together with all accrued but unpaid interest with respect to that Loan, shall be due and payable on (1) the 1st day of the first calendar month immediately following the expiration of ___ months after the date of the Short Form Deed of Trust executed in connection with that Loan or (2) the Maturity Date, whichever is the first to occur.

c. **Additional Payments.** In some instances the Loan Agreement may require payments on this Note in addition to the scheduled payments described above. Borrower promises to make all of the additional payments on this Note that are required by the Loan Agreement.

d. **Prepayments.** This Note may be prepaid, in whole or in part, at any time without penalty of any kind, Prepayments shall be credited first to accrued but unpaid interest to the date of the prepayment and the balance to the reduction of principal.

e. **Application.** All payments on this Note may, at the sole option of Lender, be applied at any time and from time to time and in any order, to the following: (i) the payment of accrued but unpaid interest, (ii) the payment or reimbursement of any expenses, costs, or obligations (other than principal and interest on this Note) which Borrower is obligated to pay or which Lender is entitled to receive pursuant to this Note or any of the other Loan Documents, and (iii) the payment of all or any portion of the principal balance then outstanding.

f. **Place.** All payments on this Note must be made to Lender at its offices in _____ County, Texas, at the address of Lender as specified in this Note or as Lender may from time to time designate in writing to Borrower.

g. **Business Days.** If any payment of principal or interest on this Note becomes due and payable on a Saturday, Sunday, or any other day on which Lender is not open for normal business, Borrower shall make such payment on the next succeeding business day of Lender. Any such extension of time for payment will be included in computing interest which has accrued and is payable in connection with such payment.

h. **Legal Tender.** All amounts payable under this Note are payable in lawful money or legal tender of the United States of America in immediately available funds.

i. **Revolving Nature.** This Note evidences, in part, the revolving loan described more particularly in the Loan Agreement. Subject to the terms of this Note and the Loan Agreement, Borrower may borrow, repay, and reborrow principal amounts up to the face amount of this Note pursuant to the terms of the Loan Agreement. The principal amount actually owing on this Note at any given time shall be the aggregate of all advances previously made by Lender, less all payments of principal received by Lender as payment on this Note.

5. **Default and Remedies.**

a. **Default.** An Event of Default shall occur pursuant to this Note if (i) any default is made in the payment, in whole or in part, of any amount payable under this Note or any other Loan Document when due and such default is not cured within 10 days after the date on which Lender gives written notice of the default to Borrower or (ii) any Event of Default occurs pursuant to, and as defined in any other Loan Document.

b. **Remedies.** If an Event of Default occurs under this Note or under any of the other Loan Documents, then Lender may, at its option, without further notice or demand, declare the unpaid principal balance of, and the accrued but unpaid interest on, this Note immediately due and payable, foreclose all liens and security interests securing payment of this Note, pursue any and all other rights and remedies available to Lender or pursue any combination of the foregoing. All remedies under this Note, the Loan Documents, and at law or in equity shall be cumulative.

c. **Waiver.** Except as specifically provided in the Loan Documents, Borrower, any endorsers of this Note, any guarantors of this Note, and all persons and entities liable or to become liable on this Note severally waive presentment and demand for payment, notice of intent to accelerate maturity, notice of acceleration of maturity, protest and notice of protest and non-payment, bringing of suit and diligence in taking any action to collect any sums owing under this Note or in proceeding against any of the rights and collateral securing payment of this Note. Borrower, any endorsers of this Note, any guarantors of this Note, and all persons and entities liable or to become liable on this Note agree (i) that the time for any payments on this Note may be extended from time to time without notice and consent, (ii) to the acceptance of further collateral, and/or (iii) to the release of any existing collateral for the payment of this Note, all without in any manner affecting their liability under this Note. No extension of time for the payment of this Note or any installment of it shall affect the liability of Borrower, any endorser, any guarantor, or any person or entity liable or to become liable on this Note, under this Note even though Borrower, such endorser, such guarantor, or such other person or entity is not a party to such agreement.

d. **No Waiver.** Failure of Lender to exercise any of the options granted to Lender under this Note upon the happening of one or more of the events giving rise to such options shall not constitute a waiver of the right to exercise the same or any other option at any subsequent time with respect to the same or any other event. The acceptance by Lender of any payment under this Note that is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the options granted in this Note to Lender at that time or at any subsequent time or nullify any prior exercise of any such option without the express written acknowledgment of the Lender.

e. **Collection Costs.** Borrower agrees to pay all costs of collection of this Note when incurred, including attorneys' fees, whether or not any legal action is instituted to enforce this Note.

6. **Miscellaneous.**

a. **Notices.** All notices or other communications required or permitted to be given pursuant to this instrument must be in writing and will be deemed properly given if (i) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, or (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee. Notice so mailed is effective upon its deposit with the United States Postal Service or any successor to it; notice sent by a commercial delivery service is effective upon delivery to such commercial delivery service; notice given by personal delivery is effective only if and when received by the addressee; and notice given by other means is effective only if and when received at the designated address of the intended addressee. Either party may change its address for notice under this instrument to any other location within the continental United States by giving thirty (30) days' notice to the other party in the manner described in this paragraph. For purposes of such notices, the addresses of the parties are as follows:

Lender: _____

Borrower: _____

b. **Governing Law.** THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. THIS NOTE IS PERFORMABLE IN _____ COUNTY, TEXAS. Any action or proceeding under or in connection with this Note against Borrower or any other party ever liable for payment of any sums of money payable on this Note may be brought in any state or federal court in _____ County, Texas. Borrower and each such other party irrevocably (i) submits to the nonexclusive jurisdiction of such courts, and (ii) waives any objection they may now or hereafter have as to the venue of any such action or proceeding brought in such court or that such court is an inconvenient forum.

c. **Interest Limitation.** 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 this Note or the indebtedness evidenced by it and the other Loan Documents (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 (i) the applicable law is ever judicially interpreted so as to render usurious any amount called for under this Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the indebtedness evidenced by this Note and the other Loan Documents, or (ii) Lender's exercise of the option to accelerate the maturity of this Note, or (iii) 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 (a) all excess amounts previously collected by Lender be credited on the principal balance of this Note (or, if this Note has been or would thereby be paid in full, refunded to Borrower), and (b) the provisions of this Note and the other Loan Documents immediately be deemed reformed and the amounts subsequently collectible under this Note and the other Loan Documents reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for under this Note and the other Loan Documents. All sums paid or agreed to be paid to Lender for the use, forbearance, and detention of the indebtedness evidenced by this Note and the other Loan Documents 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 such indebtedness for so long as the debt is outstanding. To the extent that Lender is relying on Chapter 303 of the Texas Finance Code, as amended and or succeeded, to determine the Maximum Lawful Rate payable on such indebtedness, Lender will utilize the "weekly ceiling" rate from time to time in effect as provided in Chapter 303 of the Texas Finance Code, as amended and/or succeeded. To the extent United States federal law permits Lender to contract for, charge, or receive a greater amount of interest than Texas law, Lender will rely on United States federal law instead of Chapter 303 of the Texas Finance Code, as amended and/or succeeded, for the purpose of determining the Maximum Lawful 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 Lawful Rate under Chapter 303 of the Texas Finance Code, as amended and/or succeeded, 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 (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to the indebtedness evidenced by this Note. Notwithstanding anything to the contrary contained in this Note or any of the other Loan Documents, it is not the intention of Lender 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.

d. **Joint and Several Liability.** If there is more than one Borrower of this Note, each such Borrower is jointly and severally liable for the obligations of Borrower under this Note. If Borrower is a partnership, each general partner of Borrower is jointly and severally liable for the obligations of Borrower under this Note, and each general partner waives any requirement of law that Lender exhaust any assets of Borrower before proceeding against the assets of such general partner.

e. **Security.** This Note is secured, among other things, by one or more Deeds of Trust, a master form of which has been or will be recorded in various counties within the State of Texas pursuant to the Texas Property Code with the intention that such master forms be supplemented by Short Form Deeds of Trust in the future.

Mark with "x" if applicable:

____ **Purpose.** This Note is executed in renewal of, substitution and replacement for, a note in the original face amount of dated _____ executed by _____ Borrower payable to _____.

____ **Other:**

EXECUTED to be effective as of _____, 20__.

BORROWER:

By: _____
Printed Name: _____
Title: _____

Exhibit D
MASTER CONSTRUCTION LOAN AGREEMENT

This Master Construction Loan Agreement ("Agreement") is entered into as of _____ by _____ ("Borrower", whether one or more), whose address is _____ and _____ ("Guarantors", whether one or more), and _____ ("Lender"), whose address is _____.

ARTICLE I

Definitions and Description of Loan Documents

1.1 **Loan Applications.** Borrower has requested that Lender establish a procedure whereby Borrower may submit loan applications (the "Loan Application" or "Loan Applications") to Lender for loans for the purpose of purchasing Lots and constructing Houses on them. Subject to the terms and conditions of this Agreement, Lender has agreed to consider these Loan Applications and if Lender, in its sole and absolute discretion, decides to approve any Loan Applications, the loans so approved will be subject to the terms and conditions of this Agreement. Until Lender changes the format, Borrower agrees to request Lender to review Borrower's Loan Application requests on the Loan Application form that is attached to this Agreement as Exhibit "A" and incorporated into it by reference for all purposes.

1.2 **Loans.** As used in this Agreement, the term "Loan" means any loan approved by Lender pursuant to this Agreement and the term "Loans" means any such approved loans, collectively. Notwithstanding anything contained in this Agreement to the contrary, Lender is not obligated to make any loans to Borrower. This Agreement simply describes the terms and conditions which the parties have agreed will govern any loans which Lender may later decide, in its sole and absolute discretion, to make to Borrower pursuant to this Agreement.

1.3 **Promissory Note.** Any Loans which may be made by Lender to Borrower pursuant to the terms and provisions of this Agreement will be evidenced by a master revolving line of credit promissory note (the "Note") dated the same date as this Agreement in the original face amount of _____ Dollars (_____) (the "Maximum Amount") executed by Borrower and payable to Lender. The Loan will mature on _____, (the "Maturity Date"), and will bear interest and be payable in the manner described in the Note. The fact that the Note has a maturity date that is beyond the "Termination Date" (as defined in Section 2.1 of this Agreement) shall not be deemed to (a) extend Lender's Agreement to consider making loans beyond the Termination Date or (b) to alter Borrower's obligation to repay the entire unpaid principal balance of each Loan, together with all accrued but unpaid interest thereon, on the dates described in Subparagraph 4.b. of the Note. If the Maturity Date is extended by a written agreement signed by Borrower and Lender, the term "Maturity Date" as used in this Agreement means the Maturity Date as so extended. The term "Note" includes any and all renewals, modifications, rearrangements, reinstatements, enlargements, or extensions of the Note and any promissory note or notes given in renewal, substitution, or replacement therefor.

1.4 **Guaranty.** The full and prompt payment of the Note will be unconditionally guaranteed by _____ ("Guarantors", whether one or more) pursuant to one or more Guaranty Agreements (the "Guaranty", whether one or more).

1.5 **Deed of Trust.** The Note will be secured, among other things, by (i) numerous Master Deed(s) of Trust (the "Master Deeds of Trust") executed by Lender as master form deeds of trust pursuant to Section 12.009 of the Texas Property Code, which are recorded in various counties in the State of Texas and (ii) numerous Short Form deeds of trust (the "Short Form Deeds of Trust") executed by Borrower for the benefit of Lender covering various properties within the State of Texas which incorporate by reference the terms of the Master Deed of Trust. The term "Deeds of Trust" means the Master Deeds of Trust and the Short Form Deeds of Trust and all amendments, renewals, extensions, and modifications made to any of them after the date of this Agreement, collectively.

1.6 **Loan Documents.** This Agreement, the Note, the Deeds of Trust, the Guaranty, if any, and all other documents now or hereafter executed by Borrower, Guarantors, or any other party in connection with, as evidence of, or as security for the Note including all amendments, renewals, extensions, and modifications made to any of them after the date of this Agreement are collectively referred to in this Agreement as the "Loan Documents". Each Loan Document must be in form and content acceptable to Lender, in Lender's sole and absolute discretion.

1.7 **Indebtedness.** The term "Indebtedness" means all of the following:

(a) All indebtedness owed by Borrower to Lender that is evidenced by, secured by, or created in connection with the Loan Documents; including without limitation the aggregate of all principal and interest owing from time to time under the Note and all fees, expenses, charges, premiums (if any), and other amounts from time to time owing under the Note, this Agreement, or the other Loan Documents;

(b) All renewals, modifications, rearrangements, reinstatements, enlargements, or extensions of the Note and any promissory note or notes given in renewal, substitution, or replacement for the Note.

1.8 **Definitions.** In addition to the other capitalized terms that are defined throughout this Agreement, the following terms have the following meanings when used in this Agreement:

(a) "**Lot**" means a subdivided and platted lot or other tract of land approved by Lender the fee simple title to which is owned by Borrower.

(b) "**House**" means a 1-4 family residence constructed or to be constructed by Borrower upon a Lot; provided however, no more than one residence may be constructed on each Lot. The term "House" includes the Lot upon which it is located.

(c) "**Vacant Lot**" means a Lot without a House under construction on it that Borrower has designated as a Vacant Lot on the Advance Request (as defined in Section 3.3) applicable to it.

(d) "**Approved Sales Contract**" means a bona fide, legally binding, enforceable contract for the sale of a House, between Borrower, as seller, and a third party unrelated to Borrower, as buyer, with respect to which an earnest money deposit has been delivered to either an independent escrow agent or to Borrower and Borrower has undertaken a preliminary screening of the credit worthiness of the buyer (including, without limitation, obtaining a copy of a written indication of such credit worthiness from a reliable third party such as the buyer's prospective lender) and has concluded that the buyer will qualify for a mortgage loan commitment to finance the purchase of the House.

(e) "**Pre-Sold House**" means a House which is the subject of an Approved Sales Contract. The term "Pre-Sold House" includes the Lot upon which it is located.

(f) "**Spec House**" means a House which is not the subject of an Approved Sales Contract. The term "Spec House" includes the Lot upon which it is located.

(g) "**Model House**" means a House built by Borrower for the purpose of marketing Borrower's inventory to prospective purchasers and not for immediate sale. The term "Model House" includes the Lot upon which it is located.

(h) "**Mortgaged Property**" means all Vacant Lots and Houses securing the Loans.

(i) "**Governmental Authority**" means 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.

(j) "**Governmental Requirements**" means (i) all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates, and ordinances of any Governmental Authority applicable to Borrower, Guarantors, or the Mortgaged Property, its ownership, use, occupancy, possession, operation, maintenance, alteration, repair, or reconstruction; (ii) all covenants, conditions, and restrictions contained in any deeds, or other forms of conveyance, or in any other instruments of any nature that are applicable to the Mortgaged Property, its ownership, use, or occupancy; and (iii) all other contracts (written or oral) of any nature that are in any way related to the Mortgaged Property and to which Borrower or Guarantors may be bound.

1.9 **Purpose.** The purpose of the Loans is to enable Borrower to acquire Lots and construct Houses upon them.

ARTICLE II
Loan Applications and Loan Terms

2.1 **Termination Date.** The last date Borrower is entitled to have Lender consider new Loan Applications pursuant to this Agreement is _____ (the "Termination Date"). No Loan Applications will be considered after the Termination Date. The Termination Date may be extended by Lender, in Lender's sole and absolute discretion. If the Termination Date is extended, the term "Termination Date" means the Termination Date as so extended.

2.2 **Approval.** As used in this Agreement, the term "Approval" means Lender's agreement, to be provided or denied in Lenders sole and absolute discretion, to make a Loan pursuant to this Agreement. At any time before to the Termination Date, Borrower may submit Loan Applications to Lender for the purpose of acquiring Lots and/or constructing Houses on them. Each Loan Application must be in form and content acceptable to Lender and at a minimum contain the following information with respect to the Vacant Lot and House: (a) the legal description, (b) whether Borrower intends the Lot to be categorized as a Vacant Lot, Model House, Spec House, or Pre-Sold House under this Agreement, and (c) a proposed budget for the acquisition of each Lot and, if Borrower intends the Lot to be categorized as a Model House, Spec House, or Pre-Sold House, a proposed budget for construction of the House. Lender will review the Loan Application and as many of the documents and as much of the information described in Sections 2.6 and 2.7 of this Agreement as Lender requests Borrower to furnish to Lender. When Lender has completed its review, Lender will give Borrower written notice of Approval or rejection of each Loan. In each notification of Approval Lender will designate the "Commitment Amount" (as defined in Section 2.3) attributable to the Loan. Lender shall have no obligation to consider or approve additional Loans if (i) their Approval will cause the sum of the Commitment Amounts of all approved Loans to exceed the Maximum Amount, (ii) an "Event of Default" (as defined in Section 8.1) exists, or (iii) a "Potential Event of Default" (as defined in Section 8.1) exists.

2.3 **Commitment Amount.** The term "Commitment Amount" has the following meanings in the following contexts:

(a) In the context of a Pre-Sold House, the term "Commitment Amount" means the lesser of (i) ____% of the Approved Budget for the Pre-Sold House, (ii) ____% of the projected sales price of the Contract House, (iii) ____% of the appraised value of the Pre-Sold House as determined by the Appraisal, or (iv) \$ _____ per Pre-Sold House.

