

APPENDIX A

Sample Loan Commitment

SAMPLE LOAN COMMITMENT

_____, 199__

[LENDER]

Re: _____

Ladies and Gentlemen:

The undersigned submits this Application (this "Application") to _____ or its nominee ("Lender") for a mortgage loan (the "Loan") to be made on the following general terms and conditions:

A. Borrower: _____. [NOTE: provide/attach complete name of Borrower; whether a corporation, partnership (limited or general), limited liability company, or trust; state of formation; if a general partnership, an ownership chart showing its partnership structure, including its partners and their respective ownership interests; if a limited partnership, an ownership chart showing its partnership structure, including its general partners, limited partners and their respective ownership interests, and the partnership structure of the general partners of Borrower; if a corporation, its principal stockholders and their respective ownership interests; if a limited liability company, its members and their respective ownership interests; and if a trust, its designation and the beneficiaries. **LENDER TO CONSIDER SUBSTANTIVE CONSOLIDATION ISSUES.**] Borrower's sole asset shall be the Property (as defined in Paragraph G),

B. Borrower's Taxpayer Id. No.: _____.

C. Loan Amount: \$ _____.

D. Term: _____ [years] [months].

E. Interest Rate: [__% per annum, payable monthly in arrears] [_____ basis points over the average yield on _____ year United States Treasury Notes per annum, payable monthly in arrears (such rate to be determined and fixed as of the close of business the day when Lender receives from Borrower the signed Application, the Application Fee, Loan Fee and Due Diligence Fees required hereunder)].

[F. **Monthly Payments**: Borrower shall make monthly payments of interest only based on the outstanding Loan Amount calculated at the Interest Rate and commencing on the first day of the second full calendar month (the "First Payment Date") following funding of the Loan (the "Loan Closing") and on the first day of each subsequent month until maturity. In addition, an interest only payment shall be due and payable at the Loan Closing based on the actual number of days to elapse from the Loan Closing through and including the last day of the calendar month of the Loan Closing. Lender shall calculate interest based on a 360-day year and a 30-day month. In no extent will Lender receive interest in excess of that allowed by applicable state law.]

[F. **Monthly Payments:** Borrower shall make monthly payments or interest only based on the outstanding Loan Amount calculated at the Interest Rate and commencing on the first day of the second full calendar month (the “First Payment Date”) following funding of the Loan (the “Loan Closing”) and on the first day of each subsequent month through and including the _____ anniversary of the First Payment Date (the “Anniversary Date”). From and after the Anniversary Date, principal and interest shall be payable on the first day of the month following the Anniversary Date and on the first day of each subsequent month until maturity). Lender shall calculate such payments of principal and interest based on a _____ year amortization schedule. In addition, an interest only payment shall be due and payable at the Loan Closing, based on the actual number of days to elapse from the Loan Closing through and including the last day of the calendar month of the Loan Closing. Lender shall calculate interest based on a 360-day year and a 30-day month. In no extent will Lender receive interest in excess of that allowed by applicable stale law.]

[F. **Monthly Payments:** Borrower shall make monthly payments of principal and interest commencing on the first day of the second full calendar month (the “First Payment Date”) following funding of the Loan (the “Loan Closing”) and on the first day of each subsequent month until maturity. Lender shall calculate such payments of principal and interest based on a _____ year amortization schedule. In addition, an interest only payment shall be due and payable at the Loan Closing, based on the actual number of days to elapse from the Loan Closing through and including the last day of the calendar month of the Loan Closing. Lender shall calculate interest based on a 360-day year and a 30-day month. In no event will Lender receive interest in excess of that allowed by applicable stale law.]

G. **Security:** The Loan shall be secured by, inter alia,

1. a valid first lien on Borrower’s unencumbered fee simple interest in:

a. Real property containing _____ approximate [acres][square feet] located at _____ (the “Land”); [NOTE: provide complete property address]

b. [GENERIC IMPROVEMENTS: Improvements consisting of all buildings, structures, surface parking and other improvements of every kind and description now or hereafter erected on the Land (the “Improvements”);]

c. [OFFICE IMPROVEMENTS: Improvements consisting of a _____ -story [low-rise] [mid-rise] [high-rise] office building containing approximately _____ square feet of net leasable area, and all other structures, surface parking and other improvements of every kind and description now or hereafter erected on the Land (the “Improvements”);]

d. [APARTMENT IMPROVEMENTS: Improvements known as “_____” consisting of _____ [high-rise building(s)] [low-rise building(s)] [garden-type building(s)] containing _____ units and all other structures, surface parking, swimming pools, tennis courts, and other improvements of every kind and description associated with Borrower’s multi-family apartment complex, now or hereafter erected on the Land (the “Improvements”);]

2. a valid first-priority security interest in all Borrower's fixtures, equipment, goods, accounts and other articles of personal property (the Land, the Improvements and personal property are hereinafter collectively referred to as the "Property");

3. a first-priority assignment to Lender of Borrower's interest in the rents and all leases covering any portion of the Property (the "Leases");

4. any reserves required hereby; and

5. any and all cash and noncash proceeds of the foregoing.

H. Guarantor: _____ [Note: provide/attach complete names and addresses of Guarantor; if other than individuals provide/attach same information as required for Borrower. Lender to consider whether need net worth or "quick asset" tests; limits on debt or ability to transfer assets] Borrower and the Guarantor shall satisfy the requirements of the General Conditions in **Exhibit A** hereto.

I. Application Fee: \$ _____ in current funds or by certified check payable to Lender is enclosed with this Application (the "Application Fee"). The Application Fee is non-refundable and Lender may retain the entire Application Fee whether or not Lender accepts this Application. Borrower acknowledges that the Application Fee represents a reasonable fee for Lender to charge to compensate Lender for its time and effort in considering Borrower's loan request and reviewing this Application.

