Commercial Real Estate Transactions—From Acquisition to Closing

November 18, 2021

9:00 a.m. – 1:45 p.m.

CT Bar Association

New Britain, CT

CT Bar Institute, Inc.

CT: 4.0 CLE Credits (3.5 General; 0.5 Ethics)
NY: 4.5 CLE Credits (4.0 AOP; 0.5 Ethics)

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LAWYERS' PRINCIPLES OF PROFESSIONALISM

As a lawyer, I have dedicated myself to making our system of justice work fairly and efficiently for all. I am an officer of this Court and recognize the obligation I have to advance the rule of law and preserve and foster the integrity of the legal system. To this end, I commit myself not only to observe the Connecticut Rules of Professional Conduct, but also conduct myself in accordance with the following Principles of Professionalism when dealing with my clients, opposing parties, fellow counsel, self-represented parties, the Courts, and the general public.

Civility:

Civility and courtesy are the hallmarks of professionalism. As such,

- I will be courteous, polite, respectful, and civil, both in oral and in written communications;
- I will refrain from using litigation or any other legal procedure to harass an opposing party;
- I will not impute improper motives to my adversary unless clearly justified by the facts and essential to resolution of the issue;
- I will treat the representation of a client as the client's transaction or dispute and not as a dispute with my adversary;
- I will respond to all communications timely and respectfully and allow my adversary a reasonable time to respond;
- I will avoid making groundless objections in the discovery process and work cooperatively to resolve those that are asserted with merit;
- I will agree to reasonable requests for extensions of time and for waiver of procedural formalities when the legitimate interests of my client will not be adversely affected;
- I will try to consult with my adversary before scheduling depositions, meetings, or hearings, and I will cooperate with her when schedule changes are requested;
- When scheduled meetings, hearings, or depositions have to be canceled, I will notify my adversary and, if appropriate, the Court (or other tribunal) as early as possible and enlist their involvement in rescheduling; and
- I will not serve motions and pleadings at such time or in such manner as will unfairly limit the other party's opportunity to respond.

Honesty:

Honesty and truthfulness are critical to the integrity of the legal profession – they are core values that must be observed at all times and they go hand in hand with my fiduciary duty. As such,

- I will not knowingly make untrue statements of fact or of law to my client, adversary or the Court;
- I will honor my word;
- I will not maintain or assist in maintaining any cause of action or advancing any position that is false or unlawful;

- I will withdraw voluntarily claims, defenses, or arguments when it becomes apparent that they do not have merit or are superfluous;
- I will not file frivolous motions or advance frivolous positions;
- When engaged in a transaction, I will make sure all involved are aware of changes I make to documents and not conceal changes.

Competency:

Having the necessary ability, knowledge, and skill to effectively advise and advocate for a client's interests is critical to the lawyer's function in their community. As such,

- I will keep myself current in the areas in which I practice, and, will associate with, or refer my client to, counsel knowledgeable in another field of practice when necessary;
- I will maintain proficiency in those technological advances that are necessary for me to competently represent my clients.
- I will seek mentoring and guidance throughout my career in order to ensure that I act with diligence and competency.

Responsibility:

I recognize that my client's interests and the administration of justice in general are best served when I work responsibly, effectively, and cooperatively with those with whom I interact. As such,

- Before dates for hearings or trials are set, or if that is not feasible, immediately after such dates have been set, I will attempt to verify the availability of key participants and witnesses so that I can promptly notify the Court (or other tribunal) and my adversary of any likely problem;
- I will make every effort to agree with my adversary, as early as possible, on a voluntary exchange of information and on a plan for discovery;
- I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;
- I will be punctual in attending Court hearings, conferences, meetings, and depositions;
- I will refrain from excessive and abusive discovery, and I will comply with all reasonable discovery requests;
- In civil matters, I will stipulate to facts as to which there is no genuine dispute;
- I will refrain from causing unreasonable delays;
- Where consistent with my client's interests, I will communicate with my adversary in an effort to avoid needless controversial litigation and to resolve litigation that has actually commenced;
- While I must consider my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with zealous and effective representation.

Mentoring:

I owe a duty to the legal profession to counsel less experienced lawyers on the practice of the law and these Principles, and to seek mentoring myself. As such:

- I will exemplify through my behavior and teach through my words the importance of collegiality and ethical and civil behavior;
- I will emphasize the importance of providing clients with a high standard of representation through competency and the exercise of sound judgment;
- I will stress the role of our profession as a public service, to building and fostering the rule of law;
- I will welcome requests for guidance and advice.

Honor:

I recognize the honor of the legal profession and will always act in a manner consistent with the respect, courtesy, and weight that it deserves. As such,

- I will be guided by what is best for my client and the interests of justice, not what advances my own financial interests;
- I will be a vigorous and zealous advocate on behalf of my client, but I recognize that, as an officer of the Court, excessive zeal may be detrimental to the interests of a properly functioning system of justice;
- I will remember that, in addition to commitment to my client's cause, my responsibilities as a lawyer include a devotion to the public good;
- I will, as a member of a self-regulating profession, report violations of the Rules of Professional Conduct as required by those rules;
- I will protect the image of the legal profession in my daily activities and in the ways I communicate with the public;
- I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement of administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance; and
- I will support and advocate for fair and equal treatment under the law for all persons, regardless of race, color, ancestry, sex, pregnancy, religion, national origin, ethnicity, disability, status as a veteran, age, gender identity, gender expression or marital status, sexual orientation, or creed and will always conduct myself in such a way as to promote equality and justice for all.

Nothing in these Principles shall supersede, supplement, or in any way amend the Rules of Professional Conduct, alter existing standards of conduct against which a lawyer’s conduct might be judged, or become a basis for the imposition of any civil, criminal, or professional liability.

Faculty Biographies

Gregory J. Cava

Gregory J. Cava is an attorney in private practice in Roxbury, Connecticut where he concentrates in land development law with special emphasis on zoning and land use applications and appeals, commercial real estate and secured lending transactions, commercial leasing, condominium and community association law, and ad valorum tax appeals. Prior to establishing his boutique practice in Roxbury, Mr. Cava was a principal and shareholder in Zeldes Needle & Cooper in Bridgeport where he practiced from 1983 through early 2007.