(b) In the context of a Spec House, the term "Commitment Amount" means the lesser of (i) ____% of the Approved Budget for the Spec House, (ii) ____% of the projected sales price of the Spec House, (iii) ____% of the appraised value of the Spec House as determined by the Appraisal, or (iv) \$ _____ per Spec House.

(c) In the context of a Model House, the term "Commitment Amount" means the lesser of (i) ____% of the Approved Budget for the Model House, (ii) ____% of the projected sales price of the House, (iii) ____% of the appraised value of the House as determined by the Appraisal, or (iv) \$ _____ per Model House.

(d) In the context of a Vacant Lot the term "Commitment Amount" means the lesser of (i) ____% of the purchase price of the Vacant Lot or (ii) ____% of the appraised value of the Vacant Lot as determined by the Appraisal, or (iii) \$ _____ per Vacant Lot.

2.4 **Limitations on Commitment Amounts.**

(a) **Maximum Limit.** The aggregate Commitment Amounts of all Loans made by Lender pursuant to this Agreement may not exceed \$ _____ or _____ (# of Loans) at any time (the "Maximum Limit").

(b) **Limitation on Pre-Sold Houses.** The aggregate Commitment Amounts of all Loans made for the purpose of constructing Pre-Sold Houses May not exceed \$ _____ or _____ (# of Loans) at any time.

(c) **Limitation on Spec Houses.** The aggregate Commitment Amounts of all Loans made for the purpose of constructing Spec Houses May not exceed \$ _____ or _____ (# of Loans) at any time.

(d) **Limitation on Model Houses.** The aggregate Commitment Amounts of all Loans made for the - purpose of constructing Model Houses may not exceed \$ _____ or _____ (# of Loans) at any time.

(e) **Limitation on Vacant Lots.** The aggregate Commitment Amounts of all Loans made for the purpose of purchasing Vacant Lots may not exceed \$ _____ or _____ (# of Loans) at any time.

(f) **Geographical Limitation.** All the Mortgaged Property must be located in: _____.

(g) **Other Limitations:**

2.5 **Loan Terms.**

(a) **Interest Rate.** The Loans will bear interest at the rate or rates of interest provided in the Note.

(b) **Payment Terms.** Interest on the Note will be due and payable monthly in accordance with the terms of the Note.

The entire unpaid principal balance of each Loan made in connection with a Pre-Sold House, together with all accrued but unpaid interest thereon will be due and payable on (i) the first day of the first calendar month immediately following the expiration of ____ months after the date of the Short Form Deed of Trust executed in connection with the Loan or (ii) the Maturity Date, whichever is the first to occur.

The entire unpaid principal balance of each Loan made in connection with a Contract House, together with all accrued but unpaid interest thereon will be due and payable on (i) the first day of the first calendar month immediately following the expiration of ____ months after the date of the Short Form Deed of Trust executed in connection with the Loan or (ii) the Maturity Date, whichever is the first to occur.

The entire unpaid principal balance of each Loan made in connection with a Model House, together with all accrued but unpaid interest thereon will be due and payable on (i) the first day of the first calendar month immediately following the expiration of ____ months after the date of the Short Form Deed of Trust executed in connection with the Loan or (ii) the Maturity Date, whichever is the first to occur.

The entire unpaid principal balance of each Loan made in connection with a Vacant Lot, together with all accrued but unpaid interest thereon will be due and payable on (i) the first day of the first calendar month immediately following the expiration of ____ months after the date of the Short Form Deed of Trust executed in connection with the Loan or (ii) the Maturity Date, whichever is the first to occur.

The dates on which these principal payments are due and payable are referred to in this Agreement as "Principal Payment Dates".

(c) **Extension Requests.**

Lender has no obligation to extend the Principal Payment Date of any Loan. Provided however, as long as no Event of Default or Potential Event of Default exists under this Agreement, Borrower may request that Lender extend the Principal Payment Date of any Loan. A request for an extension of a Principal Payment Date (an "Extension Request" or "Extension Requests") must be made by Borrower at least 10 days before the Principal Payment Date requested to be extended and until Lender changes the required format any Extension Request must be made on the Extension Request form that is attached to this Agreement as Exhibit "B" and incorporated into it by reference for all purposes.

Lender will not be obligated to consider the approval of any Extension Request if the effect of the extension is to extend a Principal Payment Date beyond the Maturity Date.

Lender will not be obligated to consider the approval of an Extension Request for a Loan made in connection with a Pre-Sold House for more than ____ months after the original Principal Payment Date.

Lender will not be obligated to consider the approval of an Extension Request for a Loan made in connection with a Spec House for more than ____ months after the original Principal Payment Date.

Lender will not be obligated to consider the approval of an Extension Request for a Loan made in connection with a Model House for more than ____ months after the original Principal Payment Date.

Lender will not be obligated to consider the approval of an Extension Request for a Loan made in connection with a Vacant Lot for more than ____ months after the original Principal Payment Date.

(i) **Extension Fees.**

If Lender approves an Extension Request for any Loan made in connection with a Pre-Sold House, Borrower agrees to pay Lender an extension fee of \$ _____ for each approved Extension Request.

If Lender approves an Extension Request for any Loan made in connection with a Spec House, Borrower agrees to pay Lender an extension fee of \$ _____ for each approved Extension Request.

If Lender approves an Extension Request for any Loan made in connection with a Model House, Borrower agrees to pay Lender an extension fee of \$ _____ for each approved Extension Request.

If Lender approves an Extension Request for any Loan made in connection with a Vacant Lot, Borrower agrees to pay Lender an extension fee of \$_____ for each approved Extension Request.

(ii) **Principal Reductions.**

If Lender approves an Extension Request for a Loan made in connection with a Pre-Sold House, Borrower agrees to make a principal reduction on the Loan of at least the following amounts for the following extension periods:

- (1) ___% for the first ___ month extension period,
- (2) an additional ___% for the second ___ month extension period
- (3) an additional ___% for the third ___ month extension period, and
- (4) an additional ___% for the fourth ___ month extension period.

If Lender approves an Extension Request for a Loan made in connection with a Spec House, Borrower agrees to make a principal reduction on the Loan of at least the following amounts for the following extension periods:

- (1) ___% for the first ___ month extension period,
- (2) an additional ___% for the second ___ month extension period
- (3) an additional ___% for the third ___ month extension period, and
- (4) an additional ___% for the fourth ___ month extension period.

If Lender approves an Extension Request for a Loan made in connection with a Model House, Borrower agrees to make a principal reduction on the Loan of at least the following amounts for the following extension periods:

- (1) ___% for the first ___ month extension period,
- (2) an additional ___% for the second ___ month extension period
- (3) an additional ___% for the third ___ month extension period, and
- (4) an additional ___% for the fourth ___ month extension period.

If Lender approves an Extension Request for a Loan made in connection with a Vacant Lot, Borrower agrees to make a principal reduction on the Loan of at least the following amounts for the following extension periods:

- (1) ___% for the first ___ month extension period,
- (2) an additional ___% for the second ___ month extension period
- (3) an additional ___% for the third ___ month extension period, and
- (4) an additional ___% for the fourth ___ month extension period.

2.6 Conditions to Approval. Lender may require Borrower to fully satisfy any one or more of the conditions precedent contained in this Section before Lender will consider the Approval of any new Loan. All of the things required to be received by Lender or done by Borrower pursuant to this Section must be furnished or done by Borrower and they must be in all respects satisfactory to Lender, in Lender's sole and absolute discretion.

(a) All of the Loan Documents (including without limitation, a new Short Form Deed of Trust covering each new Vacant Lot or House accepted into the Mortgaged Property) must be executed, delivered, and where appropriate, acknowledged and recorded,

(b) Lender has received the following: (i) certified copies of Borrower's Organizational Documents, any Guarantor's Organizational Documents, or if any Borrower or Guarantor has general partners, such general partner's Organizational Documents, or if any Borrower, Guarantor, or any general partner of Borrower or Guarantor has managers or managing members, such managers' or managing members' Organizational Documents; (ii) resolutions and/or certificates authorizing the execution, delivery, and performance of the Loan Documents by each party to them; (iii) certificates of existence and good standing from the Governmental Authority having jurisdiction over each party to the Loan Documents; and (iv) such other certificates or documents as Lender may from time to time require to evidence the continuing authority of each party to the Loan Documents to perform its obligations under the Loan Documents. With respect to any party to the Loan Documents, the term "Organizational Documents" means, if the party is: (i) a partnership or joint venture, a true and complete executed copy of its partnership or joint venture

agreement and of all amendments to them; (ii) a limited partnership, a true and complete executed copy of its partnership agreement and certificate of limited partnership and all amendments to them; (iii) a corporation, a true and complete executed copy of its articles of incorporation and bylaws and of all amendments to them; (iv) a limited liability company, a true and complete executed copy of its articles of organization and regulations and of all amendments to them; and (v) an organization other than a general or limited partnership, joint venture; corporation; or limited liability Company, a true and complete executed copy of each document creating it or governing its existence, power, and authority and of all amendments to them.

(c) Lender has received evidence that the proposed Vacant Lot or House is not located within any designated flood plain or special flood hazard area (including without limitation, flood zones A or V); or evidence that Borrower has applied for and received flood insurance covering the House in the maximum coverage available to Lender.

(d) Lender has received a copy of the Plans and Specifications for each proposed House. As used in this Agreement the term "Plans and Specifications" means the plans and specifications for each House prepared by Borrower or Borrower's architect that have been approved by Lender and all applicable Governmental Authorities and all amendments and modifications to the Plans and Specifications that are subsequently approved in writing by the same. If Borrower obtains Lender's prior written approval, Borrower may satisfy this requirement by submitting master plans and specifications to Lender.

(e) Lender has received evidence that all insurance policies required by Section 6.17 of this Agreement will cover the proposed Vacant Lots and Houses.

(f) Lender has received the Title Evidence. "Title Evidence" means, with respect to each Vacant Lot and House, (i) a mortgagee's title insurance policy or an interim construction binder issued by a title company acceptable to Lender in an amount equal to the Commitment Amount for that Loan insuring or committing to insure that fee simple title to the applicable Vacant Lot or House is owned by Borrower and the applicable Short Form Deed of Trust is a valid first and superior lien on the fee simple title to the applicable Vacant Lot or House, subject only to those exceptions approved by Lender, (ii) all extensions required to keep such binders in full force and effect, and (iii) if Lender believes at any time there is or will be a dispute concerning the validity or priority of Lender's lien on any Vacant Lot or House, all mortgagee's title insurance policies required by Lender.

(g) Lender has received a Loan Application.

(h) Lender has received an "Appraisal" of each Vacant Lot and House that is acceptable to Lender. As used in this Agreement, the term "Appraisal" means one or more of the following, as requested by Lender: (i) a Master Certificate of Reasonable Value or Certificate of Reasonable Value issued by the Veterans Administration; (ii) a certificate of insurance or a commitment to insure loans by the Federal Housing Administration; (iii) an appraisal prepared by Lender or a third party appraiser, or (iv) some other method of valuation acceptable to Lender.

(i) A copy of the "Approved Budget". As used in this Agreement, the term "Approved Budget" means a budget that has been agreed to and accepted by Lender for the acquisition of the Lot and the construction of the House. Each Approved Budget must be in form and content acceptable to Lender in Lender's sole and absolute discretion.

2.7 Optional Conditions to Approval. In addition to the requirements of Section 2.6 above, Lender may also require Borrower to deliver any one or more of the items described in this Section 2.7 to Lender before Lender will consider the Approval of any Loan. All of the things required to be received by Lender or done by Borrower pursuant to this Section must be furnished or done by Borrower and they must be in all respects satisfactory to Lender, in Lender's sole and absolute discretion.

(a) Evidence that all streets providing access to each Vacant Lot or House have been paved, completed, dedicated to public use, and accepted by applicable Governmental Authorities.

(b) Evidence showing the availability of all necessary utilities at the boundary lines of each Vacant Lot and House, including sanitary and storm sewer facilities, potable water, telephone, electricity, gas, and municipal services.

(c) Evidence that each Vacant Lot and House comply with all Governmental Requirements.

(d) Building permit(s) and all other permits required with respect to the construction of each House.

(e) Evidence that all applicable zoning ordinances and restrictive covenants affecting each Vacant Lot and House permit their use as a single family residence and have been or will be timely complied with.

(f) A soil report and letter from a registered engineer stating that (i) the engineer has reviewed the soil report, (ii) such soil conditions will not cause construction of the foundations of the contemplated Houses to cost more than normally incurred for such foundations in the city in which the House is located, and (iii) the soil will not require any special engineering treatment.

(g) A fully executed copy of the Approved Sales Contract for each House, if any, together with such supplementary documentation as Lender may require (e.g., such buyer's written evidence of credit worthiness, etc.).

(h) A full size, single sheet copy of the recorded plat of the subdivision in which proposed Vacant Lot or House is located along with evidence that the plat has been approved by all Governmental Authorities.

(i) A copy of all restrictive covenants applicable to the Vacant Lots and Houses.

(j) A Phase I Environmental Site Assessment of the Vacant Lot or House evidencing no adverse environmental conditions.

(k) Evidence that no environmental notices, permits, licenses, or authorizations are required in connection with the proposed Vacant Lot or House or, if they are required, Borrower has expressly notified Lender in writing and provided Lender with a copy of such notice, permit, license, or authorization and is in compliance therewith.

(l) Such other instruments, evidence, or certificates as Lender may reasonably request.

(m) Borrower has paid Lender all fees and expenses required to be paid by Borrower by Article IV of this Agreement.

(n) A plot plan acceptable to Lender showing the proposed location of the House on the Lot and that the proposed location of the House on the Lot will not encroach on, across, or into any easement, building setback line, septic tank field, or other restricted area.

(o) A fully executed copy of the purchase contract for each Vacant Lot, if any, together with such supplementary documentation as Lender may require.

ARTICLE III Advances

3.1 **No Obligation.** Lender has no obligation to advance any funds to Borrower until such time as a Loan is approved by Lender, in its sole and absolute discretion, pursuant to the terms of this Agreement. Once a Loan has been approved, Lender is still not obligated to advance any funds under such Loan unless and until all of the conditions precedent contained in Article III of this Agreement have been fully satisfied with respect to the requested Advance.

3.2 **Advances.** As used in this Agreement, the term "Advance" means a disbursement by Lender, whether by journal entry, deposit to Borrower's account, check to third party, or otherwise of any of the proceeds of the Loans, any insurance proceeds, or "Borrower's Deposit" (as defined in Section 3.8). All Advances will be made at the office of Lender or at such other place as Lender designates. Except as set forth in this Agreement, all Advances are to be made by wire transfer to a depository account that is acceptable to Lender and Borrower. Lender may, in Lender's discretion without the necessity of an Advance Request, disburse Loan proceeds by journal entry to pay interest, financing costs, and any fees and expenses described in Article IV of this Agreement. Loan proceeds disbursed by Lender by journal entry to pay interest or financing costs, and Loan proceeds disbursed directly by Lender to pay costs or expenses required to be paid by Borrower pursuant to this Agreement, shall constitute Advances to Borrower.

3.3 **Procedure for Advances.** At least five (5) business days prior to each date on which Borrower is requesting an Advance, Borrower shall submit a written request for the Advance (an "Advance Request") to Lender. Lender shall have until the fifth (5th) business day after receipt of the Advance Request to determine whether the amount requested should be advanced, during which time Lender's representative ("Lender's Inspector") may, if requested by Lender, make an inspection of each House for which funding is requested. Each Advance Request must be certified by Borrower and such other parties as Lender may require and be in form and content acceptable to Lender, in Lender's sole and absolute discretion. Lender will only make Advances for the acquisition of Lots and costs and expenses specified in the Approved Budget, and then only for work performed, services rendered, or materials furnished. No advance will be made for advance or unearned payments. Advances for payment of construction costs will only be made after actual commencement of construction and may not exceed the aggregate of (i) the costs of labor, materials, and services incorporated into the Mortgaged Property in a manner acceptable to Lender, plus (ii) if approved by Lender, the purchase price of uninstalled materials to be utilized in the construction of the Houses that are stored on the Mortgaged Property, or elsewhere with the written consent of and in a manner acceptable to Lender, less (iii) any retainage required by Lender, and less (iv) all prior advances for payment of costs of labor, materials, and services for the construction Houses.

3.4 **Inspections.** Borrower will permit Lender, Lender's Inspector, or their representatives to enter the Mortgaged Property for the purposes of inspecting it and appraising its value at any time. Borrower shall cooperate with Lender's Inspector and upon request will furnish Lender's Inspector with any information Lender's Inspector considers necessary or useful in connection with the performance of Lender's Inspector's duties. Without limiting the generality of the foregoing, Borrower shall furnish such items as working details, Plans and Specifications and details thereof, samples of materials, licenses, permits, certificates of public authorities, zoning ordinances, building codes, and copies of any contract for the construction of any of the Houses. Borrower agrees that Lender's Inspector owes no duty to anyone other than Lender, including without limitation Borrower, Borrower's agents, employees, contractors, subcontractors, or suppliers.

3.5 **Conditions to Advances.** Lender is under no obligation to make any Advance unless and until all of the conditions precedent contained in this Section have been fully satisfied with respect to such Advance. All of the things required to be received by Lender or done by Borrower pursuant to this Section must be in all respects satisfactory to Lender, in Lender's sole and absolute discretion.