J. Loan Fee: In addition to the Application Fee, Borrower shall deposit with Lender within two (2) business days following receipt of this Application by Lender \$ _____ in current funds or by certified check payable to Lender (the "Loan Fee"). Borrower agrees that Lender may deposit the Loan Fee, and such deposit shall in no way lessen Borrower's obligation to close the Loan according to the terms of this Application. Lender may hold the Loan Fee free of trust as security for Borrower's obligations hereunder, and Lender may retain any interest earned on such fees. The Loan Fee shall be deemed earned by Lender as compensation for accepting this Application and shall not be returned to Borrower except as otherwise provided herein.

K. Prepayment Privilege: Subject to applicable law. Borrower may prepay the Loan in full, but not in part, on any Monthly Payment date upon giving Lender not less than one hundred eighty (180) days prior written irrevocable notice. Borrower acknowledges that if the Loan is prepaid before the maturity date and Lender is unable to collect the prepayment fee, Lender may suffer damages from the loss of income caused by its inability to obtain the yield it would have realized from the Loan. If Borrower elects to prepay the Loan, Borrower shall prepay the entire unpaid balance of the Loan with accrued interest and all other sums due at such time and a prepayment fee equal to (a) the present value, computed on a monthly basis as of the date of prepayment at the yield of The United States Treasury Bond or Note then outstanding with a maturity closest to that on the Loan (or if there is more than one United States Treasury Bond or Note with a maturity closest to that on the Loan, then, from among those, choose the United States Treasury Bond or Note with a coupon interest rate closest to that on the Loan), as reported in The Wall Street Journal (or if it is not then published, another similar journal selected by Lender) two (2) business days before the date of prepayment, of (i) The Monthly Payments from the date of prepayment to, but not including, the maturity date of the Loan; **plus** (ii) the aggregate principal and interest due on the maturity date of the Loan (assuming all Monthly Payments due before the date of prepayment were made when due); **minus** (b) the amount prepaid (assuming all Monthly Payments due

before the date of prepayment were made when due); provided, however, the difference of (a) minus (b) shall not be less than zero; **plus** (c) the amount, as reasonably estimated by Lender, of Lender's out-of-pocket costs in reinvesting the amount prepaid, including, transaction, processing, legal and brokerage costs and Lender's costs in terminating any servicing agreement related to the Loan. An example of the method utilized to calculate the prepayment fee is as follows:

Assume:

Loan Amount	\$1,000,000
Interest	10.00%
Term	5 years
Amortization	None
Monthly Payment	\$8,333.33
Treasury Bond Yield	7.50% (per Wall St. Journal)

Also, assume that 3 years have elapsed (i.e. there are 24 months to maturity) and the Loan is prepaid in full.

Then, according to the prepayment formula, PREPAYMENT is equal to the following:

a. The Present Value computed on a monthly basis of:

Monthly Payments from the date of prepayment, but not including the Maturity Date of the Loan

Plus

The aggregate amount of principal and interest due at the Maturity Date of the Loan

Present value = \$8,333.33 per month, for 23 months

PLUS

\$8,333.33 (interest) + \$1,000,000

(principal), 24th month, all

discounted at 7.5%

= \$1,046,296.64

Minus

b. The amount prepaid = \$1,000,000

Plus

c. Lender's out-of-pocket costs (in this case, assume no costs)

Therefore, PREPAYMENT FEE = a - b + c

$$= \underline{\$46,296.64}$$

The prepayment fee shall be due and payable if the Loan is paid before the maturity date of the Loan, whether by acceleration, refinancing or otherwise, except no prepayment fee shall be due upon the payment of the entire unpaid principal sum, with accrued and unpaid interest, made within ninety (90) days of the maturity date, or following Lender's applying any condemnation awards or insurance proceeds to reduce the principal sum after any casualty or condemnation affecting the Property. If for any reason the prepayment fee is deemed unenforceable, in whole or in part, Lender may pursue any other legal or equitable right or remedy now or hereafter available to Lender and Lender shall be entitled to recover an amount equal to the damages Lender will incur if the Loan is prepaid before the maturity date of the Loan.

L. Exhibits: Attached hereto are the following exhibits: General Conditions (Exhibit A), Special Provisions, if any (Exhibit B), List of Major Tenants, if any (Exhibit C), and Lender's Standard Insurance Certificate (Exhibit D), which are incorporated herein by reference and constitute a part of this Application.

M. Closing Costs: The Loan is to be closed without expense to Lender. Unless the Loan does not close due exclusively to Lender's default under the terms of this Application. Borrower shall pay all fees, commissions, costs, charges, taxes and other expenses incurred in making the Loan, including, but not limited to, the fees of Lender's In-house, local and/or special counsel, if any; title examination charges and title premiums for the mortgagee title policy; appraisal and engineering fees; recording fees; transfer taxes; revenue or documentary stamps; survey fees; and any and all other incidental expenses Lender incurs to perfect Lender's lien and security interests, such expenses shall be payable by Borrower whether or not the Loan Closing occurs.

N. Closing Date: The Loan shall close on or before [_____] [that date which is [forty-five (45)] days from the date of Lender's acceptance of this Application], on a date acceptable to Lender on not less than five (5) days' written notice to Borrower (the "Closing Date") at a location designated by Lender.