He received his B.A. degree *summa cum laude* with Distinction in Philosophy from Boston University where he was *Phi Beta Kappa* and his J.D. degree from Boston University School of Law. He is a Fellow of the American College of Real Estate Lawyers (ACREL), a Fellow of the American College of Mortgage Attorneys (ACMA), holds an AV-Preeminent rating from Martindale Hubble, is listed in Martindale Hubbell's *Bar Register of Preeminent Lawyers*, Naifeh & Smith's *Best Lawyers in America*, has been named a Connecticut Super Lawyer (2007-2022) and is a past Chairman of the Real Property Section of the Connecticut Bar Association (2003-2005) as well as a member of its Executive Committee. Mr. Cava is also a member of Litchfield County Bar Association, and formerly a member of the Greater Bridgeport Bar Association and four times the chairman or co-chairman of its Real Estate Committee (2003-2004, 2002-2003, 1997-1998 and 1996-1997).

Mr. Cava has served as a member of the Board of Directors of Connecticut Attorneys Title Insurance Company (1989-2011) and Vested Technologies, Inc., a company providing technology solutions to the legal profession (2002-2005). He formerly served as an elected member of the Planning & Zoning Commission (1989-1993) and Environmental Protection Commission (1989-1991) of the Town of Darien, Connecticut as well as an appointed member of the Roxbury Inland Wetland Commission (2000-2009) and a Justice of the Peace (2005-2009). He is in his fourth (4-year) term as an elected member, and third year as Chairman, of the Shepaug Valley Regional School District 12 Board of Education that operates the regional pre-K through Grade 12 public school system in the Towns of Bridgewater, Roxbury and Washington, Connecticut, and the high school Agriscience program for Bethel, Bridgewater, Brookfield, Danbury, New Fairfield, New Milford, Newtown, Roxbury, Sherman, and Washington, Connecticut.

A native of Colorado Springs, Colorado, the author of *We Have Met the Enemy…and They Live Here! Strategies for dealing with problem people, condo commandos, troublemakers, flag waivers and patriots, and those with idle hands.* Vol. II Issue 6, Common Interest magazine, 2007, Mr. Cava lives in Roxbury, Connecticut where since 2012, he has served as Organist & Choir Director of Christ Church (Episcopal).

ANDREW R. LUBIN

Andrew Lubin practices in the areas of real estate, commercial finance, and commercial law. He is an elected Fellow of the American College of Real Estate Lawyers and the American College of Mortgage Attorneys (State Chair). He has been included in the national publication "Best Lawyers" since 2001 and named to the Connecticut, New England and New York Tri-State "Super Lawyer's" lists since their inception.

Mr. Lubin is a current Executive Committee member and a former Chairman of the Connecticut Bar Association's Real Property Section and is the founder of the CBA's Commercial Finance Section. He has served on a number of working committees of both the CBA and the New Haven County Bar Association.

Mr. Lubin serves on a number of municipal and nonprofit boards. He received his B.A. from Clark University and his law degree from the John Marshall Law School, with distinction. He is a frequent lecturer on various real estate related topics.

Michael L. Miller

Mike is a Partner in Wiggin and Dana's Real Estate, Environmental, Construction and Facilities Department in the New Haven office. An experienced environmental, health and safety (EHS) attorney, Mike's practice is largely comprised of three distinct categories of EHS legal representation: transactional support; compliance and risk counseling; and litigation. Mike has over thirteen years of EHS compliance and risk management experience. His passion for client service, substantive and technical knowledge and geographic breadth of experience (having worked on matters in over 20 states) contribute to his individualized approach to strategic counseling. Mike counsels clients on a broad variety of EHS issues relating to corporate, real estate and financial transactions, including federal and state occupational health and safety requirements and environmental laws, regulations and permitting programs. Mike represents sellers, purchasers and lenders in the context of the leasing, sale and purchase of real estate property, asset and stock deals and project finance transactions. Mike has significant and practical experience relating to compliance with the federal Resource Conservation and Recovery, Clean Air and Clean Water Acts and related state and local programs. He has developed particular expertise relating to the applicability of and compliance with the Connecticut Transfer Act. He has also been involved in the negotiation of contracts for hazardous and other regulated waste management and disposal services. Mike also has particular expertise in connection with representing clients in cost recovery actions brought under the federal Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) and state analogs. He frequently provides strategic counseling to clients in connection with investigations and enforcement actions brought by governmental entities alleging EHS violations. Mike also has significant experience defending clients in toxic tort and product liability actions. Prior to becoming an attorney, Mike served as an EHS professional with General Electric Company. During law school, he spent time with the Air Bureau of the

Connecticut Department of Energy and Environmental Protection ("DEEP"). Mike earned his J.D., *summa cum laude*, from Quinnipiac University School of Law, and his B.S.E., from the University of Michigan.

Commercial Real Estate Transactions – From Acquisition to Closing (ERP211118)

Agenda

9:00 – 9:15 a.m.	Introduction; Letters of Intent—Are They Worth the Trouble? **Andrew R. Lubin**, Neubert Pepe & Monteith PC
9:15 – 10:30 a.m.	Issues in Drafting and Negotiating the Contract of Sale **Gregory J. Cava**, The Cava Law Firm LLC **Andrew R. Lubin**, Neubert Pepe & Monteith PC, New Haven **Michael L. Miller**, Wiggin and Dana LLP, New Haven
10:30 – 10:45 a.m.	Break
10:45 – 11:45 a.m.	The Buyer/Borrower, the Seller, the Lender. Choose one only. Buyer's Due Diligence and the Closing Checklist **Gregory J. Cava**, The Cava Law Firm LLC
11:45 – 12:00 p.m.	Spotting and Resolving Environmental Issues **Michael L. Miller**, Wiggin and Dana LLP
12:00 – 12:30 p.m.	Lunch
12:30 – 1:30 p.m.	Real Estate Financing and Dealing with the Lender and Its Counsel. **Andrew R. Lubin**, Neubert Pepe & Monteith PC Ethical issues in the delivery of a third-party opinion letter. Special issues related to Borrowers and Guarantors. **Gregory J. Cava**, The Cava Law Firm LLC **Andrew R. Lubin**, Neubert Pepe & Monteith PC, New Haven
1:30 – 1:45 p.m.	The Closing—How to Get There; How to Get Out of There; Is There Even a "There" There? **Gregory J. Cava**, The Cava Law Firm LLC **Andrew R. Lubin**, Neubert Pepe & Monteith PC, New Haven **Michael L. Miller**, Wiggin and Dana LLP, New Haven

LETTERS OF INTENT

The letter of intent ("LOI") or memorandum of understanding ("MOU") has become an integral part of purchasing or leasing real estate.