(a) The Loan Documents continue to be in full force and effect and enforceable according to their terms.

(b) All representations and warranties made by Borrower in this Agreement and the other Loan Documents are true and correct as of the date of each Advance and there has been no material adverse change in the financial condition of Borrower or Guarantors between the date of this Agreement and the date of the Advance.

(c) No Potential Event of Default or Event of Default exists.

(d) Borrower has furnished Lender with all of the documents or items described in Section 2.6 of this Agreement, together with all of the documents or items described in Section 2.7 of this Agreement that have been requested by Lender.

(e) The Mortgaged Property has not been destroyed or materially damaged by fire or other casualty.

(f) The Mortgaged Property is not the subject of a condemnation proceeding.

(g) The Mortgaged Property is not located in flood zone A or V unless Lender gives its advance written consent thereto, which may be withheld for any reason in Lender's sole and absolute discretion.

(h) Borrower has complied with all Governmental Requirements.

(i) Borrower has paid Lender all fees and expenses required to be paid by Borrower under Article IV of this Agreement.

(j) If requested by Lender, Borrower will also do the following: (i) deliver copies of recorded Affidavits of Commencement to Lender; (ii) deliver updated Title Evidence to Lender showing title to the Mortgaged Property to be vested in Borrower and no stated facts objectionable to Lender, including without limitation, mechanic's liens filings for unpaid bills for labor or materials; (iii) furnish Lender with a list of the names and addresses of all contractors, subcontractors, laborers, and suppliers who have furnished labor or materials for any House; (iv) furnish Lender with copies of the contracts, bills of sale, receipted vouchers, and agreements under which Borrower claims title to the materials, articles, fixtures, and other personal property used or to be used in the construction or operation of any House; and/or (v) furnish Lender with lien waivers or lien subordination agreements from all contractors, subcontractors, laborers, or suppliers, who have furnished labor or material for any House certifying that they have been fully paid for all labor and material furnished by them through the date of the Advance Request.

3.6 **Limitation on Advances.** The Commitment Amount designated by Lender as being allocated to a particular Vacant Lot or House is the maximum amount that will be advanced in connection with that Vacant Lot or House. Furthermore, Lender is not obligated to make an Advance for any stage of construction described in the Approved Budget or for any line item described in the Approved Budget if all of the work necessary to complete the construction for that stage of construction or that line item has not been fully completed in accordance with the Plans and Specifications. If the aggregate amount of Advances for any House is insufficient to pay for all labor and materials necessary to complete the construction of the House, Borrower shall pay all excess costs with funds from sources other than the Loan.

3.7 **Borrower's Deposit.** If Lender, in its sole and absolute discretion, deems that the undisbursed proceeds of any Loan are insufficient to complete the construction of the House to be constructed with that Loan, plus the costs of insurance, ad valorem taxes, and other normal costs incidental to the construction of those Houses, Lender may refuse to make any additional Advances to Borrower until Borrower has deposited sufficient additional funds ("Borrower's Deposit") with Lender to cover the deficiency which Lender deems to exist. Borrower will deliver Borrower's Deposit to Lender within five (5) days after Lender's

written demand for it. Borrower's Deposit will be disbursed by Lender to Borrower pursuant to the terms and conditions of this Agreement as if Borrower's Deposit constituted a portion of the Loan. Unless required by Governmental Requirements, Lender will not pay interest on Borrower's Deposit.

3.8 **Advance Not An Approval.** The making of any Advance will not be deemed an approval or acceptance by Lender of the work done before the date of the Advance. Lender has no obligation to make any Advance after the occurrence of any Event of Default, but does have the right and option to do so; provided however, if Lender elects to make an Advance after the occurrence of an Event of Default, the Advance will not be deemed to be either a waiver of the Event of Default or an obligation to make any other Advance.

3.9 **Advance Not A Waiver.** No Advance will constitute a waiver of any condition precedent to any obligation of Lender to make any further Advances or preclude Lender from thereafter declaring the failure of Borrower to satisfy the condition precedent to be an Event of Default.

3.10 **No Third Party Beneficiaries.** The benefits of this Agreement will not inure to any third party. This Agreement will not be construed to make or render Lender liable to any materialmen, subcontractors, contractors, laborers, or others for goods and materials supplied or labor performed in connection with the construction of any of the Houses. Lender is not liable for the manner in which any Advances under this Agreement may be applied by Borrower or any of Borrower's contractors or subcontractors, Notwithstanding anything contained in the Loan Documents or any conduct or course of conduct by Borrower or Lender, before or after the date of this Agreement, this Agreement will not be construed as creating any rights, claims, or causes of action against Lender, or any of its officers, directors, agents or employees, in favor of any contractor, subcontractor, supplier of labor or materials, or any of their respective creditors, or any other person or entity other than Borrower. Without limiting the generality of the foregoing, Advances made to any contractor, subcontractor, or supplier of labor or materials will not be deemed a recognition by Lender of any third-party beneficiary status claimed by any such person or entity.

3.11 **Conditions for Benefit of Lender.** All conditions precedent to the obligation of Lender to make any Advance are imposed solely for the benefit of Lender and may be waived by Lender as to one or more Advances in Lender's sole and absolute discretion without waiving them as to others, and no other party may require satisfaction of any condition precedent or be entitled to assume that Lender will refuse to make any Advance in the absence of strict compliance with these conditions precedent. All requirements of this Agreement may be waived by Lender, in whole or in part, at any time. Borrower shall have no right to rely on any investigations, inspections, or reviews performed by Lender pursuant to the terms of this Agreement or any other procedures employed by Lender under the terms of this Agreement. All such investigations, inspections, or reviews performed by Lender pursuant to the terms of this Agreement or any other procedures employed by Lender under the terms of this Agreement are solely for the Lender's own protection. Borrower acknowledges and agrees that Borrower has sole responsibility for constructing the Houses and paying for work done and materials furnished in their construction and that Borrower has solely, on Borrower's own behalf, selected or approved each contractor, each subcontractor, each materialman, and each supplier and that Lender has no responsibility for any such persons or entities or for the quality of their materials or workmanship.

ARTICLE IV Fees and Expenses

4.1 **Loan Fees.** Borrower shall pay Lender:
Applicable required fees are "x"ed

_____ an annual loan fee (the "Loan Fee") of _____ on the first day of « 166 » of each year during the term of any of the Loans. The first annual Loan Fee is due and payable on the date this Agreement is signed.

_____ for Pre-Sold Houses a loan origination fee equal to _____ % of each approved loan amount. Said amount due at each approved Loan Application initial funding.

_____ for Spec Houses a loan origination fee equal to _____ % of each approved loan amount. Said amount due at each approved Loan Application initial funding.

_____ for Model Houses a loan origination fee equal to _____ % of each approved loan amount. Said amount due at each approved Loan Application initial funding.

_____ for Vacant Lots a loan origination fee equal to _____% of each approved loan amount. Said amount due at each approved Loan Application initial funding.

4.2 **Appraisal Fees.** Borrower shall promptly pay or reimburse Lender for all fees incurred or imposed by Lender for Appraisals made pursuant to this Agreement.

4.3 **Inspection Fees.** Borrower shall promptly pay Lender an inspection fee in the amount of « 423» for each House that becomes part of the Mortgaged Property.

4.4 **Flood Certificate Fees.** Borrower shall promptly pay or reimburse Lender for all fees incurred by Borrower or Lender in obtaining evidence that each Vacant Lot or House is not located within any designated flood plain or special flood hazard area.

4.5 **Title Evidence Fees.** Borrower shall promptly pay or reimburse Lender for all fees incurred by Borrower or Lender in obtaining Title Evidence.

4.6 **Other Fees and Expenses.** Borrower shall promptly pay or reimburse Lender for all wire transfer fees, recording fees, insurance premiums, and other expenses incurred by Lender in connection with the Loans or the Mortgaged Property that are not specifically described in other Sections of this Article IV. Borrower shall also promptly pay or reimburse Lender for all fees and expenses of counsel for Lender in connection with (a) the negotiation, preparation, filing, and recording of the Loan Documents and any renewals, extensions, and modifications to them; (b) the administration, servicing, and collection of the Loans; (c) the protection of Lender's liens on the Mortgaged Property; and (d) the exercise by Lender of any of its rights and remedies under the Loan Documents.

4.7 **Lender Attorney Fees.** Borrower shall promptly pay or reimburse Lender the sum of \$75.00 for each individual House and Vacant Lot loan closing.

ARTICLE V Representations and Warranties

To induce Lender to enter into this Agreement and make each Advance, Borrower represents and warrants to Lender, as of the date of this Agreement and as of the date of each Advance, that:

5.1 **Plans and Specifications.** The Plans and Specifications comply with all Governmental Requirements. To the extent required by Governmental Requirements or applicable restrictive covenants, the Plans and Specifications have been approved by the applicable Governmental Authorities and the architectural control committee or other persons empowered to do so by any restrictive covenants.

5.2 **Governmental Requirements.** No violation of any Governmental Requirements exists with respect to the Mortgaged Property and neither the Borrower nor the Guarantors are in default with respect to any Governmental Requirements.

5.3 **Utility Services.** All utility services (including without limitation, potable water storm and sanitary sewer facilities, gas, electric, and telephone facilities) necessary for the construction of a House and its operation as a single family residence are available at the boundaries of each Lot that is part of the Mortgaged Property in adequate sizes and capacities and that Borrower has the right to connect each House to such utility services.

5.4 **Access.** All roads necessary for the full utilization of the Mortgaged Property for its intended purposes have been completed and have been accepted by the appropriate Governmental Authority.

5.5 **No Work Performed.** No labor will be performed on and no materials will be furnished or delivered to any Lot prior to recording the Short Form Deed of Trust covering that Lot, including without limitation, any labor to clear or otherwise prepare the Lot for construction of any improvements on it.

5.6 **Disclaimer of Permanent Financing.** Lender has not made any representations, warranties, guarantees, commitments, or other agreements of any kind whatsoever, either express or implied, that Lender, any subsidiary of Lender, or any other party affiliated with Lender will extend the term of any Loan past its stated Maturity Date (unless otherwise expressly stated in this Agreement) or provide permanent financing for Borrower or any person purchasing any Vacant Lot or House from Borrower.

5.7 **Interstate Land Sales Act.** Borrower's development of the Mortgaged Property and the sale or lease of the Mortgaged Property by Borrower are exempt from registration under and any requirements of the Interstate Land Sales Full Disclosure Act and the regulations promulgated pursuant to it.

5.8 **Financial Statements.** Each Financial Statement delivered to Lender in connection with the Loans, whether before or after the date of this Agreement, was and will be prepared and signed by Borrower's authorized agent in conformity with generally accepted accounting principles (unless other accounting principles are approved by Lender in writing) applied on a basis consistent with that of previous statements and does or will completely and accurately disclose the financial condition (including all contingent liabilities) of the party for whom it was prepared as of its date and for the period covered by it.

5.9 **Information.** All information, Financial Statements, reports (including without limitation, Inventory Reports), papers, and data given or to be given to Lender with respect to Borrower, Guarantors, and all others obligated under the terms of the Loan Documents, or with respect to the Mortgaged Property are, or at the time of delivery will be, accurate, complete, and correct in all material respects and do not, or will not, omit any fact, the inclusion of which is necessary to prevent the facts contained therein from being materially misleading.

5.10 **Master Deed of Trust.** The warranties and representations contained in Article III of the Master Deed of Trust are true and correct

ARTICLE VI Covenants

As long as any portion of the Indebtedness remains unpaid or as long Borrower has the right to request or obtain additional Advances pursuant to this Agreement, Borrower covenants and agrees as follows:

6.1 **Commencement and Completion.** Borrower shall commence construction of each House within 45 days after the applicable Short Form Deed of Trust is recorded in the appropriate records of the county where the House is located and diligently pursue its completion without cessation except due to acts of God.

6.2 **Affidavit of Commencement.** If requested by Lender in connection with any House, Borrower will record an affidavit of commencement ("Affidavit of Commencement") in the appropriate records of the county where the House is located. The Affidavit of Commencement must state the date construction began. The Affidavit of Commencement must not state a commencement date or be recorded before the applicable Short Form Deed of Trust is recorded and must be in form and content satisfactory to Lender, in Lender's sole and absolute discretion.

6.3 **Affidavit of Completion.** If requested by Lender in connection with any House, Borrower will record an affidavit of completion ("Affidavit of Completion") stating the date construction was completed in the appropriate records of the county where the Lot is located. The Affidavit of Completion must be form and content satisfactory to Lender in Lender's sole and absolute discretion.

6.4 **Construction According to Plans and Specifications.** Borrower will construct each House in a good and workmanlike manner and in accordance with its Plans and Specifications and all Governmental Requirements. Furthermore, Borrower will not materially amend, alter, or change the Plans or Specifications unless the changes have been approved in writing by Lender in advance and, if necessary, by all Governmental Authorities and any architectural control committee or other party empowered to do so by any restrictive covenants.

6.5 **Correction of Defects.** Borrower will correct (a) any defect in the construction of the Houses and any departure from the Plans and Specifications not approved in writing by Lender and (b) all violations of any Governmental Requirements or restrictive covenants. An Advance will not constitute a waiver of Lender's right to require compliance with this covenant with respect to any such defects or violations not previously discovered by Lender.

6.6 **Compliance with Governmental Requirements.** Borrower will promptly comply with all Governmental Requirements effecting the Mortgaged Property and do all things necessary to remain in good standing in the state where Borrower is organized.

6.7 **Notification of Budget Changes.** Promptly notify Lender of any change of 10% or more in the Approved Budget, and any material change in any fact or circumstance represented or warranted by Borrower in the Loan Documents.

6.8 **Taxes.** Pay promptly when due and before the accrual of penalties thereon all taxes, including without limitation, all payroll taxes, all federal and state income taxes, and all real and personal property taxes and assessments, levied or assessed against Borrower or the Mortgaged Property and provide Lender with paid receipts therefor if requested by Lender.

6.9 **Reports and Notices.** Furnish promptly to Lender such information as Lender may require concerning costs, progress of construction, marketing, and such other factors as Lender may require. Notify Lender promptly of (i) any litigation instituted or threatened against Borrower or any Guarantor, (ii) any deficiencies asserted or liens filed by the Internal Revenue Service against Borrower, any Guarantor, or the Mortgaged Property, (iii) any audits of any federal or state tax returns of Borrower or any Guarantor and the results of any such audit, (iv) any condemnation or similar proceedings with respect to any of the Mortgaged Property, (v) any proceeding seeking to enjoin the intended use of the Mortgaged Property, (vi) any changes of Governmental Requirements, utility availability, or anticipated costs of completion, and (vii) any other matters which could reasonably be expected to adversely affect Borrower's ability to perform its obligations under this Agreement.

6.10 **Indebtedness.** Promptly pay when due all Indebtedness to Lender according- to the terms of this Agreement and the other Loan Documents and all other indebtedness of Borrower. To incur no other indebtedness in any manner secured in whole or in part by the Mortgaged Property, any income to be derived therefrom, or any other collateral for the Indebtedness, except as otherwise expressly approved in writing by Lender.

6.11 **Identify Property.** Display the Borrower's name and the street address of each Lot in a prominent place on the Lot that is visible from the street.

6.12 **Performance.** Promptly and fully perform all of Borrower's obligations under the Loan Documents, and never permit an Event of Default to exist.

6.13 **Advances.** Borrower will receive the Advances and will hold such funds or an equivalent amount in trust for the purpose of paying the costs and expenses for which each Advance is made and will not use any part of any Advance for any other purpose.

6.14 **Personalty and Fixtures.** Borrower will deliver to Lender, on demand, any contracts, bills of sale, statements, receipted vouchers, or agreements under which Borrower claims title to any materials, fixtures, or other personal property incorporated into any of the Houses located on any of the Mortgaged Property.

6.15 **Statement of Unpaid Balance.** Upon Lender's request, but no more often than 2 times per calendar year, Borrower will deliver a written statement or affidavit to Lender, in form satisfactory to Lender, stating the unpaid balance of the Indebtedness and that there are no offsets or defenses against full payment of the Indebtedness and the terms of the Loan Documents, or if there are any such offsets or defenses, specifying them.

6.16 **Other Loan Documents.** The covenants and agreements contained in this Agreement are made in addition to, not in lieu of, the covenants and agreements contained in the other Loan Documents.