O. Appraisal, Environmental Audit and Engineer's Report. Borrower hereby authorizes Lender to obtain at Borrower's cost (i) a current appraisal of the Property (the "Appraisal"), satisfactory in methodology, form and substance to Lender, from a third party appraiser selected by Lender, (ii) an environmental audit of the Property, satisfying the conditions of Paragraph 10 of Exhibit A, from a licensed engineer or environmental consultant selected by Lender (the "Environmental Audit"), and (iii) a site engineering report, assessing the physical condition and structural integrity of the Property, from a structural engineer selected by Lender (the "Engineer's Report") (the Appraisal, Environmental Audit and Engineer's Report are called collectively the "Due Diligence Reports"). The Due Diligence Reports shall be subject to Lender's approval before the Closing Date. Enclosed with this Application, in addition to the

Application Fee, is \$ _____ (the "Due Diligence Fees") in current funds or by certified check payable to Lender. The Due Diligence Fees represent Lender's estimate of the cost of obtaining the Appraisal, the Environmental Audit and the Engineer's Report. At the Loan Closing, Lender will provide Borrower with a statement of the actual costs incurred to obtain the Due Diligence Reports and any overpayment or underpayment will be credited to or collected from Borrower, as the case may be, at that time. If Lender accepts this Application and the Loan does not close for any reason whatsoever, then promptly following Lender's determination of the actual cost of the Due Diligence Reports Lender shall return to Borrower the amount by which the Due Diligence Fees exceed the actual cost of the Due Diligence Reports or Borrower shall pay to Lender the amount by which the actual cost of the Due Diligence Reports exceeds the Due Diligence Fees, as the case may be.

P. Additional Information: Within five (5) days from the date this Application is submitted to Lender, Borrower shall provide Lender with the following items, all or which shall be current, correct and complete and subject to Lender's approval before the Closing Date:

1. true and exact copies of Borrower's organizational documents, including **[IN THE CASE OF A PARTNERSHIP]**: the Certificate of Formation filed with the appropriate offices of the jurisdiction governing Borrower's formation, Borrower's Partnership Agreement, the names of each partner of Borrower and their respective partnership interest, the organizational documents for each general partner of Borrower, and the organizational documents for all entities which directly or indirectly control the general partners of Borrower]; **[IN THE CASE OF A CORPORATION]**: the Articles of Incorporation of Borrower filed with the appropriate offices of the jurisdiction governing Borrower's incorporation, the Bylaws of Borrower, the Organizational Minutes of Borrower, the names of each shareholder of Borrower and the class and number of outstanding shares held by such shareholders]; **[IN THE CASE OF A LIMITED LIABILITY COMPANY]**: the Articles of Organization filed with the appropriate offices of the jurisdiction governing Borrower's formation, the Operating Agreement of Borrower, the organizational documents for each member of Borrower, and the organizational documents for all entities which directly or indirectly control the members of Borrower];

2. certified Financial Statements (which shall include, without limitation, an income and expense statement, a balance sheet and a statement of contingent liabilities) for the previous three (3) years for Borrower, Guarantor, [Borrower's and Guarantor's general partner(s),] any individual with an interest in Borrower and Guarantor [, Borrower's and Guarantor's general partner(s) or any partner thereof] and the Property;

3. Pro Forma Income and Expense Statement for the Property;

4. Income Tax Returns for the previous three (3) years for Borrower and Guarantor, [Borrower's and Guarantor's general partner(s),] and any individual with an interest in Borrower or Guarantor [or Borrower's or Guarantor's general partner(s) or any partner thereof];

5. Rent Roll and space leases and/or form lease for the Property;

6. Certified Construction Budget from the construction lender if the Improvements have been completed within the last three (3) years; and

7. Deed and Bill of Sale if the Property has been purchased within the last three (3) years.

Q. Borrower's Representations: In order to induce Lender to consider favorably this Application, Borrower represents and warrants (i) all information and statements furnished by or on Borrower's behalf in connection with this Application and all other materials from time to time submitted to Lender in connection with this Application are true, complete and correct (ii) no voluntary or involuntary petition for bankruptcy under applicable state or federal law has ever been filed by or against Borrower or any Guarantor, and neither Borrower nor any Guarantor has ever made any assignment for the benefit of creditors or sought or otherwise obtained relief under any other insolvency or other law for the protection of debtors; (iii) no voluntary or involuntary petition for bankruptcy under applicable state or federal law has ever been filed by or against any entity who directly or indirectly controls Borrower, is a principal of Borrower, is affiliated with Borrower, or is related to Borrower, and such entity has never made any assignment for the benefit of creditors or sought or otherwise obtained relief under any other insolvency or other law for the protection of debtors; (iv) there is no litigation, pending or to the best of Borrower's knowledge threatened against Borrower, any Guarantor or the Property which may result in a material adverse change in the finances, business, operations, affairs or prospects of Borrower, any Guarantor or the use or value of the Property; (v) neither Borrower, any Guarantor, nor any principal of Borrower is the subject of any pending criminal indictment or investigation, nor has been convicted of any felony; (vi) Borrower is not an "employee benefit plan" as defined in Section 3(3) of the Employment Retirement Income Security Act of 1974 ("ERISA") which is subject to Title I of ERISA, nor do Borrower's assets constitute "plan assets" of one or more such plans within the meaning of 29 CFR Secs. 2510.3-101 and (vii) Borrower is not a "governmental plan" within the meaning of Section 3(32) of ERISA, nor are transactions with Borrower subject to state statutes regulating investments of and fiduciary obligations with respect to governmental plans. Borrower agrees to provide Lender promptly with supplemental information with respect to material changes in any of the foregoing.

R. Loan Committee Approval. Borrower acknowledges and agrees that this Application shall be and is subject to the approval of Lender's loan committee in its sole and absolute discretion and, as such, is not binding on Lender until so approved for a period of up to forty-five (45) days from the date of Lender's receipt of a signed Application from Borrower. If Lender in its sole and absolute discretion does not accept this Application by signing and mailing a copy of this Application to Borrower by the end of said forty-five (45) day period, (i) Lender shall retain the Application Fee; (ii) Lender shall return to Borrower the Loan Fee; (iii) Lender shall return to Borrower the amount by which the Due Diligence Fees exceed the actual cost of the Due Diligence Reports or Borrower shall pay to Lender the amount by which the actual cost of the Due Diligence Reports exceeds the Due Diligence Fees, as the case may be; and (iv) this Application shall expire.