The core issues are: a) what terms should the LOI contain and b) whether it is intended to be a binding document.

The more an LOI looks like a contract and the more information it includes, the more a court may interpret it as a binding contract.

A. Uses of the LOI:

1. To memorialize the business terms of the deal.

2. To confirm areas of mutual understanding.

3. To create an exclusivity period.

4. To provide evidence of interest in property (i.e. to satisfy a pre-leasing requirement or assist in obtaining financing).

5. To allocate cost or provide for confidentiality during the negotiation period.

6. To protect the interest of a broker

7. To provide drafting assistance for the lawyer.

Even if the LOI does not create a binding contact it may impose an obligation to negotiate in good faith or it may prevent a party from insisting on terms that do not comply with the LOI.

B. Is an LOI Binding?

The "intent" of the parties will typically determine whether the LOI is binding.

Intent may be inferred by:

1. Specific language;

2. Circumstances of the negotiation;

3. The extent and detail to which material issues are addressed;

4. Performance; and

5. Custom and usage.

C. <u>Theories of liability</u>:

1. Breach of Contract;

2. Breach of implied covenant of good faith;

3. Fraud and misrepresentation;

4. Promissory estoppel; and

5. CUTPA

D. <u>What's A Lawyer To Do?</u>

A lawyer must determine the client's goals before the LOI is signed.

1. Are any of the provisions to be binding?

2. Is there an exclusivity period?

3. Are the negotiations confidential?

4. Can an LOI be avoided entirely and negotiations undertaken within the confines of the contract itself?

E. <u>Draft Language Re: Intent of the Parties - LOI Not To Be Binding</u>

"It is understood and agreed that this letter of intent is only a summary of the basic business terms of the proposed transaction and does not contain all matters upon which agreement must be reached in order for the transaction to be consummated. Therefore, this letter does not constitute a binding agreement. A binding transaction will only result from the execution and delivery of a formal purchase and sale agreement by all parties. Until such time as an agreement is signed neither party shall have any obligation to negotiate in good faith and either party shall have the right to terminate discussions at any time, with or without cause."

F. ADDITIONAL READING:

"Letters of Intent-A Trap For The Unwary", Real Property Probate and Trust Journal, Vol 37, Number 3 (Fall 2002)

"Letters of Intent", John S. Hollyfield, The Practical Real Estate Lawyer, September 2009

[date]

Client
ABC Company
123 Street Road
___, CT

Re: Acquisition and Financing of ___, ___ Connecticut (the "Property")
Commercial Shopping Center ("Current Use")
Proposed Purchaser is a new business entity to be created (the "Purchaser")
____, ____, ____, and ____ ("Beneficial Interest Owners")
Current Property Owner: Owner, LLC (the "Seller")

Ladies and Gentlemen:

I have spoken with ___ and who advised me that the Beneficial Interest Owners will form a limited liability company in order to facilitate the consummation of the transaction described hereinabove to acquire and finance the acquisition of the Property, a multi-tenant strip shopping center (the "Transaction") and to continue the Current Use. Thank you for choosing (name of law firm) to represent your interests in connection with the Transaction to the extent and as hereinafter set forth. This letter sets for the scope of the representation and the terms of payment for our services.

As ___ and I discussed, because this is a commercial transaction involving commercial property, there is a considerable amount of due diligence required in order to assess risk and determine whether or not you desire to move forward with the Transaction. At a minimum, the following need to be investigated: the title, and the servitudes and encumbrances on title, obtain a new land survey of the property, the environmental condition of the property and a determination made as to whether or not the property is an "establishment" under the provisions of the Connecticut Transfer Act (Connecticut General Statute 22a-134d, et seq.), the condition of the land and building including a structural analysis of the building and in the event any expansion of the center, either by addition to the existing building or the development of one or more pad sites, is anticipated, whether the land is capable of supporting such expansion and of course whether or not that would be permitted by zoning and land use laws and controls, a review of the _____ Zoning Regulations ("_ZR") and any other applicable land use regulations and the terms of existing permits against a land survey in order to determine whether the property complies with the terms of the __ZR and any existing permit in any material respect, a review of other files including those in the land use and building departments of the Town/City of ___, a review of the existing leases, a review of any applicable real estate listing agreements which might create an obligation to pay any real estate commissions in the event of a renewal of a tenancy, or a replacement tenant,

review any existing state or federal permits, and determine whether appropriate insurance coverages may be obtained. During diligence, additional inquiries may surface.

___ has advised me that the Beneficial Owners are experienced in the acquisition, ownership and development of commercial real estate, and hence are sophisticated real estate investors. Accordingly, each of the Beneficial Owners has had the opportunity to assess the risk and rewards of the Transaction. Even though we may from time to time call potential issues to your attention, we do not render business advice, only legal services, and so you should obtain any financial and business counsel you may require from others who provide such services.

We have discussed a division of the diligence responsibilities. ___ has told me that you prefer to handle certain of this diligence.

The Representation.