6.17 **Insurance.**

(a) **General Requirements.** Borrower will, at Borrower's own expense, obtain and maintain in full force and effect insurance upon and relating to the Mortgaged Property with such insurers, in such amounts, and covering such risks as are requested by and satisfactory to Lender, from time to time, including but not limited to: (a) the broadest available form of builder's risk insurance (utilizing the then prevailing "ISO causes of loss-special forms" and "non-reporting forms" of builder's risk insurance form or equivalent forms acceptable to Lender) covering all Houses within the Mortgaged Property during their construction for their full replacement cost; (b) the broadest available form of "all risks" or "special form" property insurance (utilizing the then prevailing "ISO Special Form" property insurance form or an equivalent form acceptable to Lender), covering all Houses within the Mortgaged Property after their construction is complete for their full replacement cost, with no exclusions permitted for vandalism or malicious mischief; and including flood as a covered cause of loss; (c) worker's compensation insurance to the statutory limit; (d) a commercial general liability insurance policy providing coverage against (among other things) bodily injury and disease, including

death resulting therefrom, personal injury and property damage, written on an "occurrence" basis in connection with the business or other activities conducted on or from the Mortgaged Property; (e) flood insurance covering all Houses located within Flood Zone A or V, both during construction and after construction is complete for their full replacement cost or the maximum amount available under the federal flood insurance program, whichever is the most; and (f) such other insurance with other coverages or increased coverages, if any, as Lender may require from time to time. Each insurance policy issued pursuant to this Section must be issued by good and solvent insurance companies satisfactory to Lender and all such policies must provide, by way of endorsements, riders, or as otherwise applicable, that: (a) the builder's risk and property insurance policies must contain a standard "Mortgagee clause" and must be payable to Lender as a mortgagee and not as a co-insured, and with respect to all policies and insurance carried by Borrower for the benefit of Lender, such insurance must be payable to Lender as Lender's interest may appear; (b) with respect to the commercial general liability policy and all other liability insurance, such insurance must name Lender as an "Additional Insured" (using the applicable ISO form, or an equivalent form reasonably acceptable to Lender, without modification [and under the commercial umbrella, if any], and which policy must contain standard commercial general liability "other insurance" wording, unmodified in any way that would make it excess over or contributory with the additional insured's own commercial general liability coverage); (c) Lender's coverage under the policies must not be terminated, reduced, or affected in any manner regardless of any breach or violation by Borrower of any warranties, declarations, or conditions in the policies; (d) no policies will be canceled, endorsed, altered, or reissued to effect a change in coverage for any reason and to any extent whatsoever unless the insurer has first given Lender no less than thirty (30) days' prior written notice; and (e) Lender must be permitted, but not be obligated, to make premium payments to prevent any cancellation, endorsement, alteration, or reissuance of the policies, and such payments must be accepted by the insurer to prevent same. Lender must be furnished with the original of each such initial policy when this Agreement is executed and the original of each renewal policy not less than thirty (30) days before the expiration of the initial policy or each immediately preceding renewal policy, and Lender must additionally be concurrently furnished with receipts or other evidence that the premiums on all the policies have been paid for at least one (1) year. Borrower shall furnish to Lender, on or before thirty (30) days after the close of each of Borrower's fiscal years while this Deed of Trust is in force and effect, a statement certified by Borrower or a duly authorized officer of Borrower of the amounts of insurance maintained in compliance with this Section, of the risks covered by such insurance, and of the insurance companies which carry the insurance. For purposes of this Section, the term "ISO" shall mean Insurance Services Office.

(b) **Texas Collateral Protection Insurance Notice.**

According to Section 307.052 of the Texas Finance Code the following notice is given to Borrower by Lender:

(i) Borrower is required to:

(1) keep the Mortgaged Property insured against damage in the amount the Lender specifies;

(2) purchase the insurance from an insurer that is authorized to do business in Texas or an

eligible surplus lines insurer; and

(3) name Lender as the person to be paid under the policy in the event of a loss;

(ii) Borrower must, if required by Lender, deliver Lender a copy of the policy and proof of the payment of premiums; and

(iii) Borrower fails to meet any requirement listed in paragraph (1) or (2) above, Lender may obtain collateral protection insurance on behalf of Lender at Borrower's expense.

6.18 **Surveys.** Any survey requested by Lender under this Section must be furnished to Lender within ten (10) days after Lender's request for it. All surveys or other evidence provided to Lender must be paid for by Borrower and be in form and substance acceptable to Lender in Lender's sole and absolute discretion.

(a) **Foundation Surveys.** If requested by Lender after the foundation of a House is poured, Borrower will obtain a foundation survey or other evidence acceptable to Lender, showing (i) the location of the foundation on the Lot, (ii) that the foundation is entirely within the property lines of the Lot, (iii) that the foundation does not encroach on, across, or into any easement, building setback line, septic tank field, or other restricted area, (iv) that the foundation is located in accordance with the Plans and Specifications, (v) that the foundation does not violate any Governmental Requirements, and (vi) no state of facts objectionable to Lender. Lender has no obligation to make any Advance at any time after the completion of the foundation until such foundation survey or other acceptable evidence is delivered to Lender.

(b) **Completion Surveys.** If requested by Lender after the completion of a House, Borrower will also obtain another survey or other evidence acceptable to Lender showing the same things as the foundation survey. Lender agrees that it will not require a completion survey of any House unless Lender believes the House encroaches on, across, or into any property line, easement, building setback line, septic tank field, or other restricted area.

6.19 **Subordination and Restrictions on Payment of Affiliated Party Debt.** All Affiliated Party Debt (as defined in Section 6.21) shall be expressly subordinated to the Loans. Borrower covenants and agrees not to repay any Affiliated Party Debt if (a) an Event of Default or Potential Event of Default has occurred and is continuing, (b) Borrower is not in compliance with the covenants contained in Section 6.21 of this Agreement, or (c) the repayment would cause Borrower to breach any one of the covenants contained in Section 6.21 of this Agreement.

6.20 **Financial Statements and Reports.**

(a) **Financial Statements.** All financial statements required to be delivered to Lender pursuant to this Agreement must be prepared according to generally accepted accounting principles. All financial statements required to be delivered to Lender by this Agreement must be certified as being prepared according to generally accepted accounting principles and as being true and correct by the person or legal entity whose financial condition is described in the financial statements. All audited financial statements, if any, required to be delivered to Lender by this Agreement must be prepared by an independent certified public accountant and certified by such accountant as being prepared according to generally accepted accounting principles and as being true and correct.

(b) **Borrower's Statements and Tax Returns.**

(i) **Annual Statements.** Within ___ days after the end of each calendar year during the term of the Loans beginning ___, Borrower shall deliver Borrower's annual **reviewed** financial statements to Lender.

(ii) **Quarterly Statements.** Within ___ days after the end of each calendar quarter during the term of the Loans, Borrower shall deliver Borrower's quarterly **internally prepared** financial statements to Lender.

(iii) **Tax Returns.** Within ___ days after the date filed with the Internal Revenue Service, Borrower shall deliver signed copies of Borrower's annual federal income tax returns to Lender.

(c) **Guarantors' Statements and Tax Returns.**

(i) **Annual Statement.** Within ___ days after the end of each calendar year during the term of the Loans, Guarantors shall deliver Guarantors' annual **personally** or **internally prepared** financial statements to Lender.

(ii) **Tax Returns.** Within ___ days after the date filed with the Internal Revenue Service, Guarantors shall deliver signed copies of Guarantors' annual federal income tax returns to Lender.

d) **Inventory Reports.** Borrower agrees to deliver inventory reports (the "Inventory Reports") to Lender within ___ days after the end of each calendar quarter during the term of the Loans. All Inventory Reports must be in form and content satisfactory to Lender, in Lender's sole and absolute discretion, and must specify the following: (i) the number of houses that Borrower has under construction that are not a part of the Mortgaged Property categorizing them as vacant lots, spec houses, pre-sold houses, or model houses; (ii) the number of houses that Borrower has under construction that are a part of the Mortgaged Property categorizing them as Vacant Lots, Spec Houses, Pre-Sold Houses, or Model Houses (iii) the number of houses that have been fully completed (subject to minor customer selection items) and a description of which completed houses are pre-sold houses, spec houses, or model houses; and (iv) the subdivision and city in which each such house (whether under construction or completed) is located.

6.21 **Financial Covenants.**

7.2 **Assignment of Plans and Specifications.** As additional security for the Loans, Borrower transfers and assigns to Lender all of Borrower's right, title, and interest in and to the Plans and Specifications and represents and warrants to and covenants and agrees with Lender as follows:

(a) Each schedule of the Plans and Specifications delivered or to be delivered to Lender is and will be a complete and accurate description of the Plans and Specifications.

(b) The Plans and Specifications are and will be complete and adequate for the construction of the Houses to which they relate and there have been no material modifications of them except as described in such schedule. The Plans and Specifications will not be modified without the prior written consent of Lender.

(c) Lender may use the Plans and Specifications for any purpose relating to the Mortgaged Property, including but not limited to inspections of construction and the completion of construction.

(d) Lender's acceptance of this assignment will not constitute approval of the Plans and Specifications by Lender. Lender has no liability or obligation in connection with the Plans and Specifications and no responsibility for their adequacy or for the construction of the Houses contemplated by the Plans and Specifications. Lender has no duty to inspect the Mortgaged Property, and if Lender inspects the Mortgaged Property, Lender has no liability or obligation to Borrower or any other party arising out of such inspection. No such inspection nor any failure by Lender to make objections after any such inspection will constitute a representation by Lender that any Houses are constructed in accordance with the Plans and Specifications or constitute a waiver of Lender's right thereafter to insist that such Houses be constructed in accordance with the Plans and Specifications.

(e) This assignment will inure to the benefit of Lender, its successors and assigns, any purchaser upon foreclosure of the Deed of Trust, and any receiver in possession of the Mortgaged Property.

(f) If the Plans and Specifications are not owned by Borrower, Borrower will obtain the consent of the owner of the Plans and Specifications to this assignment.

ARTICLE VIII Events of Default and Remedies

8.1 **Events of Default.** Each one of the events described in this Section 8.1 is an "Event of Default" under this Agreement. As used in this Agreement, the term "Potential Event of Default" means the occurrence of any event which, but for the giving of notice or the passage of time, would become an Event of Default.

(a) The occurrence of an "Event of Default" pursuant to and as defined in any other Loan Document.

(b) If any lien for labor or materials performed or furnished in connection with the construction of any improvements is filed against any Vacant Lot or House and it is not paid or released or bonded within 30 days after it is filed. Notwithstanding the foregoing, the filing of such a lien will not be an Event of Default if Borrower, within 30 days after Borrower becomes aware of such lien filing, satisfies the requirements of Section 8.11 of the Master Deed of Trust and Article III of the Short Form Deed of Trust describing the Lot against which the lien was filed, including without limitation, payment of the Partial Release Price (as defined in Section 3.4 of the applicable Short Form Deed of Trust) so that the House which is the subject of the lien filing is released from the liens of the Deed of Trust and is no longer a part of the Mortgaged Property.

(c) If the building permit for any House is revoked or if any House violates a Governmental Requirement in such a manner that it cannot be occupied as a single family residence. Notwithstanding the foregoing, such revocation or violation will not be an Event of Default if Borrower, within 30 days after Borrower becomes aware of such revocation or violation, satisfies the requirements of Section 8.11 of the Master Deed of Trust and Article III of the Short Form Deed of Trust describing the House which is the subject of the revocation or violation, including without limitation, payment of the Partial Release Price (as defined in Section 3.4 of the applicable Short Form Deed of Trust) so that the House which is the subject of the revocation or violation is released from the liens of the Deed of Trust and is no longer a part of the Mortgaged Property.

(d) If Borrower executes any conditional bill of sale, chattel mortgage, or other security instrument covering any materials, fixtures, or articles of personal property intended to be incorporated into the Mortgaged Property, or covering articles of personal property placed in any of the Houses, or if Borrower files a financing statement publishing notice of such security interest, or if any of such materials, fixtures, or articles of personal property are not purchased in such a manner that their ownership vests unconditionally in Borrower, free from encumbrances, on delivery at the Mortgaged Property.

(e) If any Governmental Authority files or gives any notice, levy, or assessment that does or could constitute a lien on any portion of the Mortgaged Property or any of Borrower's other assets.

(f) If any Borrower (i) changes the state of its organization or domicile, (ii) changes or converts from one type of legal entity to another, or (iii) merges or consolidates with any other legal entity, without obtaining Lender's prior written consent.

(g) If Borrower makes or permits a "Disposition" (as defined in the Master Deed of Trust) without obtaining Lender's prior written consent.

(h) If any portion of the ownership or any senior management change or both of the Borrower should without the prior written consent of Lender.

8.2 **Remedies.** Upon the occurrence of an Event of Default or a Potential Event of Default Lender may, at Lender's option, do any one or more of the following:

(a) Refuse to consider any additional Loan Applications made by Borrower to Lender pursuant to this Agreement.

(b) Refuse to make any additional Loans to Borrower pursuant to this Agreement.

(c) Perform or attempt to perform any covenant contained in the Loan Documents that Borrower has failed to keep or perform and any payment made or expense incurred in the performance or attempted performance of any such covenant shall be and become a part of the Indebtedness and Borrower shall, upon demand, pay Lender all sums so paid by Lender together with interest from the date paid or incurred by Lender at the Default Rate described in the Note.

(d) Refuse to make additional Advances.

(e) Exercise any rights or remedies Lender has under any of the Loan Documents or pursuant to applicable law.

(f) Enter into possession of the Mortgaged Property and, at Lender's option, in the name and on behalf of Borrower, do anything in connection with the construction of the Houses that Borrower could do in its own behalf, including without limitation, any one or more of the following: (i) perform all work necessary to complete construction of the Houses then under construction or discontinue any such work, whether commenced by Borrower or Lender, (ii) assume Borrower's rights, and powers under any contract Borrower has entered into in connection with the Mortgaged Property or the construction of the Houses, (iii) execute all certificates and applications that are required under any construction contract, (iv) make any additions, changes, and corrections in the Plans and Specifications which in Lender's judgment are necessary or desirable to complete construction of the Houses in substantially the same manner as contemplated by the Plans and Specifications, (v) employ architects, contractors, subcontractors, engineers, inspectors, and security guards, and other persons to perform services or furnish materials or equipment in connection with any action Lender takes under this Section, (vi) continue any existing construction contracts or subcontracts, (vii) pay, settle, or comprise any existing bills or claims which are or may become liens against the Mortgaged Property or may be necessary or desirable for the completion of the work or the clearing of title, (viii) prosecute and defend all actions or proceedings in connection with the Mortgaged Property or the construction of the Houses; (ix) use all of Borrower's funds that are in Lender's control (including any amounts held in escrow and Borrower's Deposit), and any funds which remain unadvanced on the Loans for the purposes described in this Section; and (x) make advances in excess of the Maximum Loan Amount for the purposes described in this Section, which advances will be a part of the Indebtedness. All amounts expended by Lender pursuant to this Section will be deemed to have been disbursed to Borrower as Advances and be secured by the Deed of Trust. For the purposes described in this Section and the enforcement of the terms and conditions of this Agreement, Borrower irrevocably appoints Lender as Borrower's agent and attorney-in-fact with full power of substitution to exercise all of the rights and remedies granted to Lender by this Section. Borrower agrees that this power of attorney is coupled with an interest and cannot be revoked.

ARTICLE IX

Lender's Disclaimers - Borrower's Indemnities

9.1 **No Obligation by Lender to Construct.** Lender has no liability or obligation in connection with the Mortgaged Property or its development or construction. Lender is not obligated to inspect the work in progress. Lender is not liable for (i) the performance or default of any contractor or subcontractor, (ii) any failure to construct, complete, protect, or insure the Mortgaged

Property, (iii) the payment of any cost or expense incurred in connection therewith, or (iv) the performance or nonperformance of any obligation of Borrower or Guarantors to Lender or to any other person or entity.

9.2 **No Obligation by Lender to Operate.** Notwithstanding anything contained in the Loan Documents to the contrary, Lender shall not have, and by its execution and acceptance of this Agreement hereby expressly disclaims, any obligation or responsibility for the management, conduct, or operation of the business and affairs of Borrower or Guarantors. Any term or condition of the Loan Documents which permits Lender to disburse funds, whether from the proceeds of the Loans, the Borrower's Deposit or otherwise, or to take or refrain from taking any action with respect to Borrower, Guarantors, the Mortgaged Property, or any other collateral for repayment of the Loans, shall be deemed to be solely to permit Lender to audit and review the management, operation, and conduct of the business and affairs of Borrower and Guarantors, and to maintain and preserve the security given by Borrower to Lender for the Loans, and may not be relied upon by any other person. Further, Lender shall not have, has not assumed and by its execution and acceptance of this Agreement expressly disclaims any liability or responsibility for the payment or performance of any indebtedness or obligation of Borrower or Guarantors and no term or condition of the Loan Documents, should be construed otherwise. Further, Lender shall have no obligation under any Approved Sales Contract or other agreement for the sale of any House or Vacant Lot. Borrower expressly acknowledges that no term or condition of the Loan Documents should be construed to deem the relationship between Borrower, Guarantors, and Lender to be other than that of Borrower, Guarantor, and lender. Borrower shall at all times represent that the relationship between Borrower, Guarantors, and Lender is solely that of borrower, guarantor, and lender. **BORROWER AGREES TO DEFEND, INDEMNIFY, AND HOLD LENDER HARMLESS FROM ANY COST, EXPENSE, OR LIABILITY INCURRED BY LENDER ARISING OUT OF ANY CLAIM THAT LENDER HAS ANY OBLIGATION OR IS RESPONSIBLE FOR THE MANAGEMENT, OPERATION, OR CONDUCT OF THE BUSINESS AND AFFAIRS OF BORROWER OR GUARANTORS OR AS A RESULT OF ANY CLAIM THAT LENDER HAS ANY OBLIGATION OR IS RESPONSIBLE FOR THE PAYMENT OR PERFORMANCE OF ANY INDEBTEDNESS OR OBLIGATION OF BORROWER OR GUARANTORS.**

9.3 **Lender/Borrower Relationship.** No term or condition of this Agreement or of any of the other Loan Documents should be construed to establish a joint venture, partnership, or agency relationship between Borrower and Lender. **BORROWER AGREES TO DEFEND, INDEMNIFY AND HOLD LENDER HARMLESS FROM ANY LIABILITY, LOSS, COST, OR EXPENSE INCURRED BY LENDER AS A RESULT OF ANY ASSERTION OR CLAIM AGAINST LENDER FOR THE PAYMENT OR PERFORMANCE OF ANY INDEBTEDNESS OR OBLIGATION OF BORROWER; INCLUDING WITHOUT LIMITATION, ANY CLAIM FOR PAYMENT OR PERFORMANCE MADE BY ANY CONTRACTOR, SUBCONTRACTOR, LABORER, OR SUPPLIER IN CONNECTION WITH THE CONSTRUCTION OF ANY IMPROVEMENTS ON THE MORTGAGED PROPERTY.**

ARTICLE X Partial Releases

10.1 **Partial Releases.** Provided no Event of Default or Potential Event of Default exists under this Agreement or any of the other Loan Documents, Lender will grant partial releases of Vacant Lots and Houses from the lien of the Deed of Trust, upon the occurrence of all of the following conditions precedent:

(a) Borrower delivers a written request to Lender for the partial release accompanied by a partial release form that is satisfactory to Lender, in Lender's sole and absolute discretion.