S. Default: If the Loan does not close for any reason, whether pursuant to Paragraph T or otherwise, then Lender's sole remedy shall be to retain the entire Application Fee and Loan Fee as liquidated damages (it being agreed by Borrower and Lender that it is now, and will be at the time of such failure to close, difficult or impossible to calculate the amount of Lender's actual damages due to its lost opportunity to make the Loan and that such liquidated amount represents reasonable compensation for Lender's loss). Notwithstanding the foregoing, Lender agrees that it shall return only the Loan Fee, less the fees of Lender's In-house, local and/or special counsel, if any, if Borrower's representations and warranties in Paragraph Q are true, current and complete, and (i) Lender's loan committee determines not to accept this Application or (ii) Lender fails to approve the Due Diligence Reports, the title commitment required under Paragraph 6 of Exhibit A, or the survey required under Paragraph 8 of Exhibit A].

T. Lender's Right to Terminate. Notwithstanding anything contained herein to the contrary, Lender shall not be obligated to close the Loan and shall be relieved of all obligation or liability to do so (i) if any material adverse change occurs in the finances, business, operations, affairs or prospects of Borrower or Guarantor (or that of any principal or partner of Borrower or Guarantor) or the Property, or any material adverse change occurs in the rental income from the Property, [the financial position of any tenant occupying one or more floors of the leasable area and any other tenant listed on Exhibit C (collectively, the "Major Tenants"),] or in any other feature of the transaction from that which existed on the date of this Application; (ii) if the Loan, or any other feature of the Loan transaction has been or is misrepresented by Borrower (as reflected in this Application, in the loan documents to be delivered pursuant to this Application, or otherwise); (iii) if Borrower or any Guarantor shall be involved in any criminal proceedings; (iv) if the Loan does not close in accordance with the terms of this Application on or before the Closing Date; (v) if Borrower (or any principal or partner of Borrower) breaches any covenant or obligation herein; or (vi) following acceptance of this Application by Lender, upon the failure of any other condition precedent contained herein to be satisfied.

Lender may accept this Application only by signing and mailing a copy of this Application to the undersigned at the address indicated below, at which time this Application shall constitute a binding and enforceable agreement for Lender to lend, and Borrower to borrow, all on the terms and subject to the conditions set forth herein and in the Exhibits.

By: _____ (SEAL)

Name:

Title:

BORROWER'S APPLICATION IS ACCEPTED THIS ____ DAY OF _____, 199 __, subject to the terms of the attached letter of even date.

By: _____ (SEAL)

EXHIBIT A

GENERAL CONDITIONS

1. **Loan Documents:** The loan documents shall consist of a promissory note or deed of trust note (“Note”) in the amount of the Loan, a first mortgage, deed of trust or deed to secure debt (“Indenture”) securing the Note, an assignment of leases and rents (“Assignment of Leases”), a guaranty and indemnity agreement (“Guaranty Agreement”) and any other customary security documents required by Lender or required in the jurisdiction where the Property is located (collectively, the “Loan Documents”). All instruments and documents evidencing or securing the Loan shall be on Lender’s standard forms and subject to the approval of Lender and its counsel.

2. **Late Charge and Default Interest Rate:** The Note will provide that if any Monthly Payment is not received on or before the date when due and payable, Borrower shall pay a late charge equal to five percent (5%) of the unpaid Monthly Payment. Upon a default, interest on the Loan shall accrue at the lesser of (i) the Interest Rate plus three percent (3%), or (ii) the highest interest rate permitted under applicable law (the “Default Rate”). If the Loan is accelerated, the entire amount of principal, interest and other charges due as of the date of acceleration shall bear interest at the Default Rate.

3. **Insurance:** Borrower shall maintain and deliver to Lender policies providing All Risk or Special Form perils insurance, including Replacement Cost with Agreed Amount Endorsement or equivalent, ordinance insurance, loss of rent insurance or business interruption insurance for a period of at least twelve (12) months, commercial general and excess or umbrella liability insurance written on an occurrence basis, earthquake insurance, flood insurance, boiler and machinery insurance and other appropriate insurance on the Property as Lender may reasonably require from time to time in amounts, form and substance reasonably satisfactory to Lender, with companies acceptable to Lender having a rating of at least A:X in A. M. Best Company’s Key Rating Guide and licensed to do business in the state where the Property is located. All policies shall provide or have attached a standard mortgage clause satisfactory to Lender and/or a provision naming Lender as an additional insured or lender’s loss payable, whichever is appropriate, to the policy in question, and shall also contain a clause providing that such policy may not be canceled, have its coverage reduced or materially changed without thirty (30) days prior written notice to Lender.

All certificate issued in support of the above requirements must be on Lender’s standard form attached as Exhibit D, and shall carry positive statements that the specific coverages requested are provided, state that these coverages are primary, not contributory nor excess over any other valid and collectible insurance, and state that the premiums for the insurance evidenced by the certificates have been paid in full for the first year following the Loan Closing.

All binders, original policies or certified copies of policies, endorsements, copies of certificates, and cancellation notices are to be sent to [Loan Officer].

4. **Disposition of Condemnation/Insurance Proceeds.** If, at any time during the term of the Loan, all or any part of the Property is taken in a condemnation proceeding or damaged by fire or other hazard, Borrower will make any condemnation or insurance proceeds available to Lender within five (5)

days of Borrower's receipt thereof for Lender to apply to principal reduction or property restoration or repair, at Lender's sole option. Any principal reduction from an early involuntary payment resulting from a condemnation proceeding or an insurance settlement will cause a pro rata reduction in debt service payments but shall not require payment of a prepayment premium.