Business Entity Formation. You will, in consultation with your existing corporate counsel who has represented you in connection with the formation of your business entities, and your existing tax counsel, make a determination of the type of business entity or entities to form to enter into any purchase and sale agreement and own and operate the Subject Property, and whether it will be organized under Connecticut law (a "Domestic Entity"), or the law of another jurisdiction (a "Foreign Entity")(collectively the "Business Entity"). In the event you desire to use a Foreign Entity, Connecticut law may require you to obtain a Certificate of Authority in order to engage in certain of the business activities required for the operation of the Property. We can assist you with obtaining a Certificate of Authority. For the Business Entity, you will provide to us (or we may obtain on your behalf) two certified copies of (1) a Certificate of Good Standing, (2) the Articles of Incorporation or Articles of Organization, (3) a copy of the By Laws, all minutes, and company records, and a corporate resolution to effect all portions of the Transaction, certified by the Secretary of the Business Entity corporation, or for a Business Entity that is a limited liability company ("LLC"), the operating agreement, all minutes, and company records certified by the Manager, or if member managed, by all members, and a company resolution to effect all portions of the Transaction, and (3) such other records, writings, affidavits, certifications, and undertaking that will enable this firm to perform the diligence required to represent the interests of the Purchaser and obtain the issuance of owners and mortgagee title insurance and to issue any opinion of counsel required by any lender financing the Transaction. We will prepare the corporate/company resolution.

Contract Review and Negotiation. We will review any term sheet or letter of intent that may exist and will review the proposed purchase and sale agreement (the "P&S Agreement"), discuss the same with you, and negotiate it. You are advised not to execute any document with Seller, a real estate broker, your mortgage lender, or otherwise in connection with the Transaction, no matter how seemingly innocuous, without our review and counsel.

Title Services. Upon receipt of this signed fee letter from you, we will order a title, municipal records, bankruptcy, and Patriot Act search from a title insurance company licensed in Connecticut. We will also arrange for the issuance of (a) an owner policy of title insurance in the amount of the purchase price or such larger amount that you request provided that amount is acceptable to the title insurer, and (b) a Mortgagee policy of title insurance in the amount of the mortgage financing. In Connecticut, the attorney for the purchaser underwrites the title insurance policy and causes it to be issued as the agent of the title insurance company. A title insurance agent must be an attorney licensed in Connecticut. The cost of the insurance is the same if purchased with an agent or not as the rates are filed rates approved by our Insurance Commission. However as I will have to review and perform the same steps as a title underwriter in representing the interests of the Business Entity, there is an economy of effort to be realized.

Surveying Services. As we discussed, I strongly recommend engaging the services of a land surveyor to provide a property survey to enable us to verify whether the property conforms with zoning and land use controls, and also to determine whether there are encroachments or other issues which affect marketability of title. We can recommend a land surveyor and will engage them for you. We will also have to coordinate with the land surveyor to make certain the type of survey as well as what we require be shown thereupon is what is required for the Transaction and the diligence connected therewith. We will advise if they require a deposit against their fee that you will provide upon request.

Environmental Services. You will need to engage the services of a consultant to provide an environmental site assessment. You will need at least a Phase I site assessment, and possibly a limited Phase II site assessment if the consultant recommends it. We can recommend a consultant who will coordinate this once you have selected a consultant. We will review the assessment and consult with you as to any further assessment required.

Building and Land Assessment. You will retain a consulting engineer, structural engineer and such other specialist as you require to assess the building and the land. We will not be involved with this, but will review any assessment and consult with you as you determine.

Land Use and Permit Review. Once we have obtained the land survey and municipal records search, we will seek information on existing permits and review those and advise you of our findings. We may meet with the municipal planning, zoning and building officials as necessary if we have questions or issues surface. If during the course of our investigation, we determine that there are federal or state permits, we will review them and advise you accordingly.

Leases. In view of your experience in the ownership and management of commercial shopping centers, we have discussed and you have agreed to review the leases and any rent roll we or you are able to obtain, for your purposes. You will determine whether the leases contain any exclusives or other terms which impact the operation and future leasing of the center, whether any tenant is a significant

consumer of utilities which impacts your profit margin, and such other business terms that may affect your interests. It will be necessary for us to perform a limited review of the leases for issues that will be of concern to the mortgage lender, e.g., whether the leases are self subordinating, whether there are renewal options, etc. and for title underwriting purposes, e.g., whether any tenant has a right of first refusal or option to purchase the Property which must be cleared, or any other term which affects marketability of the title or title insurance underwriting. In addition, we will review any existing real estate listing agreements provided by the Seller to determine if commissions are due in the future on lease renewal.

Mortgage and Closing Representation. We will review and negotiate your mortgage commitment, if that opportunity arises, and the mortgage and closing instruments. We will represent the interests of the Business Entity created to own the Property at closing of the mortgage and title. We will arrange for the post-closing recordation of the Deed, Mortgage, Assignment of Leases and Rents and other title instruments and the issuance of Owner and Mortgagee policies of title insurance.

Tax Counsel. We do not provide, and the Representation expressly excludes, any counsel, advice or assistance with federal, state or local income tax liability, or any other tax counsel, advice or assistance. You would be advised to turn to your tax advisors for any counsel in this respect. Should you decide you wish to challenge the real estate tax assessment, this firm does provide representation in connection with ad valorem tax appeals. Please note the deadline for filing an appeal with the municipal board of assessment appeals, the first step in any appeal and a non-waivable precondition for appeal to the courts, is February 20 of any year unless extended by the municipality. The Representation does not include representation for an ad valorem tax appeal and if you wish to pursue this, we will need to come to a separate agreement.

Terms of Payment.

We will charge fees on an hourly basis at my usual hourly rate of $____ per hour or fraction thereof in six (6) minute (1/10 of an hour) increments for all time expended on the Representation. This rate is subject to change on 30 days prior notice. We do not anticipate any rate changes during the present calendar year. In addition, we will charge for out-of-pocket expenses and disbursements for such expenses as the title and municipal records search, copies, the premiums for owner and mortgagee title insurance, recording services and municipal fees for recording documents, and any other fees, expenses and disbursements we consider necessary and appropriate to the Representation. We will bill for our services approximately monthly, and our fees are due and payable upon receipt of an invoice. In addition, we will forward invoices we may receive from the land surveyor, environmental, or other consultants that are due and payable upon receipt. In addition, we require the payment of a retainer in the amount of $_____ against which we will bill our expenses and time after the exhaustion of which you will cause balances due to be paid upon receipt. Any balances due and unpaid after 30 days will incur interest at the rate of 1.5% per month from the date of the original invoice which by acceptance of this agreement you agree to pay. In addition, in the event any invoice remains unpaid for 30 days, we reserve the right to withdraw from and end the Representation.