(b) Payment to Lender of the Partial Release Price (as defined in Section 10.2 below) applicable to the Vacant Lot or House requested to be released.

(c) Payment to Lender of any costs and expenses incurred by Lender in connection with the partial release.

10.2 **Partial Release Price.** The Partial Release Price will be equal to the amount shown on Lender's records to be the outstanding principal balance of the Loan attributable to the Vacant Lot or House requested to be released plus all accrued but unpaid interest thereon. Lender records will be conclusive evidence of the amount of the outstanding principal balance of the Loan attributable to the Vacant Lot or House requested to be released plus all accrued but unpaid interest thereon.

ARTICLE XI Miscellaneous

11.1 **Successors and Assigns.** This Agreement is binding upon, and inures to the benefit of Borrower and Lender and their respective heirs, legal representatives, successors and assigns; provided, however, that Borrower may not assign any rights or obligations under this Agreement without the prior written consent of Lender.

11.2 **Headings.** All Article and Section headings are for convenience of reference only and will in no way affect the interpretation of this Agreement. All references in this Agreement to Section numbers refer to Section numbers in this Agreement, unless a different document is described, in which case the Section number refers to that Section number in the document described.

11.3 **Survival.** The provisions of this Agreement will survive the execution of all instruments described in it, will continue in full force and effect until the Loans have been paid in full and will not be affected by any investigation made by any party.

11.4 **Applicable Law.** **THIS AGREEMENT IS GOVERNED BY AND SHOULD BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. COURTS WITHIN THE STATE OF TEXAS WILL HAVE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN BORROWER AND LENDER, WHETHER IN LAW OR EQUITY, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL DISPUTES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT; AND VENUE IN ANY SUCH DISPUTE WHETHER IN FEDERAL OR STATE COURT SHALL BE IN « 6 » COUNTY, TEXAS.**

11.5 **Notices.** All notices or other communications required or permitted to be given pursuant to this Agreement must be in writing and will be considered as properly given if (i) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, or (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee. Notice so mailed is effective upon its deposit with the United States Postage Service or any successor thereto; notice sent by such a commercial delivery service is effective upon delivery to such commercial delivery service; notice given by personal delivery is effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the designated address of the intended addressee. For purposes of notice, the addresses of the parties are the addresses shown on page 1 of this Agreement; provided however, either party may change its address for notice to any other location within the continental United States by giving thirty (30) days' notice to the other party in the manner described above.

11.6 **Reliance by Lender.** Lender is relying and is entitled to rely upon each of the provisions of this Agreement. If any provision or provisions of this Agreement are held to be invalid or ineffective, all of the other provisions of this Agreement will continue in full force and effect.

11.7 **Limitation on Interest.** It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with applicable Texas law 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) and that this section shall control every other covenant and agreement in this Agreement. If the applicable law is ever judicially interpreted so as to render usurious any amount called for under the Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Indebtedness evidenced or secured by the Loan Documents, or if Lender's exercise of the option to accelerate the maturity of the Note, 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 shall be credited to the principal balance of the Note and all other Indebtedness (or, if the Note and all other Indebtedness have been or would thereby be paid in full, refunded to Borrower), and the provisions of the Note and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law. 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 stated term of the indebtedness until payment in full so that the rate or amount of interest on account of the Indebtedness does not exceed the Maximum Lawful Rate (as defined in the Note) from time to time in effect and applicable to the Indebtedness for so long as the Indebtedness is outstanding. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to the Loans. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Lender 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.

11.8 **Construction.** All pronouns, whether in masculine, feminine, or neuter form, will be deemed to refer to the object of such pronoun whether same is masculine, feminine, or neuter in gender, as the context may suggest or require. All terms used in

this Agreement, whether they are capitalized defined terms or not, and whether used in singular or plural form, are deemed to refer to the object of such term whether it is singular or plural in nature, as the context may suggest or require.

11.9 **Controlling Document.** In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of any other Loan Document, the terms and conditions of this Agreement shall control. This Agreement supersedes and replaces any commitment letter, term sheet or other written correspondence between Borrower, Guarantors, and Lender prior to the date of this Agreement.

11.10 **Time of Essence.** Time is of the essence with respect to all provisions of this Agreement and the other Loan Documents.

11.11 **Waiver.** No course of dealing and no delay or omission by Lender in exercising any right or remedy under this Agreement or with respect to any Loan Document shall operate as a waiver thereof or of any other right or remedy, and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy. Lender may remedy any Potential Event of Default or Event of Default by Borrower without waiving same and without waiving any prior or subsequent Potential Event of Default or Event of Default, and Lender shall be reimbursed by Borrower for any and all of its expenses in so remedying such Potential Event of Default or Event of Default. All rights and remedies of Lender under this Agreement are cumulative.

11.12 **Waiver of Jury Trial.** BORROWER, LENDER, AND ANY GUARANTORS EACH WAIVE ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION, OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, THE LOAN DOCUMENTS, OR THE LOANS, OR (B) IN ANY WAY CONNECTED WITH, PERTAINING OR RELATED TO, OR INCIDENTAL TO ANY DEALINGS OF LENDER AND/OR BORROWER WITH RESPECT TO THE LOAN DOCUMENTS OR IN CONNECTION WITH THIS AGREEMENT OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES UNDER THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, OR APPLICABLE LAW, OR THE CONDUCT OR THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. BORROWER, LENDER, AND ANY GUARANTORS AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED AGREEMENT OF BORROWER, GUARANTORS, AND LENDER IRREVOCABLY TO WAIVE THEIR RIGHTS TO A TRIAL BY JURY AS AN INDUCEMENT TO ENTER INTO THIS AGREEMENT AND MAKE THE LOANS, AND THAT ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN BORROWER AND LENDER OR GUARANTORS OR LENDER SHALL INSTEAD TO TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

11.13 **ENTIRE AGREEMENT.** THIS LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS 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, THIS INSTRUMENT MAY BE AMENDED ONLY BY AN INSTRUMENT IN WRITING EXECUTED BY THE PARTIES TO IT.

“x”ed if applicable:

____ **Prior Guidance Line Replaced**

12.1 **Prior Guidance Line.** A revolving line of credit (the "Prior Guidance Line") for residential construction financing has previously been provided to Borrower by Lender. The Prior Guidance Line was evidenced by among other documents the following (the "Prior Loan Documents"):

- (a) Master Construction Loan Agreement (the "Prior Loan Agreement") dated _____ executed by Lender and Borrower.
- (b) Master Promissory Note dated _____ in the original face amount of _____ executed by Borrower payable to Lender (the "Prior Note").
- (c) Numerous Master Deeds of Trust executed by Lender and recorded in various counties in the State of Texas (the "Prior Master Deeds of Trust").
- (d) Numerous individual Short Form Deeds of Trust executed by the Borrower at various times pursuant to the Prior Loan Agreement and recorded in various counties in the State of Texas (the "Prior Short Form Deeds of Trust").
- (e) One or more Notices of Invalidity of Oral Agreements (the "Prior Notice").
- (f) Various Certificates and Resolutions authorizing the transactions contemplated by the Prior Loan Documents (the "Prior Certificates and Resolutions").
- (g) Guaranty Agreement dated _____ executed by Guarantors (the "Prior Guaranty").

12.2 **Amendment and Restatement.** This Agreement is intended to be a complete amendment and restatement of the Prior Loan Agreement and all amendments to it. The Prior Loan Agreement, all amendments to it, and all other documents replaced and supplanted by the Prior Loan Agreement are completely replaced and supplanted by this Agreement and they have no further force or effect.

12.3 **Renewal and Extension.** The indebtedness evidenced by the Loan Documents is given in renewal and extension of the unpaid balance of the Prior Guidance Line and all of the liens, rights, assignments, and security interests securing it, including without limitation, those created, made, or granted by the Prior Loan Documents, all of which are now owned and held by Lender and which Borrower expressly acknowledges to be valid and existing against the portions of the Mortgaged Property described therein.

12.4 **Deeds of Trust.** The term "Deeds of Trust" as used in this Agreement includes the Prior Master Deeds of Trust and the Prior Short Form Deeds of Trust described herein.

12.5 **Loan Documents.** The term "Loan Documents" as used in this Agreement includes (a) the Prior Short Form Deeds of Trust listed and the Prior Master Deeds of Trust incorporated into the Prior Short Form Deeds of Trust by reference, (b) the Prior Notice, and (c) the Prior Certificates and Resolutions.

12.6 **Indebtedness.** The term "Indebtedness" as used in this Agreement includes all indebtedness owed by the Borrower to Lender that is evidenced by, secured by, or created in connection with the Prior Loan Documents.

12.7 **Mortgaged Property.** The term "Mortgaged Property" as used in this Agreement includes all Vacant Lots and Houses described in the Prior Short Form Deeds of Trust reference herein.

Other Terms and Conditions:

EXECUTED to be effective as of _____, 20__.

BORROWER:

By: _____
Printed Name: _____
Title: _____

GUARANTORS:

LENDER:

By: _____
Name: _____
Title: _____

Exhibit A

**LOAN APPLICATION
(Pursuant to Master Construction Loan Agreement)**

_____ ("Lender") has extended a guidance line of credit to _____ ("Borrower", whether one or more). The guidance line is evidenced by, in addition to other documents, a Master Promissory Note (the "Note") dated _____ in the original face amount of _____ and a **Master Construction Loan Agreement** (the "Loan Agreement") between Borrower and Lender. Borrower requests that Lender approve the following request for loan funding pursuant to the terms of the Master Construction Loan Agreement:

Property Address: _____

City: _____ State: Texas Zip: _____

Legal Description:

Lot: _ Block: _____ Addition: _____

County: _____

Requested Loan Amount: \$ _____

Pursuant to the terms of the Master Construction Loan Agreement Borrower intends the requested loan to be categorized as a:

Type of Loan: _____ Pre- Sold Home _____ Spec Home _____ Model Home _____ Inventory Lot

If Lender approves this Loan Application, Borrower agrees to pay the following fees in addition to the common and customary title company and recording fees:

Origination Fee to Lender:

Per Master Construction Loan Agreement

for Pre-Sold Houses a loan origination fee equal to _____% of each approved loan amount.

for Spec Houses a loan origination fee equal to _____% of each approved loan amount.

for Model Houses a loan origination fee equal to _____% of each approved loan amount.

for Vacant Lots a loan origination fee equal to _____% of each approved loan amount.

Date of Request: _____/_____/_____

Borrower Name: _____

By: _____

Name: _____

Title: _____

Lender's Approval or Denial of Loan Application

The foregoing Loan Application is:

_____ approved for \$ _____

_____ denied

Lender: _____

By: _____

Name: _____

Title: _____

Exhibit B

**EXTENSION REQUEST
(Pursuant to Master Construction Loan Agreement)**

_____ ("Lender") has extended a guidance line of credit to _____ ("Borrower", whether one or more). The guidance line is evidenced by, in addition to other documents, a Master Promissory Note (the "Note") dated _____ in the original face amount of _____ and a **Master Construction Loan Agreement** (the "Loan Agreement") between Borrower and Lender. Borrower requests that Lender extend the Principal Payment Date pursuant to the terms of the Master Construction Loan Agreement:

Property Address: _____

City: _____ State: Texas Zip: _____

Legal Description:

Lot: _ Block: _____ Addition: _____

County: _____

Commitment Amount: \$ _____

Current Principal Balance: \$ _____

At time of Loan Approval the property was categorized as a:

Type of Loan: _____ Pre- Sold Home _____ Spec Home _____ Model Home _____ Inventory Lot

If Lender approves this Extension Request, per the terms of the Master Construction Loan Agreement, Borrower agrees to make the following required Principal Reduction and pay the following fees in addition to the common and customary title company and recording fees:

Extension Fee to Lender: \$ _____

Principal Reduction \$ _____

Date of Request: _____/_____/_____

Borrower Name: _____

By: _____

Name: _____

Title: _____

Lender's Approval or Denial of Extension Request

The foregoing Extension Request is:

_____ approved. The Principal Payment Date for this property is extended by _____ months.

_____ denied

Lender: _____

By: _____

Name: _____

Title: _____

Exhibit E

After recording return to:

**SHORT FORM DEED OF TRUST,
SECURITY INSTRUMENT AND FINANCING STATEMENT**

This Short Form Deed of Trust, Security Agreement, and Financing Statement ("Deed of Trust") is entered into by _____ (Grantor, whether one or more) whose address is _____ for the benefit of _____ ("Lender").

ARTICLE I-DEFINITIONS

1.1 **Definitions.** As used herein, the following terms shall have the following definitions. If any of the following terms are also defined in the Master Deed of Trust and there are conflicts or inconsistencies between the definitions, the definitions contained in this Section 1.1 shall control.

Indebtedness: The term "indebtedness" as used in this instrument means (i) "Indebtedness" as defined in the Master Deed of Trust and (ii) "Indebtedness" as defined in the Loan Agreement.

Land: The real property described as:

together with all right, title, interest, and privileges of Grantor in and to (a) all streets, ways, roads, alleys, easements, right-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to such real property or the improvements thereon; (b) any strips or gores of real property between such real property and abutting or adjacent properties; (c) all water and water rights, timber, and crops pertaining to such real property; and (d) all appurtenances and all reversions and remainders in or to such real property.

Lender: _____ whose address is _____, its successors and assigns, and the subsequent holder or holders, from time to time, of the Note.

Loan Agreement: A Master Construction Loan Agreement dated _____ executed by Lender and _____ ("Borrower", whether one or more) in connection with the Note as it may have been or may be from time to time amended, restated, modified, or supplemented.

Master Deed of Trust: A Master Deed of Trust recorded on the following file date by Michael H. Patterson, Attorney as a master form deed of trust under the following instrument number, volume and page, or film code number of the Real Property Records of the following county in the State of Texas which is incorporated into this Deed of Trust by reference for all purposes:

County Filing Date Instrument Volume Page Film Code

Pursuant to Section 12.009(d) of the Texas Property Code, Grantor acknowledges that a true and correct copy of the Master Deed of Trust has been given to Grantor by Lender, and that this signed instrument shall be deemed conclusive evidence of Grantor's receipt thereof.

**SHORT FORM DEED OF TRUST,
SECURITY INSTRUMENT AND FINANCING STATEMENT**

Note: A Master Promissory Note evidencing a revolving line of credit extended by Lender to Borrower, dated _____ in the original face amount of _____ executed by Borrower and payable to the order of Lender, together with any and all renewals, modifications, rearrangements, reinstatements, enlargements, or extensions of such Promissory Note and any promissory note or notes given in renewal, substitution, or replacement therefore. The term "Note" as used in this Deed of Trust also has the meaning ascribed to it in the Master Deed of Trust.

Permitted Exceptions: The building setback lines, easements, restrictions, and other matters (if any) that exist on the date of this Deed of Trust that affect title to the Land to the extent consented to in writing by Lender. The term "Permitted Exceptions" never includes any lien or security interest of any type whatsoever.

Trustee: _____, whose address is _____.

1.2 **Additional Defined Terms.** All capitalized terms used in this Deed of Trust which are not specifically defined in it has the meanings ascribed to such terms in the Master Deed of Trust.

ARTICLE II-GRANT

2.1 **Grant.** To secure the full and timely payment of the Indebtedness (including without limitation, the Note) and the full and timely performance and discharge of the Obligations, Grantor has GRANTED, BARGAINED, SOLD, and CONVEYED, and by these presents does GRANT, BARGAIN, SELL, and CONVEY, unto Trustee, in trust, the Mortgaged Property, subject to the Permitted Exceptions, TO HAVE AND TO HOLD the Mortgaged Property unto Trustee forever and Grantor binds itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Trustee against every person whomsoever lawfully claiming or to claim the same or any part thereof; provided however, that if (a) the Indebtedness is paid as and when it becomes due and payable, (b) the Obligations are fully performed and discharged on or before the date same are to be performed and discharged, and (c) all rights or options to request or obtain additional Advances under the Loan Agreement shall have terminated, then the liens, security interests, estates, and rights granted by the Loan Documents will terminate, otherwise they will remain in full force and effect. A certificate or other written statement executed on behalf of Trustee or Lender confirming that the Indebtedness has not been fully paid or that the Obligations have not been fully performed or discharged or that all rights or options to request or obtain additional Advances under the Loan Agreement has not terminated will be sufficient evidence thereof for the purpose of reliance by third parties on such fact.