Notwithstanding the foregoing, Lender agrees to make casualty insurance proceeds and condemnation proceeds, to the extent a condemnation or casualty requires actual repairs to or restoration of the Property, available to Borrower to restore or repair the Property, if:

- (a) not more than 30% of the then full replacement value of the Property and the Improvements is damaged or otherwise affected by the casualty or condemnation;
- (b) no default exists under the Loan Documents (and no event has occurred which, with the passing of time, or the giving of notice, or both, would constitute such a default);
- (c) Borrower demonstrates to Lender's satisfaction that Borrower has the financial ability to continue to pay the debt service on the Loan during the period of reconstruction or restoration from the proceeds of rent insurance or otherwise;
- (d) the restoration or repair is capable of being completed at least twelve (12) months before the Loan matures;
- (e) the funds necessary to restore the Property are deposited in and subject to an escrow/construction funding arrangement satisfactory to Lender; [and]
- (f) annual income from Leases, in place immediately before the casualty or condemnation and approved by Lender, [**FOR NON-RESIDENTIAL PROPERTY:** and which tenancies arising therefrom are expected to continue after the repairs and restoration are completed,] shall provide an annual debt service coverage ratio sufficient to satisfy Lender's then applicable underwriting requirements, [**FOR NON-RESIDENTIAL PROPERTY:** ; and
- (g) Lender has received evidence, in form and substance acceptable to Lender, from Major Tenants that such Major Tenants will remain tenants of Borrower after the repairs and restoration are completed.]

5. **Flood Hazard Certification:** If the Property is now or subsequently is determined to be located in a special flood hazard area, Borrower must furnish to Lender a Flood Hazard Insurance Policy in the amount of the Loan, with a standard mortgagee endorsement in favor of Lender. If the Property is not located in a special flood hazard area, Borrower shall furnish to Lender, within ten (10) business days from the date Lender accepts this Application, a written statement in form satisfactory to the Lender from Borrower's insurer to that effect.

6. **Title Insurance:** Within five (5) business days from the date Lender accepts this Application, Borrower shall provide Lender with a legal description of the Property, together with a commitment for a standard ALTA Loan Mortgagee title insurance policy to be issued at the Loan Closing insuring Lender in an amount equal to the Loan Amount, that the Indenture creates a valid first lien on the Property and that

Borrower has good and marketable title to the Property. The policy shall be in a form and issued by a title company satisfactory to Lender and its counsel, without any exception for creditor's rights unless such exception is otherwise agreed to by Lender, shall contain such terms, coverage, re-insurance or co-insurance as Lender shall deem acceptable, shall be subject only to those exceptions to title as are approved by Lender after receipt of legible copies of all documents constituting exceptions to title, and shall contain affirmative insurance on such matters as Lender may reasonably require. No title indemnities shall be established to cause the title insurance company to insure over any exceptions to title without first obtaining Lender's written approval, Lender shall also have the right to approve the amount of insurance provided by any primary insurer and to approve any companies providing reinsurance to the primary issuer.

7. **Security Interest:** Within five (5) business days from the date Lender accepts this Application, Borrower shall furnish a detailed schedule of all chattels, fixtures, accounts, equipment, furniture and furnishings Borrower uses to operate the property, and a Uniform Commercial Code and Judgment Search Certificate or other evidence satisfactory to Lender that Borrower's personal property will be free of any security interests or other liens at the time of the Loan Closing.

8. **Survey:** Within 5 (five) business days from the date Lender accepts this application, Borrower shall provide a current survey of the property satisfactory to Lender and certified to Lender and the title company by a registered surveyor. The survey shall be dated no more than thirty (30) days before the Loan Closing, shall conform with the "Minimum Standard Detail Requirements for Land Title Surveys" jointly established and adopted by ALTA and ACSM in 1992, and shall contain a surveyor's certificate in Lender's standard form.

9. **Plans and Specifications:** The Improvements (including grading, seeding, landscaping, and all other on-site and off-site improvements) shall have been completed according to detailed plans and specifications submitted or to be submitted to Lender within ten (10) business days following the date Borrower submits this application to Lender. Such plans and specifications are subject to the prior written approval of Lender and/or Lender's designated architect or representative. Neither Lender's review or approval of such plans or specifications, nor any subsequent inspection or review of the Property shall constitute a representation or warranty by Lender, or its agents, employees, representative or designee, as to the physical condition or any other aspect of the Property.

10. **Environmental Matters:**

(a) The Environmental Audit shall indicate the presence or absence of Hazardous Materials (as hereinafter defined), any friable asbestos or any underground or other storage tanks. The audit will state the scope and results of the investigation and audit of the Property and its vicinity and shall cover such matters as Lender deems reasonably appropriate to assess the risks of environmental liability resulting from owning and operating the Property and shall otherwise be satisfactory to Lender in all respects. If the report indicates the presence of such materials or matters on the Property, or affecting or potentially affecting the Property, the engineer or consultant shall indicate their nature, statutory controls over the removal process, if any, time and cost of removal, and their assessment of the risks to the environment after the removal process is complete. If Lender is dissatisfied with the results of the Environmental Audit, it will so notify Borrower that, in Lender's sole judgment, either (a) the condition can be rectified with reasonable expenditures of time and effort and Borrower will have the option either to correct the problem before the Loan Closing and furnish evidence thereof satisfactory to Lender from

the testing firm which performed the Environmental Audit or to cancel this Application; or (b) that in Lender's judgment the condition cannot be so rectified and the Application is therefore canceled by Lender. Notwithstanding anything in this Application to the contrary, Lender is under no obligation to make the Loan if the Property contains, is affected by or potentially may be affected by any such substances or matters in a condition or quantity deemed by Lender, in the exercise of its sole discretion, to be unsafe.

Borrower shall pay the costs of all environmental audits and follow-up reports required hereunder, including, without limitation, any laboratory analysis of suspected asbestos-containing materials or the cost of air sampling to the extent such analysis is necessary to make the required definitive statement.