If the scope of the Representation and the Terms of Payment are acceptable, kindly sign below and return this agreement to me together with a check for the retainer. You may also elect to pay the retainer and any fees due through the payment portal on our website at www. _____.com We reserve the right to discontinue this payment portal at any time.

I look forward to working with you.

(signature)

We have reviewed the above letter, agree with the scope of the representation, the terms of the engagement and the terms of payment, and on said basis, do hereby retain (name of law firm) to represent the interests of the business entity to be created for our beneficial interest to own the Property.

_____ _____

_____ _____

PURCHASE AND SALE AGREEMENT

1. REFERENCE DATA AND DEFINITIONS:

The following are definitions and reference data used in this Agreement:

Execution Date:

Seller:

Buyer:

Property: The property is located at _____, _____, Connecticut and is more particularly defined and described in Paragraph 2 of this Agreement.

Purchase Price: $
(Paragraph 5)

Initial Deposit: $
(Paragraph 5)

Additional Deposit: $
(Paragraph 5)

Balance of Funds: $
(Paragraph 5)

Escrow Agent:
(Paragraph 5 and 20)

Closing Date:
(Paragraph 6)

Place of Closing: At the office of Seller's counsel at _____, _____ Connecticut.
(Paragraph 6)

Seller's Broker:
(Paragraph 19)

Co-broker, if any:
(Paragraph 19)

Duly Authorized Buyer Entity:
(Paragraph 21(b)(i))

Buyer is a_____(type of entity) duly organized and in good standing in the State of Connecticut.

Notices: Seller:
(Paragraph 25)

with a copy to:

Buyer:

with a copy to:

2. PROPERTY DESCRIPTION:

In consideration of the mutual covenants herein contained and other good and valuable consideration, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller those certain premises commonly known as _____, _____, Connecticut more particularly described in Exhibit A attached hereto and made a part hereof (the "Real Property") together with all buildings, structures and improvements now or hereafter existing thereon, and all fixtures therein owned by Seller (collectively, the "Property"). The following personal property shall also be conveyed to Buyer: _____ (the "Personal Property").

3. DEED:

Seller shall convey the Property to Buyer by Quit Claim/Warranty Deed ("Deed"). The Deed shall convey clear record and marketable title thereto, free from encumbrances except:

(a) Provisions of existing building, zoning and historical laws;

(b) Such taxes for the then current fiscal year as are not due and payable on the date of the delivery of the Deed;

(c) Any liens for municipal betterments or the like;

(d) Easements, rights and restrictions or other matters of record;

(e) Rights of tenants or parties in possession; and

(f) Acts done or suffered by Buyer or any person claiming by, through or under Buyer.

(g) Any state of facts which a physical inspection or accurate survey might disclosure.

Title to the Property shall not be deemed to be unmarketable for the purposes of this Agreement by reason of any encumbrance, lien or exception to title if: (a) the Standards of Title of the Connecticut Bar Association recommend that no corrective or curative action is necessary in those circumstances or in circumstances substantially similar to those presented by such encumbrance, lien or exception to title, or (b) a policy of title insurance can be obtained at Buyer's expense at no additional premium, without exception for the alleged title defect or, if additional premium shall be charged therefor, Seller, at its option, shall elect to pay the same.

Notwithstanding anything contained in this Agreement to the contrary, Buyer shall, prior to the Due Diligence Date as hereafter defined, give Seller written notice of any title encumbrance, lien or exception on the Real Property which requires corrective or curative action. If Buyer fails to give such notice, Buyer shall be conclusively deemed to have accepted the Real Property subject to any and all such encumbrances or defects. In the event that Buyer notifies Seller of any defect, Seller shall then have up to sixty (60) days to remove the same in accordance with the provisions of Paragraph 8 of this Agreement.

[If deed is by Quitclaim then: the Deed shall convey such title as Seller possesses to the Property without representations, warranties or covenants of any kind.]

4. PLANS:

Seller shall deliver to Buyer such plans as Seller has in Seller's actual possession.

5. PURCHASE PRICE; DEPOSIT:

The agreed to price for the Property is the Purchase Price, which is payable as follows:

(a) The Initial Deposit has been paid by check (subject to collection) or by certified funds by Buyer to the Escrow Agent simultaneously with the execution and delivery of this Agreement.

(b) The Additional Deposit shall be paid on or before _____ by bank check or certified funds. The Initial Deposit and the Additional Deposit shall be held in a separate [interest-bearing] escrow account by the Escrow Agent, subject to, and in accordance with, the terms and conditions of this Agreement. The Initial Deposit and the Additional Deposit shall herein collectively be called the "Deposit." All references to "Deposit" shall include any interest thereon. The interest earned thereon, if any, shall/shall not be applied against the Purchase Price.

(c) {All sums paid toward the purchase price hereunder shall be held in escrow by the Escrow Agent until such time as the until the Buyer has received an unconditional written commitment for a mortgage as described in the Contingency section of this Agreement.}

(d) The Balance of Funds shall be paid at the Closing by certified funds, wire transfer in accordance with instructions to be provided by Seller, bank check or other immediate funds. A lawyer's trustee check will not constitute immediate funds.

6. TIME FOR PERFORMANCE; DELIVERY OF DEED:

The Deed is to be delivered at the closing (the "Closing") on the Closing Date at the Place of Closing, unless otherwise agreed upon in writing and signed by both parties. THE PARTIES HEREBY AGREE THAT TIME IS OF THE ESSENCE OF THIS AGREEMENT.

7. POSSESSION AND CONDITION OF PROPERTY:

Seller shall deliver full possession of the Property, subject to all tenancies and agreements in effect as of the Closing Date, the Property to be then in the same condition as it now is, reasonable wear and tear excepted. Buyer shall be entitled to an inspection of the Property prior to the delivery of the Deed in order to determine whether the condition thereof complies with the terms of this Paragraph.