2.2 **Cross-Collateralization.** Grantor acknowledges and agrees that the liens, assignments, pledges, and security interests of each of the Short Form Deeds of Trust (including this Deed of Trust) secures all of the Indebtedness, which includes (without limitation) any and all of the Notes which are secured by any and all of the Short Form Deeds of Trust, and any and all renewals, increases, modifications, rearrangements, and extensions of such Notes and Short Form Deeds of Trust. Grantor acknowledges and agrees that all collateral under each of the Short Form Deeds of Trust (including this Deed of Trust) and the other Loan Documents also secures the repayment of all the Notes (including the Note described in this Deed of Trust) and the other Indebtedness and the performance of all the Obligations, regardless of whether or not the Indebtedness or Obligations arose out of or with respect to this Deed of Trust or the Note described in it. Furthermore, any Event of Default under any of the Short Form Deeds of Trust (including this Deed of Trust) or any of the Loan Documents will, at Lender's option, be an Event of Default under all of the Short Form Deeds of Trust (including this Deed of Trust) and all of the Loan Documents.

ARTICLE III-TERMS AND PROVISIONS

3.1 **Incorporation.** All of the terms and provisions of the Master Deed of Trust are incorporated into this Deed of Trust in their entirety by this reference. If there are any inconsistencies or conflicts between the terms of this Deed of Trust and the Master Deed of Trust, the terms of this Deed of Trust shall control.

3.2 **No Work.** No development, construction, or other work whatsoever has commenced on site at the Land and Grantor shall not allow anyone to commence any such development, construction, or other work until the next business day after this Deed of Trust is recorded in the county where the Land is located.

3.3 **Partial Releases.** Grantor will be entitled to have the Land described in Section 1.1 of this Deed of Trust released from the liens securing the Indebtedness when Grantor fully satisfies the terms and conditions of the Loan Agreement.

**SHORT FORM DEED OF TRUST,
SECURITY INSTRUMENT AND FINANCING STATEMENT**

ARTICLE IV-SECURITY AGREEMENT AND FINANCING STATEMENT

4.1 **Security Interest.** This Deed of Trust (a) shall be construed as a Deed of Trust on real property and (b) shall also constitute and serve as "Security Agreement" on personal property in the state in which the Mortgage Property is located with respect to the Personalty, Fixtures, Contracts, Leases, and Rents. To this end, Grantor grants, bargains, conveys, assigns, transfers, and sets over unto Trustee and Lender, a first and prior security interest in all of Grantor's right, title, and interest in, to, under, and with respect to the Personalty, Fixtures, Contracts, Leases, and Rents to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations. Grantor, as debtor, authorizes Lender, as secured party, to file all financing statements deemed necessary or advisable by Lender, in its sole and absolute discretion, to perfect the security interests granted by this Deed of Trust, the Master Deed of Trust, and any of the other Loan Documents in such form and with such content as Lender deems necessary or advisable in Lender's sole and absolute discretion. Grantor, as debtor, also ratifies and authorizes any financing statements filed in connection with the Note by Lender, as secured party, prior to the date of this Deed of Trust.

4.2 **Construction Mortgage and Fixture Filing.** This Deed of Trust secures future advances to be used for construction of improvements on the Land pursuant to the Loan Agreement. This Deed of Trust is a "construction mortgage" under the Code. This Deed of Trust shall also constitute a "fixture filing" for the purposes of the Code and other applicable law. Part of the Mortgaged Property is or will become fixtures. Information concerning the security interest granted by this Deed of Trust may be obtained from Grantor or Lender at the addresses set forth in this Deed of Trust.

[If Borrower is an organization add]

4.3 **Borrower Required Entity Information.** Pursuant to Texas Business and Commerce Code §9.516(b) requiring certain borrowing entity identification, Borrower represents that borrower is an organization and not an individual, is a _____(type of organization), the jurisdiction for the organization is _____, and the organization number for Borrower is:_____.

THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED IN EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENT OF THE PARTIES.

THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

EXECUTED to be effective as of _____, 20__.

GRANTOR:

By: _____

Printed Name: _____

Title: _____

STATE OF TEXAS §
COUNTY OF _____ §

This instrument was acknowledged before me on ____ day of _____, 200__, by _____, as _____ of _____, a _____, on behalf of said _____.

[S E A L]

Notary Public, State of Texas

My Commission Expires: _____

Printed Name of Notary Public

**SHORT FORM DEED OF TRUST,
SECURITY INSTRUMENT AND FINANCING STATEMENT**

Exhibit F

Lender: _____
Borrower: _____
Property: _____
Attorney: _____

**ATTORNEY REPRESENTATION NOTICE AND
DOCUMENT CORRECTION AGREEMENT**

This Attorney Representation Notice and Document Correction Agreement ("Agreement") is between Attorney and Borrower. Attorney has prepared the legal instruments involved in this loan using information supplied by the Lender and other third parties. Attorney has acted only on behalf of the Lender. Attorney and the Lender have not assisted or rendered legal advice to Borrower with respect to the loan or the Property securing it or the documents executed in connection with it. If Borrower has any questions about the meaning of any document or Borrower's legal rights, Borrower should retain independent legal counsel for advice in this transaction. Attorney may have prepared all or part of the following legal instruments affecting title to the Property: Deed (if a purchase transaction), Note, and Deed of Trust. Attorney has not conducted a title search on the Property, and makes no representation or warranty about condition of the title, access to the Property or any other matters that might be revealed from Borrower's examination of a survey, title information, or the Property itself. Borrower is cautioned to make sure the deed delivered to Borrower conveys what Borrower has contracted to purchase. As part of Borrower's obligation to pay the expenses of the Lender in connection with the preparation of the legal documentation, Borrower agrees to pay directly to Attorney at loan closing, the amount indicated on Attorney's invoice, unless Lender has noted otherwise in their closing instructions. The document preparation fee charged by Attorney is based on a per transaction charge rather than an hourly fee. This fee is intended to provide fair compensation for Attorney services, taking into consideration the time and labor required, the complexities of the questions involved, and the skill required to perform the services. Other considerations include Attorney expertise in the complexities of the real estate practice, the necessary overhead associated with the rendering of the services. Attorney represents Lender and only Lender in this transaction. If Attorney has prepared a draft deed, it has been at the request of Lender. Seller and Borrower are advised to consult their respective legal counsel with any questions before signing the draft deed. Attorney has provided the draft deed as a convenience only. IF THE DRAFT DEED ATTORNEY PREPARED IS USED, SELLER AND BORROWER (OR THEIR ATTORNEYS) SHOULD REVIEW AND AMEND IT, IF NECESSARY, TO MAKE CERTAIN THAT IT IS CONSISTENT WITH ANY SALES CONTRACT AND CORRECTLY REFLECTS THE CONDITION OF TITLE FOR THE PROPERTY AND THE OBLIGATIONS OF THE PARTIES TRANSFERRING RIGHTS TO REAL PROPERTY, AND IF APPLICABLE RESERVING CERTAIN RIGHTS. FOR EXAMPLE MINERAL INTERESTS, ARE AN INHERENTLY COMPLEX MATTER AND CONTEMPLATES THE INVOLVEMENT OF ATTORNEYS. IF APPLICABLE, THE DEED SHOULD BE AMENDED TO REFLECT ANY MINERAL OR OTHER RESERVATION. BE CERTAIN THAT THE DEED EXPRESSES THE INTENT OF SELLER AND BORROWER. Any other deed, or amendments to the draft deed, must be reviewed and approved by Attorney prior to its execution. To the extent Lender and Seller are the same, Attorney further represents Lender in its capacity as Seller for purposes of deed preparation only. Seller is signing this Agreement only to receive the notices and to assent to the terms contained herein. 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 agrees that, should a document be lost or misplaced, misstated or inaccurately reflect the true and correct terms and conditions with a demand on the original executed note. The documents Lender requests Borrower to execute, acknowledge, initial and deliver pursuant to this Agreement shall hereinafter be referred to as "Replacement Documents." Borrower agrees to deliver the Replacement Documents within ten (10) days after receipt by Borrower of a written request from Lender for such replacement. Borrower also agrees that upon the request of the Lender (including persons acting on behalf of the Lender) or settlement agent of the loan, upon the request of the Lender (including persons acting on behalf of the Lender) or Settlement Agent, Borrower 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 documents(s). Borrower's completed and accepted final application and any disclosures or loan agreement provided by Lender shall be evidence of Borrower's and Lender's intent regarding the agreed terms and conditions of the loan. If a replacement note is executed, the Lender hereby indemnifies the Borrower against any loss associated. Borrower will comply with Lender's reasonable request to supply additional documentation and/or to pay Lender any additional sums previously disclosed to Borrower as a cost or fee associated with the loan which for whatever reason was not collected at closing. The documents or fees Lender requests Borrower to provide pursuant to this Agreement shall hereinafter be referred to as "Additional Documents or Fees." Any request by the Lender, (including persons acting on behalf of the Lender) or settlement agent for any Additional Documents or Fees shall be prima facie evidence of the necessity for same. A written statement from Lender, (including persons acting on behalf of the Lender) or settlement agent, addressed to Borrower at the address indicated in the documentation shall be considered conclusive evidence of the necessity for said Additional Documents or Fees or corrections thereof. Borrower's failure or refusal to comply with the terms of the Lender's request may, at Lender's election, constitute a default under the note and/or mortgage/deed of trust and give Lender the option of declaring all sums secured by the loan documents immediately due and payable. If Borrower 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 agrees to be liable for any and all loss or damage which Lender sustains thereby including but not limited to all attorney's fees and costs incurred by Lender. This Agreement shall inure to the benefit of Lender's successors and assigns and be binding upon the heirs, devisees, personal representatives, successors and assigns of Borrower. Borrower and Seller hereby acknowledge receiving and reading a copy of this Agreement and

**ATTORNEY REPRESENTATION NOTICE AND
DOCUMENT CORRECTION AGREEMENT**

Exhibit F

affirm the accuracy of their respective statements contained herein.

(Borrower)

(Seller)

Exhibit G

Electronically Recorded

Tarrant County Texas

RECORDATION REQUESTED BY: Official Public Records

2005 Mar 03 02:16 PM

D205061130

TEXASBANK
Fort Worth Ridgmar
2525 Ridgmar Blvd
Fort Worth, TX 76116-4524

Suzanne Henderson

Fee: \$ 28.00

Submitter: ACS INC

Suzanne Henderson

WHEN RECORDED MAIL TO:

TEXASBANK
Ridgmar
PO Box 121459
Fort Worth, TX 76116

SEND TAX NOTICES TO:

[Redacted]
[Redacted]
Fort Worth, TX 76110

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

DEED OF TRUST

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

THIS DEED OF TRUST is dated March 3, 2005, among [Redacted] and [Redacted], whose address is [Redacted], Fort Worth, TX 76110 ("Grantor"); TEXASBANK, whose address is Fort Worth Ridgmar, 2525 Ridgmar Blvd, Fort Worth, TX 76116-4524 (referred to below sometimes as "Beneficiary"); and Vernon Bryant, whose address is 2525 Ridgmar Blvd, Fort Worth, TX 76116 (referred to below as "Trustee").

CONVEYANCE AND GRANT. For valuable consideration, Grantor conveys to Trustee in trust, with power of sale, for the benefit of Lender as Beneficiary, the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; and all easements, rights of way, and appurtenances; all water and water rights; and all other rights, royalties, and profits relating to the real property, including without limitation such rights as Grantor may have in all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in Tarrant County, State of Texas:

Lot [Redacted], Block [Redacted], Wedgwood, an Addition to the City of Fort Worth, Tarrant County, Texas, according to the Plat recorded in Volume 388-13, Page 35, Plat Records, Tarrant County, Texas.

The Real Property or its address is commonly known as [Redacted] Wedgmont Cir N, Fort Worth, TX 76133.

Grantor hereby absolutely assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

GRANTOR'S REPRESENTATIONS AND WARRANTIES. Grantor warrants that: (a) this Deed of Trust is executed at Borrower's request and not at the request of Lender; (b) Grantor has the full power, right, and authority to enter into this Deed of Trust and to hypothecate the Property; (c) the provisions of this Deed of Trust do not conflict with, or result in a default under any agreement or other instrument binding upon Grantor and do not result in a violation of any law, regulation, court decree or order applicable to Grantor; (d) Grantor has established adequate means of obtaining from Borrower on a continuing basis information about Borrower's financial condition; and (e) Lender has made no representation to Grantor about Borrower (including without limitation the creditworthiness of Borrower).

GRANTOR'S WAIVERS. Grantor waives all rights or defenses arising by reason of any "one action" or "anti-deficiency" law, or any other law which may prevent Lender from bringing any action against Grantor, including a claim for deficiency to the extent Lender is otherwise entitled to a claim for deficiency, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale.

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Deed of Trust, Borrower shall pay to Lender all indebtedness secured by this Deed of Trust as it becomes due, and Borrower and Grantor shall strictly perform all their respective obligations under the Note, this Deed of Trust, and the Related Documents.

PURPOSE OF LOAN. The Note in the amount of \$72,692.01 represents, in part or in whole, cash or other financial accommodations advanced or committed by Lender to Borrower on March 3, 2005 at Grantor's request, of which Grantor hereby acknowledges receipt.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Borrower and Grantor agree that Borrower's and Grantor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

D205061130

Exhibit H



WELCOME
TO THE OFFICIAL WEBSITE OF DALLAS COUNTY, TEXAS

Today is Thursday, January 26, 2006



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- [Assumed Names](#)
- [FAQs](#)

Dallas County Clerk

Cynthia Calhoun, Dallas County Clerk

Records Building . 2nd Floor . Dallas, Texas 75202 214. Main Telephone 653.7099 . Fax 214.653.7176

Experience to Lead the Courthouse into the 21st Century...
with a heart for the people of Dallas County.

As an attorney, with a career spent solving the problems of private sector and government clients, she has brought experience and leadership abilities to make the courthouse run as efficiently as a private sector business. Cynthia has brought skills to the table that will make our courts the most efficient in the State of Texas, with a small town friendly atmosphere.

Cynthia is a graduate of Southern Methodist University School of Law. She has also taught as an Adjunct Professor of Law at Southern Methodist University.



Exhibit H



WELCOME
TO THE OFFICIAL WEBSITE OF DALLAS COUNTY, TEXAS

Today is Thursday, January 26, 2006



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Dallas County Clerk

E-Filing Seminars

Records Building . 2nd Floor . Dallas, Texas 75202 214. Main Telephone 653.7099 . Fax 214.653.7176

If you would like the Dallas County Clerk, Cynthia Figueroa Calhoun, to provide an E-Filing presentation to your organization, please call Tracey Bauguss at 214-653-7096 to schedule the presentation.

For information on E-Filing presentations, please call Tracey Bauguss at 214-653-7096.

Exhibit I
ELECTRONIC RECORDING
MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is between Suzanne Henderson, Tarrant County Clerk, ("**CLERK**"), Tarrant County ("**COUNTY**"), Hart InterCivic, Inc. ("**ELECTRONIC RECORDING PROVIDER**"), and _____ ("**COMPANY**") with offices at _____.

Tarrant County desires to offer the recording of real property documents by electronic means providing for the receiving and transmitting of documents electronically in substitution for conventional paper based documents and to assure that transactions are not legally invalid or unenforceable as a result of the use of available electronic technologies, to the mutual benefit of the parties of the transactions.

For purposes of this Memorandum of Understanding, *Electronic Recording* is defined to be the electronically based submitting of documents from **COMPANY** to **COUNTY** and electronically based receipt of confirmation of recording from **COUNTY** to **COMPANY** based on the level of automation and structure of the transaction and is characterized by four different levels of automation and structure as follows:

Level 1 -- Submitting organizations transmit scanned image copies of ink signed documents to the county. The county completes the recording process in the same way as paper using the imaged copy as the source document. An electronic recording endorsement is returned to the organization in the form of a label or printing process in order for the submitting organization to append that information to the original paper document.

Level 2 -- Submitting organizations transmit scanned images of ink signed documents along with electronic indexing information to the county. The county performs an electronic examination of the imaged documents and indexing data, and then completes the recording process using the imaged copy and electronic indexing information. The electronic version of the recorded document is returned electronically to the submitting organization along with the electronic recording data.

Level 3 -- Submitting organizations transmit documents which have been created, signed and notarized electronically along with the electronic indexing information. Electronic signatures must comply with UETA and E-Sign specifications. The county performs an electronic examination of the electronic documents and indexing information then completes the recording process using the electronic documents. The electronic version of the recorded document and electronic recording data is returned to the submitting organization.

Level 4 -- Submitting organizations transmit "Smart" documents which are a single object containing the electronic version of the document in such a way that enables the electronic extraction of data from the object. Smart documents are required to be signed and notarized electronically. The Smart document is endorsed electronically by the county and returned in Smart document format to the submitting organization.