(b) The Loan Documents will require a representation, warranty and covenant that [neither] Borrower [nor any general partner of Borrower] [has/has not], and, to the best of [Borrower's] [their] knowledge, and except as set forth in the Environmental Audit, no prior owner or current or prior tenant, subtenant, or other occupant of all or any part of the Property, has used Hazardous Materials on, from or affecting the Property in any manner that violates federal, state, or local laws, ordinances, rules, regulations or policies governing or relating to the protection of the environment or natural resources, or relating to emissions, discharges or releases of contamination into the environment, including, ambient air, surface water, groundwater or land, or otherwise pertaining to or imposing liability or standards of conduct concerning environmental regulation, contamination or clean-up (collectively, the "Environmental Laws"), and that to the best of [Borrower's] [their] knowledge, and except as set forth in the Environmental Audit, the Property complies with all Environmental Laws and does not contain any Hazardous Materials or underground storage tanks. Borrower [and its general partner(s)] shall also represent, warrant and covenant that (i) to the best of [Borrower's] [their] knowledge, and except as set forth in the Environmental Audit, the Property does not contain, and has not in the past contained, any asbestos containing material in friable form, and (ii) there is not current or potential airborne contamination of the Property by asbestos fiber, including any potential contamination that would be caused by maintenance or tenant finish activities in any building(s) located on the Property.

(c) The Loan Documents will contain a covenant by Borrower, any general partner of Borrower and Guarantor, as the case may be, to comply, and to cause all tenants and other persons on or occupying the Property to comply, with all Environmental Laws, to pay the costs of remedial work relating to Hazardous Materials, asbestos or underground storage tanks and to keep the Property free of liens created by the Environmental Laws. The Loan Documents will also require an agreement that Borrower, its general partner(s), and the Guarantor jointly and severally indemnify Lender against, and hold Lender harmless from, any and all loss, cost or expense that Lender may incur as a result of or in any way related to (i) Borrower's breach of covenants referred to in this Paragraph 10, (ii) the presence, disposal, release or threatened release of any Hazardous Materials or asbestos-containing material which are on, from, or affecting the soil, water, vegetation, buildings, personal property, persons, animals or otherwise, (iii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials, asbestos containing material or underground or other storage tanks, (iv) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Materials, asbestos-containing material, or underground or other storage tanks and/or (v) violations of Environmental Laws, or demands of governmental authorities which are based upon or in any way related to such Hazardous Materials, asbestos-containing material, or underground or other storage tanks, The indemnity shall survive the transaction contemplated herein and shall not

terminate until three (3) years after the Loan is repaid in full or Lender acquires the Property following foreclosure or a deed in lieu of foreclosure; provided that if Lender advises Borrower of the existence of Hazardous Materials in violation of the Environmental Laws before the indemnity expires, the indemnity shall continue until Borrower, its general partner(s) or Guarantor cause the Property to comply with the Environmental Laws.

For purposes of this Paragraph 10, "Hazardous Materials" shall mean any flammable substances, explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous substances, toxic pollutants, toxic substances, tremolite, anthrolophylie or actinolite, polychlorinated biphenyls (PCBs), oil and petroleum products and their by-products, radon, asbestos, medical waste, and other bio-hazardous materials, pollutants, contaminants, pollution, or related materials or substances specified as such in, or regulated under, any of the Environmental Laws. The environmental matters should apply to both the Land and the Improvements as described in the Paragraph herein entitled "Security."

11. **Nonrecourse:** The Loan shall be nonrecourse to Borrower and its general partner(s), if any, Borrower, its general partners and Guarantor shall be jointly and severally personally fully liable (and Lender shall not be restricted from obtaining any monetary or other judgment against such persons and entities) for, and subject to, judgments and deficiency decrees arising from and to the extent of any loss suffered by Lender as a result of (a) Borrower misapplying, or following a default failing to remit to Lender, any condemnation awards or casualty proceeds, (b) any act of fraud or breach or any representation or warranty of Borrower or any partner thereof (contained in the Loan Documents or any other agreement, certificate or instrument delivered pursuant to or in connection therewith, (c) Borrower collecting rents more than one (1) month in advance or failing to apply the rents in the manner and for the purposes provided in the Indenture and in any other Loan Document, including, without limitation, for the purpose of paying ordinary operating expenses of the Property or funding any reserve required hereby, (d) Borrower misapplying any security deposits attributable to the Property or failing to transfer to Lender or any purchaser at foreclosure any such security deposits following a foreclosure or deed in lieu thereof, (e) the presence, release, threatened release, treatment or removal of any Hazardous Materials (including asbestos), or any underground or other storage tanks at the Property or the violation of applicable Environmental Laws relating to Hazardous Materials or underground storage tanks, (f) any diminution in value of the Property or other collateral or security for the Loan, arising from the waste of Borrower, (g) the amount of any self-insured risk or deductible amount under a policy of insurance relating to the Property, (h) any forfeiture of the Property by Borrower due to a violation of applicable law, (i) the failure by Borrower to obtain Lender's consent where the Loan Documents require the Lender's consent, (j) the lien of the Indenture failing to constitute a valid first lien on the Property, (k) Borrower failing to pay any local/state transfer, recordation or other tax due on the transfer of the Property following a foreclosure or upon a deed in lieu of foreclosure or (l) Borrower failing to pay any taxes or assessments on the Property. Nothing contained herein shall be deemed to limit, vary, modify or amend any obligation owed to Lender under any Guaranty Agreement.