8. EXTENSION TO PERFECT TITLE OR MAKE PROPERTY CONFORM:

(a) If Seller shall be unable to convey title to the Property in accordance with Paragraph 3 of this Agreement, or to deliver possession of the Property, all as herein stipulated, or, if, on the Closing Date, the Property does not conform with the provisions hereof, then Seller shall, at its option, have additional time to remove any defects in title, or to deliver possession as provided herein, or to make the Property conform to the provisions hereof, as the case may be, in which event the time for performance hereunder shall be extended to a date determined by Seller, but in no event more than sixty (60) days from the Closing Date specified in Paragraph 1 of this Agreement.

(b) Any attempt by Seller to cure any objection to title or condition shall not be deemed an admission by Seller that a defect does in fact exist. Nothing contained in this Agreement shall require Seller (i) to institute or continue with any legal proceedings or make any payment in order to remove any objection to title or (ii) to continue to pursue any such proceeding. If, Seller by notice to Buyer elects not to cure any objection to title or if, in Seller's opinion, the objection cannot be removed, or if the removal or cure shall require the expenditure of any monies which the Seller does not wish to incur, or the initiation of legal proceedings , then, the sole liability of Seller shall be at Buyer's election, to deliver title in accordance with Paragraph 8 below or refund to Buyer the Deposit. If the return of the Deposit is elected, then upon receipt by Buyer of the Deposit, this Agreement shall terminate, in which event both parties shall be relieved of any further liabilities and obligations hereunder (except as otherwise provided in this Agreement).

(c) If Seller shall have elected to cure and if, at the expiration of the aforesaid period of time, Seller shall have failed to remove any defects in title, deliver possession or make the Property conform, as the case may be, all as herein agreed, then, at Buyer's option (i) Buyer may elect to purchase the Property in accordance with the terms of Paragraph 8 below, or (ii) the Deposit shall be refunded to Buyer, and this Agreement shall terminate, in which event both parties shall be relieved of any further liabilities and obligations to each other hereunder (except as otherwise provided in this Agreement).

(d) In the event Seller has effected a cure within said sixty (60) day period, the Closing shall take place three (3) business days after notice to Buyer.

9. BUYER'S ELECTION TO ACCEPT TITLE:

Buyer shall have the election, at either the original or any extended time the delivery of the Deed, to accept such title as Seller can deliver to the Property, in its then condition, and to pay the Purchase Price in full, without any reduction, in which case Seller shall convey such title to Buyer.

10. CASUALTY/CONDEMNATION/EMINENT DOMAIN:

(a) If the Property shall have been damaged by fire or other casualty or is the subject of any governmental acquisition proceedings (including condemnation or eminent domain proceedings) (collectively, the "Impairment") which materially impairs the operation of the Property for a period of thirty (30) days (the "Impairment Period") or more or the damage is such that more than Twenty-Five Thousand Dollars ($25,000) would be reasonably required to repair or restore such damage, then Buyer shall have the right, at Buyer's option, to terminate this Agreement by written notice (the "Impairment Notice") from Buyer received by Seller within five (5) business days of the discovery of the Impairment by Buyer, shall be refunded to Buyer and all liabilities and obligations of the parties under this Agreement shall terminate (except as otherwise provided in this Agreement). If Seller does not receive an Impairment Notice within five (5) business days of the discovery of the Impairment by Buyer then Buyer shall not be entitled to terminate this Agreement on account of this subparagraph (a) of this Paragraph 10.

(b) If, however, Buyer does not elect to terminate this Agreement by reason of such damage, or if the Property shall have been damaged by fire or other casualty or is the subject of any governmental acquisition proceedings (including condemnation or eminent domain proceedings) which does not materially impair the operation of the Property for a period of thirty (30) days or more or the damage is such that Twenty-Five Thousand Dollars ($25,000) or less would be reasonably required to repair or restore such damage, Buyer shall accept the Property, without any reduction of the Purchase Price, all as if such damage had not occurred, but Seller shall pay over or assign to Buyer, at the Closing, all amounts recovered or recoverable on account of insurance maintained by Seller on the Property, or condemnation awards paid or payable to Seller by reason of such taking, less any amounts reasonably expended by Seller prior to the Closing Date for security, any partial restoration and the reasonable costs of collection of such insurance proceeds or condemnation awards.

(c) In the event that Buyer and Seller disagree on the cost to repair or restore the Property or material impairment, the determination thereof shall be made by a Seller approved adjuster or contractor reasonably satisfactory to Seller and Buyer, the fees of whom shall be borne equally by Seller and Buyer.

11. ACCEPTANCE OF DEED:

The parties agree that the delivery by Seller and the acceptance by Buyer of the Deed shall be deemed to constitute full compliance by Seller with all of the terms, conditions and covenants of this Agreement on its part to be performed.

12. USE OF PURCHASE MONEY TO CLEAR TITLE:

To enable Seller to convey the Property as herein provided, Seller may, at the Closing, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are delivered to Buyer simultaneously with the delivery of the Deed, or within a reasonable time thereafter in accordance with local conveyancing practice.

13. INSURANCE:

Seller shall maintain the insurance currently in effect for the Property from the date it takes title until the Closing Date.

14. CONDITION OF PROPERTY:

Buyer agrees that Buyer is responsible for its own inspection and examination of the Property, including records, files, documents and improvements thereon. Subject to the provisions of Paragraph 9 hereof, Buyer agrees to accept possession of the Property on the Closing Date in substantially the same condition as at the Execution Date, reasonable wear and tear excepted. The Buyer's execution of this Agreement and the acceptance by Buyer of the Deed shall constitute an acknowledgement by Buyer that the Property was accepted without representation or warranty, express, implied or statutory, as to the condition or suitability of the Property, or any part thereof, any matter of fact or any matter in any way relating to the Property, this Agreement or otherwise, except as expressly set forth in this Agreement. Buyer shall accept the Property in an "AS IS, WHERE IS" condition, based solely on Buyer's own investigations. Without limiting the generality of the foregoing, Buyer acknowledges that except as otherwise provided in this Agreement, that neither Seller nor any broker, agent or employee of Seller has made any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to:

(a) The nature, quality or condition of the Property, including, without limitation, the water, soil and geologic or environmental nature, quality or condition;

(b) The income derived or to be derived from the Property;

(c) The suitability of the Property for any and all activities and uses which Buyer may intend to conduct thereon;

(d) The compliance of or by the Property or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body;

(e) The habitability, merchantability or fitness for a particular purpose of the Property; or

(f) Any other matter with respect to the Property.