Program Eligibility

Title Insurance Companies, Mortgage Bankers, Full Service Banks and other trusted entities may, directly or through a trusted third party provider, submit real property records for Electronic Recording. Electronic Recording mandates a close working relationship as well as mutual trust between the **COUNTY, COMPANY, AND ELECTRONIC RECORDING PROVIDER**. All parties of the Electronic Recording transaction desire to operate and maintain a secure recording system that safeguards parties to recordation from deceit, fraud and forgery. This Memorandum of

Understanding outlines the procedures and rules for the trusted relationship between the parties involved in Electronic Recording in order to facilitate a safe and secure Electronic Recording relationship.

Participation in the Electronic Recording program is voluntary and the decision to do so is a business judgment.

There will be no added fees or costs of any kind charged by the **COUNTY** for Electronic Recording although **COMPANY** will be required to meet **COUNTY** requirements in order to record electronically.

County Requirements

The Electronic Recording Program of Tarrant County is defined by the requirements attached to this Memorandum of Understanding.

Attachment A defines the technical specifications including format, levels of recording supported, transmission protocols, and security requirements of the electronic records required by COUNTY. Company agrees to provide the transmission to the COUNTY following the specifications outlined. Company understands that the specifications may change from time to time. In the event changes to the specification are required, the COUNTY will provide a written notice to the Company within a reasonable timeframe.

Attachment B contains the document and indexing specifications for the Electronic Recording program. For each document, the COUNTY specific document code is provided along with the required indexing information. Any COUNTY specific editing rules will also be described in this attachment.

Attachment C contains the processing schedules and hours of operation for the Electronic Recording Program. No party shall be liable for any failure to perform processing of the transactions and documents where such failure results from any act of Nature or other cause beyond the party's reasonable control (including, without limitation, any mechanical, electronic or communications failure which prevents the parties from transmitting or receiving the electronic recording transactions. If the COUNTY system causes delays or power failures interfere with the normal course of business. By this agreement, COUNTY is assuming no contractual liability whatsoever for any failure to record any document, delay in recording any document, or for the quality or content or lack thereof of any document presented for recording.

Attachment D provides the payment options supported for the Electronic Recording program.

County Responsibilities

COUNTY shall attempt to protect the integrity of the Recordation process through ongoing monitoring of documents received and recorded through Electronic Recording means.

COUNTY shall work with **ELECTRONIC RECORDING PROVIDER** and **COMPANY** to install, configure, and administer necessary infrastructure components to facilitate Electronic Recording.

COUNTY shall test and maintain Electronic Recording software and hardware required to operate the Electronic Recording capability. COUNTY, however, shall be held harmless and not liable for any damages resulting from software or equipment failure and assumes no contractual liability for any damages whatsoever via any part of this document.

COUNTY shall institute security to authenticate verbal communications with.

COUNTY shall apply the same level of diligence in handling documents submitted electronically as those submitted through the normal manual process.

Electronic Recording Provider Responsibilities

ELECTRONIC RECORDING PROVIDER is responsible for providing, supporting, and maintaining Electronic Recording Software and internal Recording Software to **COUNTY**.

ELECTRONIC RECORDING PROVIDER shall ensure that Electronic Recording Software is secure and that once documents are received, that they remain immutable until such time as they are recorded. Limited to software executable and not the network environment provided by the **COUNTY**.

ELECTRONIC RECORDING PROVIDER shall work with **COMPANY**, and **COUNTY** to resolve issues encountered in the Electronic Recording process that are within the scope of the **ELECTRONIC RECORDING PROVIDERS** software.

ELECTRONIC RECORDING PROVIDER, through the Electronic Recording software, shall maintain an audit trail of documents received, ID received from, dates and times received, receipts received to **COMPANY** received, receipts transmitted, and any errors encountered.

Company Responsibilities

COMPANY shall work to insure that all security measures and credentials implemented are protected. **COMPANY** assumes all responsibility for documents submitted through unique credentials provided to **COMPANY** for the purposes of engaging in Electronic Recording.

COMPANY shall be diligent in ensuring that documents submitted for Electronic Recording have been checked before submission, for errors, omissions, scanning defects, illegible areas, and other deformities that would impact the validity of the document.

COMPANY acknowledges that Electronic Recording permits them to prepare, sign and/or transmit in electronic formats documents and business records and the document or records shall be considered as the "original" record of the transaction in substitution for, and with the same intended effect as, paper documents and, in the case that such documents bear a digital or electronic signature, paper documents bearing handwritten signatures.

By use of electronic or digital certificates to sign documents **COMPANY** intends to be bound to those documents for all purposes as fully as if paper versions of the documents had been manually signed.

By use of electronic or digital certificates to sign documents, **COMPANY** intends to be bound by those electronic signatures affixed to any documents and such electronic signature shall have the same legal effect as if that signature was manually affixed to a paper version of the document.

By use of digital certificates to seal electronic files containing images of original paper documents or documents bearing manual signatures, **COMPANY** shall recognize such sealed images for all purposes as fully as the original paper documents and shall be responsible for any failure by Users to comply with quality control procedures for assuring the accuracy and completeness of the electronic files.

The **COMPANY** and or its' employees attest to the accuracy and completeness of the electronic records and acknowledge responsibility for the content of the documents submitted through the Electronic Recording Program. **Should a dispute or legal action arise concerning an electronic transaction, the COUNTY will be held harmless and not liable for any damages.**

COMPANY is responsible for receiving receipt of documents recorded by **COUNTY** insuring that the source of the receipt is known to be the **COUNTY**. **COMPANY** is responsible for forwarding these documents to **COUNTY** insuring that the source of the documents is known to be the **COMPANY** who has been authenticated and that the documents to be recorded pass from **COMPANY** to **COUNTY** without modification. **COMPANY** must maintain an audit trail of all activity, available to **COUNTY** or **ELECTRONIC RECORDING PROVIDER**, at their request, to resolve issues or investigate potential fraudulent activity. The audit trail must contain, at a minimum, submitter ID, submitted content at point of receipt from **COMPANY**, submitted content as at point of delivery to **COUNTY**, dates and times submitted, size, and checksum.

COMPANY is responsible for supporting any technical issues associated with Electronic Recording. **COMPANY** shall work, in good faith, with **ELECTRONIC RECORDING PROVIDER**, and **COUNTY** to resolve issues with the Electronic Recording process.

COMPANY shall provide end user support to both **ELECTRONIC RECORDING PROVIDER** and **COUNTY** through which problems or issues can be reported and addressed. In the event that problem is determined to be with the Electronic Recording software and not the infrastructure provided the **COMPANY** shall work to resolve issues with **COUNTY** and **ELECTRONIC RECORDING PROVIDER**.

COMPANY is solely responsible for any and all costs of the system or services that enables **COMPANY** to meet the Electronic Recording Program requirements.

COMPANY is responsible for coordinating all technical problems and issues through **COUNTY**.

General Understandings

COUNTY will not incur any liability for the information electronically transmitted by the **COMPANY** to **COUNTY**.

COUNTY will not incur any liability for any breach of security, fraud or deceit as a result of Electronic Recording.

Neither the **COUNTY**, nor **COMPANY**, nor **ELECTRONIC RECORDING PROVIDER** shall be liable to the other for any special, incidental, exemplary or consequential damages arising from or as a result of any delay, omission or error in the Electronic Recording transmission or receipt.

The **COUNTY** and **COMPANY** will attempt in good faith to resolve any controversy or claim arising out of or relating to Electronic Recording through either negotiation or mediation prior to initiating litigation.

Any party may terminate this Memorandum of Understanding for any reason by providing 30 days written notice of termination.

The **COUNTY**, **ELECTRONIC RECORDING PROVIDER** and **COMPANY** acknowledges that the electronic recording process is an emerging technology and that State and National standards will continue to evolve. To further the technology and the electronic recording process, the **COUNTY** and **COMPANY** will meet once at 30 days and again at 120 days to discuss changes and additions to this Memorandum of Understanding.

Agreed and Accepted:

TARRANT COUNTY

HART INTERCIVIC, INC.

Suzanne Henderson, County Clerk

Date: _____

Date: _____

County Administrator's Office
Date: _____

[COMPANY]

Date: _____

Attachment A

Technical Specifications

Format of the transmitted File

PRIA file format standard will be used. Images will be in multi- page Group IV TIFF format. The can work with the ELECTRONIC RECORDING PROVIDER and COUNTY to provide additional fields (extensions) to the current PRIA standard.

Communications Protocol and Options

TCP/IP, HTTP and HTTPS

Security Framework

Encryption will be 128bit file and image encryption. SSL and user login/password will be employed. User passwords will be changed on a quarterly basis.

Returned File Format

PRIA file format standard will be used. Images will be in multi-page Group IV TIFF format.

Levels of Electronic Recording Supported

Level 2 and 3

Electronic Signatures and Use of Digital Certificates

The use of Electronic Signatures and Digital Certificates will not be used at this time. However, COUNTY reserves the right to revisit this at a later date with COMPANY. COMPANY acknowledges that Electronic Signatures and Digital Certificates will be used in the future and will work with COUNTY to accommodate their use.

Imaging Standards

***Documents will be scanned at 200dpi.
Documents will be scanned in portrait mode.
Document images will be captured as multi- page Group IV TIFF images.
Scanned documents will be legible. Legible in this instance means a clear, readable image – including signatures and notary seals – and in which all portions of each page are captured.
Document font size must meet PRIA minimum standards.***

Attachment B

Documents and Indexing Specifications

Documents shall be accepted for filing according to the provisions of Texas law and PRIA standards.

Attachment C

Service Offering

Hours of Operation

Documents may be submitted at any time during the week. Documents will only be processed on those days and hours that the COUNTY Recording Office is open to the public for business. Documents will not be processed on COUNTY holidays, weekends, "snow days", etc., or in the event of network or equipment failure. COUNTY will attempt to notify COMPANY of any disruption in service.

Processing Schedules

**Documents received prior to 3PM will be processed the same business day.
Documents received after 3PM may be processed the next working day.**

Turnaround Timeframe

Documents received prior to the times listed above will be processed (accepted or rejected) at those times.

Alternative Delivery Options

There are no other electronic delivery options at this time.

Return to Options

Submitted documents that are accepted for recording will be provided to the COMPANY in electronic format after acceptance. Confirmation of acceptance and recordation will be provided to the COMPANY in electronic format after recordation is complete. This confirmation will include the document image and COUNTY indexing data. COUNTY reserves the right to make changes to the index at a later date.

Submitted documents that are rejected will be returned to the COMPANY in electronic format after rejection, along with a description of the reason(s) for rejection.

Initially, reasons for rejections will be tabulated and discussed at 30 days and 120 days with the COMPANY.

Service Help Contact Information

COUNTY RECORDING CONTACTS:

**Paul Seaberry
817-884-1061
Pseaberry@tarrantcounty.com**

COMPANY BUSINESS CONTACT:

**[company name]
[name]
[telephone number]
[email address]**

COMPANY TECHNICAL CONTACT:

**[company name]
[name]
[telephone number]
[email address]**

COUNTY eRECORDING VENDOR:

**Hart Intercivic, Inc
Giuseppe Ferrigno
800-223-4278
gferrigno@hartic.com**

Attachment D

Payment Options

Payment Options

Escrow accounts are acceptable as the form of payment. Accounts will be summarized on a monthly basis. COMPANY will be responsible for maintaining adequate funds to enable e-Recording.

Requirements for each:

Escrow account must be in place in advance of any submissions.

Account Setup Procedures

Upon execution on the MOU, the COMPANY will submit funds in an amount no less than \$100.00 for initial deposit in the escrow account. COMPANY paying by ACH must contact Tarrant County Clerk Accounting to establish account. The CLERK will provide electronic deposit instructions necessary for funds settlement.

ACH Payments:

COMPANY agrees to settle account daily by submitting collections via ACH to the Tarrant County Clerk bank account. Company will provide all necessary reports in connection with ACH transactions.

Reporting and Reconciliation

COUNTY will be responsible for maintaining and reconciling their receipts. Documents will not be accepted if adequate funds are not available by escrow account balance. COMPANY will be responsible for submitting account information with each document batch, and for reconciling their records. COMPANY file number may be transmitted for COMPANY reconciliation purposes.

Exception Handling

Any discrepancy in fees discovered by COUNTY after document acceptance will be corrected by COUNTY within five county business days and COMPANY will be provided with a notification of the error.

Exhibit J

e-Recording available through PeirsonPatterson, LLP (www.ppdocs.com).

PeirsonPatterson, LLP (Arlington) has teamed up with leaders in the e-Recording industry allowing title companies and lenders the ability to electronically file and receive recording verification of real estate filings. The process now only takes a couple hours, instead of days or weeks. This service is available to any entity authorized to submit documents for recording in the perspective county.

What is recording?

Recording is the act of entering deeds, mortgages, easements, and other written instruments that affect title to real property into the public record. The purpose of recording is to give notice, to anyone who is interested, of the various interests that parties hold in a particular property. Recording determines the legal priority of instruments that affect title to a particular property.

What is "e-Recording"?

"e-Recording" is the same as traditional recording with one big difference. Instead of a person physically delivering or mailing the executed documents to the recording entity (County Clerk) and then waiting a long period of time before getting the recording information, the documents are delivered - with specific indexing data – electronically over the Internet. This allows the recording entity to assign the recording information in a timelier manner and return an image of the recorded documents with their recording information.

How does "e-Recording" work?

- After closing, the executed and notarized documents are scanned by either the title company or lender at 200dpi in TIFF or PDF format.
- Complete the required County indexing information via the e-Recording portal on www.ppdocs.com.
- The scanned documents are uploaded to www.ppdocs.com via HTTP protocol.
- The indexing information and scanned documents are submitted to the appropriate County.
- County records the document and returns an electronically stamped copy in a couple hours or less.

Who can use "e-Recording"?

Title insurance companies, mortgage bankers, full service banks, attorneys and other approved parties to record documents affecting the title to real property in the respected county are eligible to record documents electronically.

What type of documents are eligible for "e-Recording"?

The type of documents available for e-Recording vary by county. See the table below for an overview. However, some counties will allow additional types of documents to be e-Recorded. Electronically recorded instruments have not been fully embraced by large lenders. It is recommended that you contact your investor to verify that they will accept electronically recorded instruments.

How much does "e-Recording" cost?

You can e-Record your documents for the cost of the County's filing fees plus a \$10 convenience fee. PeirsonPatterson, LLP will bill you monthly for all filing fees and convenience charges for that month.

Exhibit J

Current list of Counties accepting e-Recordings for real estate transactions.

State	County	Deeds	Mortgages	Releases	Assignments	Availability
Arizona	Maricopa	Y	Y	Y	Y	Fall 2005
Colorado	Arapahoe-PT	N	N	Y	N	Fall 2005
	Boulder	Y	Y	Y	Y	Fall 2005
	Boulder - Public Trustee	N	N	Y	N	Fall 2005
	Douglas - Public Trustee	N	N	Y	N	Fall 2005
	El Paso	Y	Y	N	Y	Now
	Jefferson	Y	Y	Y	Y	Fall 2005
	Pueblo-PT	N	N	Y	N	Fall 2005
	Weld	Y	Y	Y	Y	Fall 2005
	Weld - Public Trustee	N	N	Y	N	Fall 2005
District of Columbia	Washington	Y	Y	Y	Y	Fall 2005
Florida	Bay	Y	Y	Y	Y	Fall 2005
	Broward	Y	Y	Y	Y	Fall 2005
	Duval	Y	Y	Y	Y	Fall 2005
	Orange	N	Y	Y	Y	Fall 2005
Illinois	Cook	Y	Y	Y	Y	Now
	Lake	Y	Y	Y	Y	Fall 2005
	Winnebago	N	Y	Y	Y	Now
Maine	Kennebec	Y	Y	Y	Y	Fall 2005
	York	Y	Y	Y	Y	Fall 2005
Massachusetts	Middlesex N	Y	Y	Y	Y	Now
Michigan	Ingham	N	Y	Y	Y	Fall 2005
	Macomb	Y	Y	Y	Y	Now
	Oakland	Y	Y	Y	Y	Fall 2005
	Ottawa	Y	Y	Y	Y	Now
Missouri	City St. Louis	N	Y	Y	Y	Fall 2005
New Hampshire	Merrimac	Y	Y	Y	Y	Fall 2005
New Jersey	Gloucester	Y	Y	Y	Y	Fall 2005
	Monmouth	N	Y	Y	Y	Fall 2005
North Carolina	Mecklenburg	N	N	Y	N	Fall 2005
	New Hanover	N	N	N	Y	Now
Oklahoma	Tulsa	Y	Y	Y	Y	Now
Pennsylvania	Philadelphia	N	N	Y	N	Fall 2005
Texas	Bexar	Y	Y	Y	Y	Fall 2005
	Brazoria	Y	Y	Y	Y	Fall 2005
	Dallas	Y	Y	Y	Y	Now
	Denton	Y	Y	Y	Y	Now
	Ft. Bend	Y	Y	Y	Y	Now
	Nueces	Y	Y	Y	Y	Fall 2005
	Tarrant	Y	Y	Y	Y	Now
	Webb	Y	Y	Y	Y	Fall 2005
	Williamson	Y	Y	Y	Y	Now
Virginia	Henrico	Y	Y	Y	Y	Fall 2005
	Spotsylvania	Y	Y	Y	Y	Fall 2005
Washington	King	N	Y	Y	Y	Now
	Pierce	N	Y	Y	Y	Fall 2005
	Snohomish	N	Y	Y	Y	Now
Wisconsin	Brown	N	Y	Y	Y	Fall 2005
	Dane	soon	Y	Y	Y	Fall 2005
	Milwaukee	N	Y	Y	Y	Fall 2005