12. **Financial Statements and Appraisals:** The Loan Documents will require Borrower to provide Lender annually with audited financial statements prepared by a certified public accountant and certified as true and correct by [the chief financial officer] [a general partner] of Borrower (to include a Balance Sheet, Profit and Loss Statement, Sources and Uses of Funds Statement and cash flow projection) in form satisfactory to Lender, within ninety (90) days after the end of each fiscal year, and that Borrower will provide Lender on an annual basis financial statements for all Major Tenants to the extent that Borrower has such financials in its possession or is entitled to obtain such financials from the

Major Tenant]. Following a default, Lender may require Borrower to have the financial statements prepared and certified by an independent certified accountant acceptable to Lender. In addition, (a) within ten (10) days after each calendar month and at the end of each fiscal year, Borrower shall also furnish to Lender, (1) a statement, certified in the same fashion as its annual financial statements, in form and detail satisfactory to Lender, listing the Leases (as hereinafter defined) then in effect, the space or unit occupied by each tenant, the gross income derived from each such tenant, the term of each such Lease and the security deposit held under such Lease, and (2) an income and expense statement for the Property prepared for said month and year to date, and (b) at least thirty (30) days before the close of each of Borrower's fiscal years, all annual operating budget for the upcoming fiscal year, including cash flow projections and proposed capital replacements. Lender reserves the right following a default or in response to a regulatory requirement imposed on Lender to require, at Borrower's expense, an annual update to the Appraisal.

13. **Taxes:** Before Lender disburses the Loan proceeds, Borrower shall have paid any outstanding unpaid taxes, assessments or other governmental charges or liens then due and payable. In addition, the Property must be a separate tax parcel, separate and apart from any other property owned by Borrower or anyone else. Borrower shall furnish evidence acceptable to Lender that such conditions have been satisfied.

14. **Tax and Insurance Escrow:** The Loan Documents will require Borrower to deposit monthly an amount equal to one-twelfth (1/12th) of the annual estimated real estate taxes and assessments and the estimated annual insurance premiums. At the Loan Closing an initial deposit will be made in an amount which, when added to the monthly deposits to be paid within the current tax and assessment period or insurance billing period, will be sufficient to satisfy the next succeeding periodic tax and assessment and insurance payment. All deposits will be retained by Lender or its servicer without interest and free of trust except to the extent, if any, that applicable law shall otherwise require, Lender shall pay or cause its servicer to pay the taxes and assessments and insurance premiums on the Property as they become due from the funds in escrow to the extent funds are available.

15. **Security Deposit and Reserve Escrow:**

(a) The Loan Documents will require Borrower to establish an escrow account in a FDIC insured bank acceptable to Lender in which all security deposits from the Property shall be held, subject to the lien of Loan Documents (to the extent permitted by law) and subject to the terms of the Leases.

(b) The Loan Documents will require Borrower to deposit monthly an amount equal to one-twelfth (1/12th) of the sum of \$_____ [(\$_____ per unit)] to pay for needed capital improvements, repairs, or replacements, as the case may be, to the Property and, if the Property is non-residential property, also to pay for leasing commissions and tenant improvements. All deposits will be retained by Lender or its servicer without interest and free of trust except to the extent, if any, that applicable law shall otherwise require. Upon written request from Borrower, Lender shall release funds from escrow in accordance with the terms of the Loan Documents.

16. **Sale or Encumbrance:** The Indenture shall prohibit the direct or indirect sale, agreement to sell, transfer, conveyance, hypothecation, lien, mortgage, grant or security interest in, encumbrance or other disposition of the Property, or any part thereof or interest therein, and the sale, transfer, assignment, pledge, hypothecation, conveyance or other disposition of (i) any legal or beneficial ownership of any

interest in Borrower, (ii) any legal or beneficial ownership of any interest in any partner of Borrower, or (iii) any legal or beneficial ownership of any interest in any entity which either directly or indirectly controls Borrower, without Lender's prior written consent, given in its sole and absolute discretion.

17. **Assignment of Leases and Rent:** All existing and future Leases shall be assigned to Lender as additional security for the Loan. At the Loan Closing, Borrower shall execute an assignment to Lender in recordable form of rents and Leases in form, scope and substance acceptable to Lender. The assignment shall be duly recorded if required by Lender, Lender may, as of the Loan Closing, give written notice of the assignment to any tenant.

18. **Leases and Tenant Agreement:** Borrower shall submit all standard lease forms it has used and/or intends to use to Lender for its prior written approval. Copies of all Leases for the Property, whether executed before or after the Loan Closing, must be submitted to Lender for its prior written approval or shall be executed conditioned upon such approval. The Leases shall each be subordinate to the Indenture. Borrower shall furnish for Lender's approval prior to the Loan Closing [(a) a sworn statement listing all Leases and such information with respect thereto as Lender shall require [, (b) a signed estoppel certificate on Lender's standard form, from each tenant immediately before the Loan Closing covering the status of the lease and Lender's non-liability for acts of prior landlords, and (c) a signed agreement, from each tenant identified by Lender following review of the leases and acceptance of the Application covering subordination, nondisturbance and attornment].

19. **Management Agreement:** If during the term of the Loan, the Property [or any parking facility which is part of the Property] is managed under a management agreement, such agreement shall be subject to Lender's prior written approval and in form and substance satisfactory to Lender. Any such management agreement may not be terminated or materially modified or amended without Lender's prior written approval, and shall be assigned to Lender at the Loan Closing.

20. **Compliance with Laws; Permits:** The Loan Documents will require Borrower to obtain and at all times keep in full force and effect such governmental approvals as may be necessary to comply with all governmental requirements relating to the Property and its occupancy for its intended uses, as such requirements may exist from time to time. At least fifteen (15) days before the Loan Closing, Borrower shall provide proof, satisfactory to Lender, that Borrower has obtained such approvals and that all applicable appeal periods have expired. Any conditions to such approvals must be reasonably acceptable to Lender and all certificates, approvals, permits, opinions, etc., must be in form, scope and substance satisfactory to Lender. If the Property represents a legal nonconforming use under applicable zoning and use regulations, Borrower must supply a damage restoration statement from the appropriate local authority setting forth its absolute right to restore damaged improvements to the existing size and density of the original improvements. In addition, Borrower shall deliver to Lender at least ten (10) days prior to the Loan Closing evidence acceptable to Lender in its reasonable judgment demonstrating that the Improvements comply with applicable laws and private covenants.