15. ENVIRONMENTAL MATTERS:

(a) Seller does not make, has not made and specifically disclaims any representation or warranty, express or implied, regarding the environmental condition (the "Environmental Condition") at, on, under or about the Property or the compliance or non-compliance of the Property with Environmental Laws (as hereinafter defined), including any administrative or judicial interpretation thereof. For purposes of this Agreement "Environmental Laws" shall mean the Comprehensive Environmental Response, Compensation and Liability Act, the Superfund Amendment and Reauthorization Act, the Resource Conservation Recovery Act, the Federal Water Pollution Control Act, the Clean Water Act, the Clean Air Act and any and all other applicable federal, state and local statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, codes, plans, injunctions, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions regulating, relating to or imposing liability (including strict liability) or standards of conduct in

regard to the environment or to emissions, discharges, releases or the presence of pollutants, contaminants, oils, petroleum or petroleum products, asbestos, lead paint, chemicals or other industrial, toxic or hazardous substances or wastes into the environment, including, without limitation, ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, oils, petroleum or petroleum products, asbestos, lead paint, chemicals or other industrial, toxic or hazardous substances or wastes or the cleanup or other remediation thereof.

(b) Buyer acknowledges and agrees that Buyer is satisfied with its opportunity (either before or after the Execution Date) to inspect the Property and to conduct such investigations and studies on and of the Property as it deems necessary, and hereby waives any and all objections to or complaints about the Environmental Condition of the Property. Buyer hereby indemnifies and holds Seller, his heirs, successors and assigns) (collectively, "Indemnitees") harmless with respect to the Environmental Condition at, on, under or about the Property caused by or resulting from the act or omission of Buyer or any person acting on behalf of or at the direction of Buyer, including, without limitation, any agent, employee, tenant, contractor or consultant of or to Buyer.

The provisions of this Paragraph shall survive the delivery of the Deed or earlier termination of this Agreement.

16. ADDITIONAL DOCUMENTS:

(a) In addition to the Deed, which shall be in recordable form, Seller shall deliver to Buyer, at the Closing, the following documents, duly executed and acknowledged as provided therein:

(i) evidence of authority of persons executing this Agreement and the other documentation to be executed and delivered by Seller hereunder.

(ii) an affidavit relative to the status of mechanics liens, tenants in possession and survey update in the usual form used by title insurers doing business in Connecticut;

(iii) deliver to Buyer State and local conveyance tax statements signed by Seller or its representative stating the applicable conveyance taxes (if any), together with Seller's checks to pay such taxes;

(iv) if applicable, an affidavit executed by Seller under oath stating that Seller is not a "foreign person" under the provisions of §1445 of the Internal Revenue Code;

(v) assignment of rents and leases pursuant to the terms of Paragraph 25 below; and

(vi) all other documentation required or contemplated by this Agreement.

(vii) a Quitclaim Bill of Sale in the form attached hereto as Exhibit B as to the Personal Property.

(b) Buyer shall deliver to Seller, at the Closing, the following documents, duly executed and acknowledged as provided therein:

(i) evidence reasonably satisfactory to Seller of the authority of persons executing this Agreement and the other documentation to be executed and delivered by Buyer hereunder; and

(ii) all other documentation required or contemplated by this Agreement and any other documentation reasonably and customarily required by Seller.

17. ADJUSTMENTS:

(a) To the extent applicable, collected rents, escalations, amounts collected from tenants/occupants on account of taxes and operating expenses, electricity, water, gas, sewage and other utilities, operating expenses and taxes for the then current tax period and all other items of revenue and expense which, by custom and practice, are prorated between sellers and buyers of real property similar in kind to the Property, shall be prorated as of the Closing Date, and the net amount thereof shall be added to or deducted from the Purchase Price, as the case may be. Real estate property taxes shall be adjusted in advance based upon the Uniform Fiscal Year Method. Uncollected rents attributable to the period prior to the Closing Date, less the reasonable expenses of collection thereof, shall be paid to Seller if and when collected by Buyer on account of such period. Any escalations on account of taxes or other charges not yet due and payable or which may be delinquent but attributable to the period prior to the Closing Date, less the reasonable expenses of collection thereof, shall be paid to Seller to the extent received by Buyer. It is understood and agreed that the first such rents and escalations collected by Buyer will be allocated to Seller as past due rents and escalations due under any leases affecting the Property. Buyer shall use reasonable efforts to collect such rents and escalations. Seller retains the right (but not the obligation) to collect or to engage an agent (including a property manager or collection agency) to collect all past due rents and escalations and any other amounts due to Seller.

(b) If the amount of real estate taxes is not known on the Closing Date, they shall be prorated on the basis of the taxes assessed for the preceding year, with a proration as soon as the new tax rate and valuation can be ascertained. Maintenance, utilities and operating expenses applicable to the Property shall be prorated between Seller and Buyer as of the Closing Date based on estimates of the amounts that will be due and payable on the next payment date, unless final readings therefor as of the Closing Date shall have been obtained, in which case such final readings shall be utilized as the basis for adjustment. As soon as the actual amount of such expenses shall be known, Seller and Buyer shall recalculate the adjustments with the result that Buyer shall pay for those expenses attributable to the period of time commencing with the first day after the Closing Date.

(c) Buyer acknowledges that it shall be responsible for all fees relating to any financing obtained by Buyer in connection with its acquisition of the Property, all title costs, recording fees and Buyer's attorneys' fees, and Seller acknowledges that Seller shall be responsible for Seller's attorneys' fees and for recording fees associated with clearing any encumbrances of record.

(d) Buyer assumes and agrees to pay all taxes and assessments which become due and payable at or after the Closing Date.

The provisions of this Paragraph shall survive the delivery of the Deed.