**Guide to the PeirsonPatterson, LLP Online
Electronic Recording System
A guide to recording documents online**



Exhibit J

PeirsonPatterson, LLP | 2310 Interstate 20 West | Arlington | Texas | 76017 | 817.461.5500 phone | 817.856.6060
fax www.peirsonpatterson.com | www.ppdocs.com

E-Recording Homepage:

- Once you are logged into ppdocs.com click on the "E-Recording" link.
This will take you to the PPDocs.com E-Recording Homepage.
- This screen shows all active transactions. A transaction contains one or more documents to be recorded, their indexing information, their associated parties, and the legal description. Each transaction will be grouped into one of four categories: Drafted, Sent, Recorded, and Rejected. Each category is summarized as follows:
 - Drafted – The transaction has been started and information may have been entered, but it has not yet been sent to the county recorder.
 - Sent – The transaction has been sent to the county recorder and is waiting to be recorded.
 - Recorded – The transaction has been recorded by the county recorder.
 - Rejected – The transaction has been sent to the recorder but it has been rejected. Possible reasons for rejection include an invalid document image (not signed, unreadable, missing pages, incorrect size) or missing important indexing information. If one of your transactions has been rejected, you can open it and click on the "Rejection Information" link to determine the cause. Once the cause of the rejection has been rectified you can send the transaction again.
- You can delete a drafted or rejected transaction by checking the box next to the transaction name and clicking the "delete selected" button at the bottom of the table.
- Sent and recorded transactions cannot be deleted. You can archive a recorded transaction by selecting it and clicking the "Archive Transaction" button.
- Click on the "Search" link to search for transactions by certain criteria.
- To begin a new transaction click on the link that says "New Transaction"

E-Recording - Microsoft Internet Explorer

File Edit View Favorites Tools Help

Address <https://www.ppdocs.com/onsite/PPERRecord/ListTransactions.aspx> Go

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About Home Casefile Manager **E-Recording** Setup Logout

Options

- New Transaction
- Search
- Billing Report

Drafted Transactions

	Transaction Name	Last Updated	Type	County
No active transactions found.				
<input type="button" value="Delete Selected"/>				

Rejected Transactions

	Transaction Name	Last Updated	Type	County
<input type="checkbox"/>	Alviar-Titus	1/10/2006 9:41:55 AM	Refinance	Tarrant
<input type="checkbox"/>	BONITA GRAND HOMES	1/9/2006 2:59:53 PM	Refinance	Denton
<input type="checkbox"/>	Drumb	1/5/2006 4:39:27 PM	Refinance	Denton
<input type="checkbox"/>	4200 Buckingham	12/28/2005 11:39:11 AM	Refinance	Tarrant
<input type="button" value="Delete Selected"/>				

Recorded Transactions

	Transaction Name	Last Updated	Type	County
--	------------------	--------------	------	--------

Internet

Exhibit J

Adding a new E-Recording Transaction:

1. After clicking the “New Transaction” link, choose the county you want to record in and the transaction type. The list of allowable documents to record is based on the transaction type you choose here.
2. Now enter a name for this transaction. You may use whatever unique name you like
3. Click the “Add Transaction” button.

The screenshot shows a Microsoft Internet Explorer browser window titled "Add New E-Recording Transaction - Microsoft Internet Explorer". The address bar displays the URL: <https://www.ppdocs.com/online/PPERecord/AddTrans.aspx>. The page header for "peirsonpatterson, llp Attorneys at Law" is visible, with navigation links for "About", "Home", "Casefile Manager", "E-Recording", "Setup", and "Logout". A left sidebar contains an "Options" menu with a "Search" button. The main content area is titled "Add A New E-Recording Transaction" and contains the following form fields:

County	Tarrant, TX
Transaction Type	Assignment
Transaction Name	Jones Builders

Below the form fields is a button labeled "Add Transaction!". The browser's status bar at the bottom shows "Done" and "Internet".

4. The “Documents & Parties” screen shows the scanned documents that have been added to the transaction. As well as the Grantors and Grantees associated with each document.

Exhibit J

5. Click the "Add Document" button to add a new scanned image.

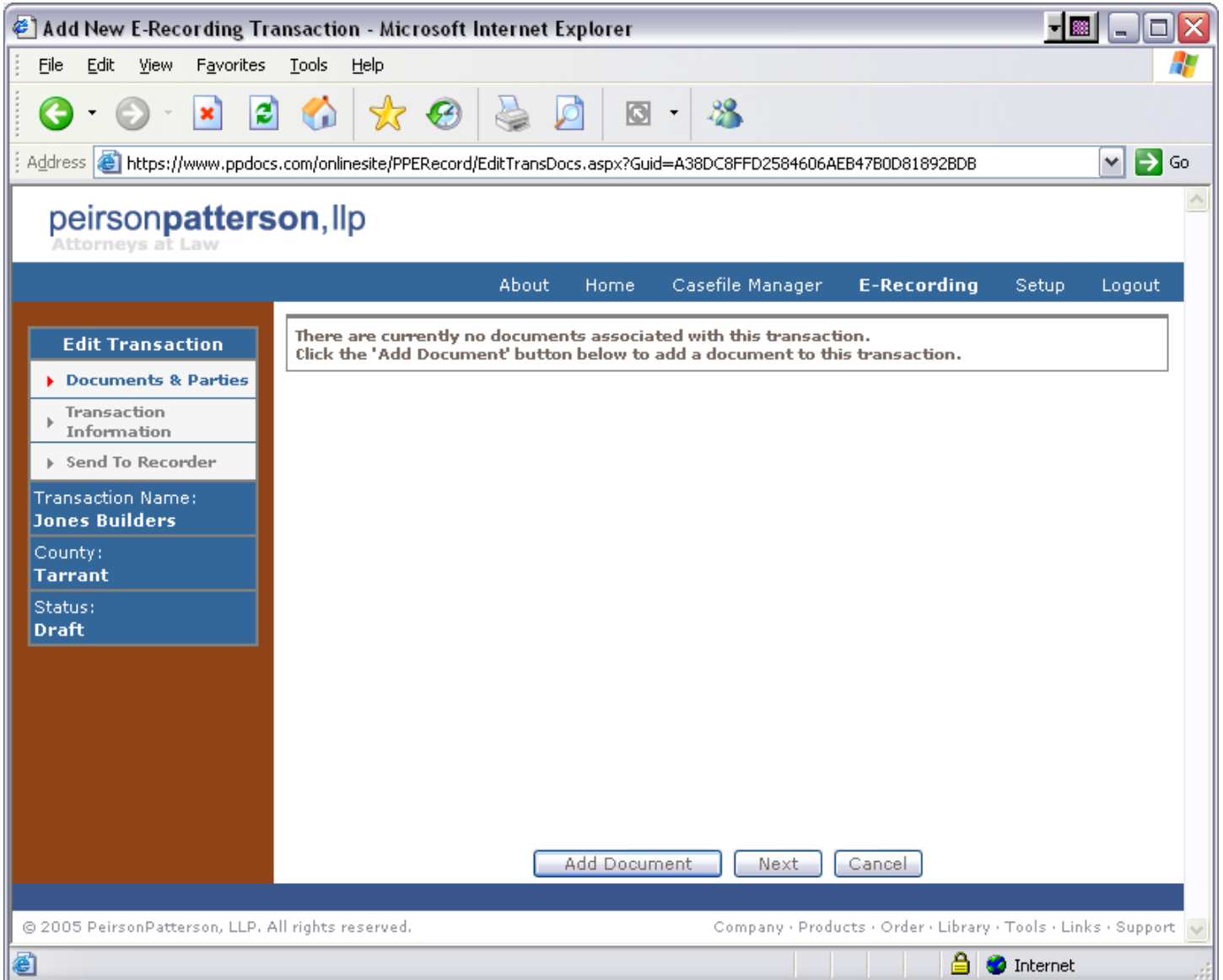


Exhibit J

6. A popup window will appear prompting you for document information.
7. Select the type of document in the Document Name list.
8. Enter the number of pages of the document.
9. Enter the execution date of the document.
10. Click on the browse button and open the scanned image of the document on your computer. The scanned image must be in .pdf or .tif format.
11. Once all the fields are complete click the "Add Document" button.

Add New Document

Document Name	Assignment Of Deed Of Trust	*
Number of Pages	8	*
Execution Date	01/10/2006	*
Filename	C:\jonesbuilders.tif	*

Browse...

- File must be of type '*.tif' Or '*.pdf'.
- Document image must legible.
- Document image must be upright.
- Document image must not have missing or blank pages.
- Document image must be signed and notarized.
- Document image must be smaller than 2000 KB.

Add Document Cancel

* = Required Field

Done Internet

Exhibit J

12. You will now see your document in list of transaction documents.
13. Under the Actions column you are given options to open the document, edit its properties, remove it from the list, or add parties to it.
14. At least one grantee and one grantor are required for each document.
15. Click the "Add Parties" button to add a new party.

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About Home Casefile Manager **E-Recording** Setup Logout

Edit Transaction

- Documents & Parties
- Transaction Information
- Send To Recorder

Transaction Name:
Jones Builders

County:
Tarrant

Status:
Draft

Document # 1			
Name	Execution Date	Pages	Actions
Assignment Of Deed Of Trust	1/10/2006	8	Open Edit Remove Add Parties

Parties No parties added to this document

Next Cancel

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Exhibit J

16. A popup window will appear prompting you for the party information:

The screenshot shows a web browser window titled "Party Information - Microsoft Internet Explorer". The main content area is a form titled "Add New Transaction Party". The form has the following fields and options:

- Party Type:** Radio buttons for "Grantee" (selected) and "Grantor".
- Capacity:** A text input field.
- Entity Type:** Radio buttons for "Organization" (selected) and "Individual".
- Company Name:** A text input field.
- Address 1:** A text input field.
- Address 2:** A text input field.
- County:** A text input field.
- Company Alias:** A text input field.
- City:** A text input field.
- State:** A dropdown menu.
- Zip:** A text input field.
- Alias Type:** A dropdown menu.

Below the form are two buttons: "Add Party" and "Cancel". At the bottom left, there is a red asterisk followed by the text "= Required".

17. Select the party type. If you have two parties of the same type they will need to be added separately. For example if there are two or more grantees, each will have to be added separately.
18. Select whether the party is an individual or organization and complete all required fields.
19. When you click "Add Party", the screen will disappear, and you will see your party added to the document on the table.
20. Once all required parties are added click "Next" to go to the "Transaction Information" screen.

Exhibit J

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About Home Casefile Manager **E-Recording** Setup Logout

Transaction Summary Show Advanced

Reference Information

Billing Reference Number

Associated Documents

Book (Volume) Type Instrument Number

Volume Number Page Number

Recording Date Original Mortgage Date

Transaction Legal Description

Lot Number Block Number

Subdivision Name

Next Cancel

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21. The Transaction Information screen allows you to enter additional information about the transaction. The billing reference number will be shown on your monthly invoice with this transaction. Associated Information may be required by some counties for certain documents. Complete the Associated Documents section if your document refers to another document that has already been recorded.
22. The Legal Description section contains information about the legal description of the property associated with the transaction. In most cases the lot number, block number, and subdivision name are required.
23. Some counties may require additional information about the transaction. If you click on the "Advanced" button you will be taken to an advanced version of this screen that allows you to enter consideration amounts and more detailed property information.
24. Click next to continue to the "Send To Recorder" screen.

Exhibit J

25. Enter your email address in the "Return To Address" field, check the box to agree to the legal terms, and click the "Send To Recorder" button.
26. If there are any problems with your transaction you will get an error message stating what needs to be corrected. Once corrections are made you can go back to this screen and send the transaction again
27. If there are no errors you will get a message saying the transaction has been sent.

The screenshot shows a Microsoft Internet Explorer browser window titled "Add New E-Recording Transaction - Microsoft Internet Explorer". The address bar displays "https://www.ppdocs.com/onlinesite/PPERecord/Send.aspx". The website header for "peirsonpatterson, llp Attorneys at Law" is visible, along with a navigation menu containing "About", "Home", "Casefile Manager", "E-Recording", "Setup", and "Logout".

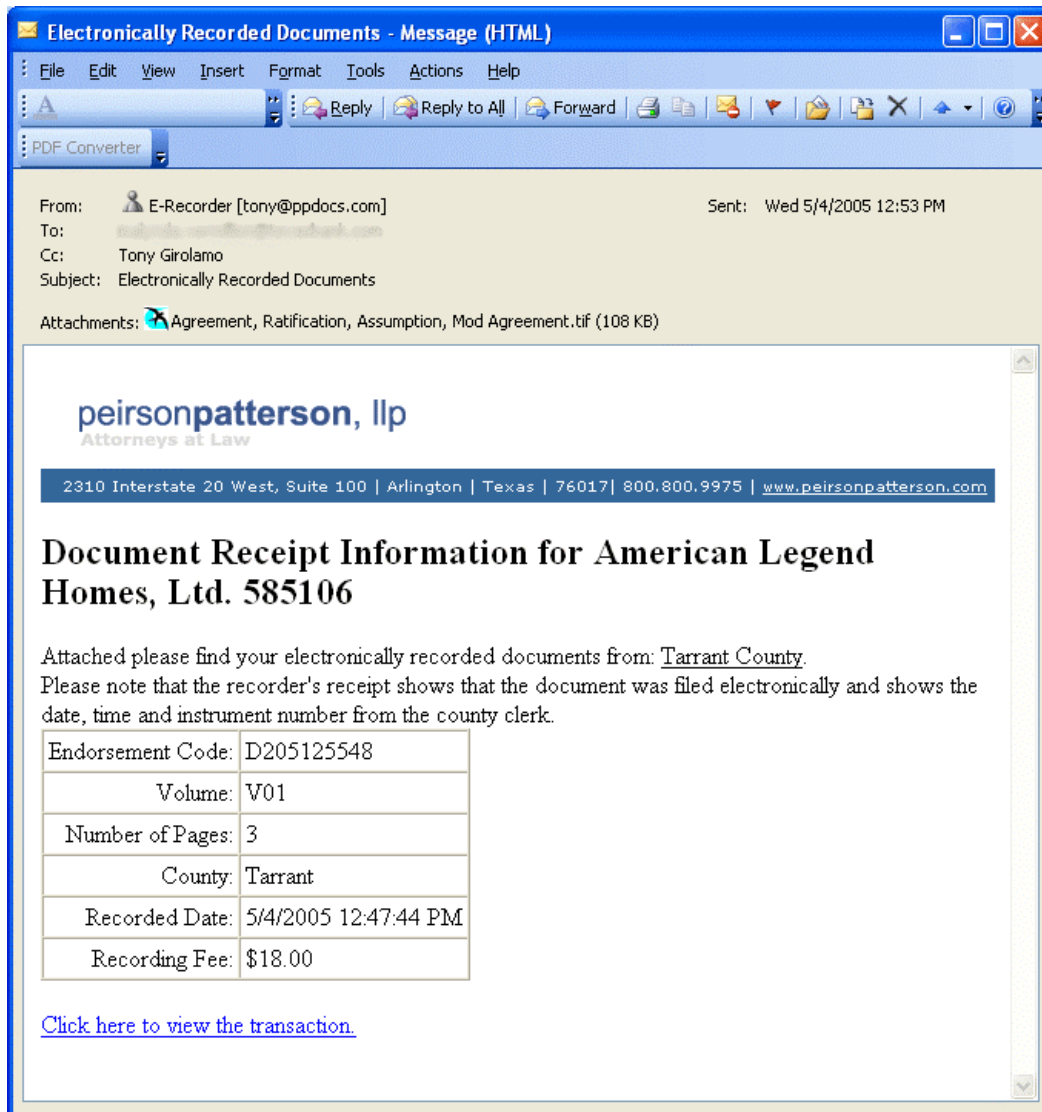
On the left side, there is a sidebar menu under "Edit Transaction" with options: "Documents & Parties", "Transaction Information", and "Send To Recorder" (which is highlighted). Below the menu, transaction details are listed: "Transaction Name: Jones Builders", "County: Tarrant", and "Status: Draft".

The main content area is titled "Send Transaction to Recorder". It features a text input field for "Return To Address:" containing "postclosing@abcbank.com". Below this is a disclaimer: "By clicking on the following button the information in this transaction will be sent to the recording office for this transaction. You will be charged the recording fee charged by this county as well as a \$5.00convenience charge. If this transaction is rejected by the county, you can return to edit any problems with the transaction and resubmit. You will not be charged for rejected transactions." A checkbox labeled "I agree to these terms." is checked. At the bottom of the form are two buttons: "Send To Recorder" and "Cancel".

The footer of the page contains the copyright notice "© 2005 PeirsonPatterson, LLP. All rights reserved." and a list of links: "Company", "Products", "Order", "Library", "Tools", "Links", and "Support". The browser's status bar at the bottom shows "Done" and "Internet".

Exhibit J

28. Once the transaction has been recorded by the county you will get an email with the recording information and the recorded document image.
29. You will be billed monthly for all successfully recorded documents.



If you have any other questions or need any additional help recording documents, please call 817-461-5500 and ask for "support".