21. **Improvements:** Borrower shall furnish evidence to Lender that the Improvements have been satisfactorily completed, and have necessary access and utilities from public streets or through valid easements, which easements, if any, shall be in form, scope and substance satisfactory to lender.

22. **Legal Opinions and Certifications:** Lender shall be furnished at the Loan Closing with opinions from its local counsel, if any, and from Borrower's counsel, in form, scope, and substance

satisfactory to Lender (subject to reasonable and customary exceptions, qualifications and assumptions) that the loan transaction is legal, that the loan Documents are enforceable and covering such other matters as Lender may reasonably require.

23. **Approval:** All instruments and documents required hereby or affecting the Property, securing the Loan or relating to Borrower's capacity and authority to obtain the Loan and to execute the Loan Documents and such other documents, instruments, opinions, assurances, consents and approvals as Lender may request and all procedures connected herewith shall be subject to the approval, as to form and substance, of Lender and Lender's counsel.

24. **Entire Agreement:** This Application contains the sole and entire agreement and understanding of the parties hereto. The captions used in this Application are for the convenience of reference only and are not to be considered a part hereof and shall not limit, amplify or otherwise any of the terms, conditions or provisions hereof.

25. **Modifications:** This Application cannot be modified or amended except by a writing signed by Borrower and Lender.

26. **Consents:** No consent or waiver by Lender to any breach or default shall be constituted to be a consent or waiver to any other breach or default. All consents or waivers must be in writing in order to be effective. In each and every instance where a Lender is required to give its consent or approval, Lender may give or withhold its consent or approval in its sole and absolute subjective discretion unless in any such instance this Application specifically provides to the contrary.

27. **Lender Definition:** The term "Lender" as used herein shall include Lender, its affiliate(s), separate account(s), nominee(s) or subsidiary(ies), and any investor, participant or assignee to whom the Loan, in whole or in part, may be sold prior or subsequent to the Closing Date. Any such sale will not modify Borrower's or Lender's rights or obligations hereunder or under the Loan Documents.

28. **Reliance:** Lender shall be deemed to have relied on the information provided to it by Borrower in its request for the Loan. Should the information be materially incorrect or incomplete, Lender reserves the right to cancel the Loan and to retain all fees paid.

29. **No Other Commitments:** Once Borrower has submitted this Application, Borrower shall not apply for or accept a commitment for any other financing for the Property until the Loan is closed or this Application expires or is otherwise terminated pursuant to the terms hereof, whichever is earlier.

30. **No Closing:** If the Loan is not closed by the Closing Date (as it may be extended in writing), then Lender's obligation to make the Loan shall cease.

31. **Choice of Law:** The rights and obligations of the parties under this Application, and the commitment resulting from its acceptance by Lender, shall be determined according to the laws of the State of _____. Lender may require that any or all of the Loan Documents will be governed by the laws of another state having significant contacts with the Loan transaction or with the parties to the transaction.

32. **Merger:** No statements, agreements or representations, oral or written, which may have been made to Borrower and/or borrowing entity or to any employee or agent thereof, either, by Lender or by an employee, agent, or broker acting on Lender's behalf, with respect to the Loan, shall be of any force or effect, except to the extent stated in this Application, and all prior agreements and representations regarding the Loan are merged herein.

33. **Waiver of Jury Trial:** If any dispute arises over this Application, the parties agree to waive their right to request a trial by jury.

34. **Broker's Commissions:** Lender shall not pay any commission to any broker or agent in connection with the Loan, and Borrower hereby agrees to indemnify and hold harmless Lender from and against any claim, loss or expense Lender may incur for brokerage commissions.

35. **No Assignment by Borrower:** If Lender accepts this Application, Borrower agrees that its rights shall not be assignable or otherwise transferable by Borrower, whether voluntarily or by operation of law, without the prior written consent of Lender, which consent may be granted or withheld in Lender's sole discretion.

36. **Survival:** The terms and conditions of this Application, when accepted by Lender shall survive the Loan Closing, but if any of the terms and conditions of this Application shall conflict with any of the terms and conditions of the Loan Documents, the terms and conditions of the Loan Documents shall prevail.

37. **Time of Essence:** Time is of the essence hereof.

38. **Lender's Right to Assign:** Lender may at any time or times, beginning on the date hereof through the Term of the Loan, sell, participate, or otherwise transfer all or any portion of its interest in this Application, the commitment or the Loan without Borrower's consent. Borrower shall cooperate with Lender in any such transaction, including, without limitation, by the execution and delivery of estoppel certificates and/or documentation which splits the Note into one or more notes, provided, that the Borrower's obligations under the Note and the other Loan Documents are not materially increased.

39. **Lender's Liability:** If Lender defaults in performing its obligations under this Application and Lender does not fund the Loan on the Closing Date, then Borrower's sole remedies shall be either to seek specific performance of Lender's obligation to fund the Loan or to seek monetary damages for its actual, ascertainable out-of-pocket damages (not in excess of one percent (1 %) of the Loan Amount) directly attributable to Lender's failure to fund. In no event shall Lender be liable to Borrower (or any person or party claiming by, through or under Borrower) for any indirect, consequential, punitive or multiple damages with respect to Lender's performance of its obligations hereunder, whatever the nature of the breach of the terms hereof, such damages and claims therefor being expressly waived by Borrower.

EXHIBIT B

SPECIAL PROVISIONS

[NONE]

[INSERT AS NEEDED]

EXHIBIT C

LIST OF MAJOR TENANTS

EXHIBIT D

LENDER'S STANDARD INSURANCE CERTIFICATE