18. CONTINGENCIES:

A. PROPERTY INSPECTION/ZONING CONTINGENCY:

(a) From and after the Execution Date through and including _____ (the "Due Diligence Deadline Date") Seller shall afford to Buyer and authorized representatives of Buyer reasonable access to the Property in order that Buyer may have full opportunity to inspect and take measurements, conduct surveys and perform tests of the Property, subject to the following: (i) Seller shall be entitled, at Seller's election, to have a representative of Seller participate in the foregoing; (ii) Buyer and its agents, officers, directors, partners, members, contractors, employees, successors and assigns (collectively, "Buyer's Representatives") shall restore the Property to its prior condition, reasonable wear and tear excepted; (iii) Buyer and Buyer's Representatives shall indemnify and hold Indemnitees and their agents, officers, directors, partners, contractors, employees, successors and assigns harmless from all loss, cost or damage, direct or indirect, including, without limitation, attorneys' fees, arising from the aforesaid investigations; and (iv) Buyer and Buyer's Representatives shall keep confidential and not disclose the information or results of any such investigations to any third party (except as otherwise required by applicable law or to any lawyer advising Buyer with respect to the transaction contemplated hereby or any lender financing Buyer's acquisition of the Property); and (v) Buyer's obligations pursuant to clauses (i), (ii), (iii) and (iv) shall survive the delivery of the Deed or earlier termination of this Agreement for any reason. It is understood that the inspections as aforesaid are in lieu of Seller making any representations as to the condition or state of repair of the Property.

(b) In furtherance of the foregoing, Buyer, at its sole cost, may perform or cause to be performed, on its own behalf and at its own expense, engineering and other "due diligence" studies, tests and analyses of the Property, including, without limitation, environmental site assessments, inspections of the roof, foundations, heating, ventilating and air conditioning system and elevators, if any, by one or more engineers, contractors and/or exterminators selected by Buyer, and such other investigations as Buyer deems necessary.

[(c) In addition, from and after the Execution Date through and including August 25, 1996 (the "Zoning Due Diligence Deadline Date") the Buyer may attempt to obtain any necessary zoning approvals necessary in order to enable Buyer to _____. In no event shall the Seller be responsible for reimbursement to Buyer for expenses incurred in obtaining any approval, regardless of any increase in value to the Property caused by the existence of such approval. In the pursuit of any permit, the Buyer shall be subject to the conditions contained in subparagraph (a) of this Section.]

(d) If, on or before the Due Diligence Deadline Date [or the Zoning Due Diligence Deadline Date as the case may be,] Buyer, in its sole discretion, determines that the results of any investigation conducted by Buyer pursuant to this Paragraph are not satisfactory to Buyer, or is unable to obtain necessary zoning approvals, then, notwithstanding anything contained in this Agreement to the contrary, Buyer may, at its option, notify Seller in writing on or before 5:00 pm on the Due Diligence Deadline Date [or the Zoning Due Diligence Deadline Date, as the case may be,] of its election to terminate this Agreement. If Buyer so elects to terminate this Agreement pursuant to this provision, then the Deposit, shall be returned to Buyer and this Agreement shall thereupon terminate without recourse to the parties (except as otherwise provided in this Agreement). In the event Buyer fails to so notify Seller: (i) the Deposit shall become non-refundable and shall be deemed earned by Seller regardless of whether the transaction is consummated (unless the transaction is not consummated pursuant to any other provision of this Agreement under which Buyer would otherwise be entitled to return of the Deposit), and (ii) Buyer shall be deemed to have waived this condition. Buyer agrees that, in

the event this transaction is not consummated for any reason, Buyer shall furnish to Seller copies of any written reports or documents in respect of the Property.

B. FINANCING CONTINGENCY:

In order to finance the acquisition of the Property, Buyer shall have until _____ to obtain a mortgage commitment in an amount not to exceed $_____ at market rates and on prevailing terms and conditions. If, after using its best efforts, Buyer is unable to obtain such a commitment, then Buyer may terminate this Agreement by written notice thereof ("Buyer's Financing Notice') to Seller, which notice must be accompanied by evidence documenting Buyer's efforts to obtain financing and the basis for denial of financing, if applicable. If Buyer's Notice is received prior to 5:00 pm on _____ this Agreement shall terminate and be void and without recourse to the parties hereto and the Deposit, together with all interest earned thereon, if any, shall be forthwith returned to Buyer, in which event Buyer and Seller shall be relieved of any further liabilities and obligations hereunder (except as otherwise provided in this Agreement). If Buyer shall fail to timely deliver Buyer's Financing Notice to Seller within the time period provided above, then this Agreement shall continue in full force and effect, and Buyer shall not be entitled to terminate this Agreement by reason of this Section.

19. BROKER:

(a) Buyer represents and warrants to Seller that no real estate broker or other party entitled to a commission is involved in connection with this transaction other than Seller's Broker and Co-Broker, if applicable. Such warranty and representation shall survive the delivery of the Deed hereunder or earlier termination of this Agreement for any reason.

(b) Buyer agrees to indemnify, defend, and to hold Indemnitees harmless from, any claim, loss, damage, cost or liability, including, without limitation, reasonable attorneys' fees, incurred as a result of claims for brokerage commissions asserted against Indemnitees by anyone (other than Seller's Broker or Co-broker) claiming to have dealt with Buyer in connection with the purchase of the Property by Buyer. This indemnity shall survive delivery of the Deed or earlier termination of this Agreement for any reason.

20. TERMS OF ESCROW:

(a) The Deposit shall be held by Escrow Agent in a separate [interest-bearing] account at a bank insured by the Federal Deposit Insurance Corporation. [The amount of the interest shall be applied against the Purchase Price.] Escrow Agent shall distribute the Deposit, to the Seller on the Closing Date or otherwise in accordance with the terms of this Agreement, unless otherwise directed by written notice to Escrow Agent signed by both Buyer and Seller. In the event of a dispute between the parties, Escrow Agent shall deposit the funds with a court of competent jurisdiction until a final order, judgment or decree, beyond appeal, directing the disposition of the Deposit, has been issued and shall thereafter disburse or cause such court to disburse the Deposit, in accordance therewith.

(b) Escrow Agent shall not be liable for any act or omission taken by it in good faith. Escrow Agent shall be liable for any gross negligence or willful misconduct in the performance of its duties pursuant to this Agreement. Escrow Agent shall not be responsible for the genuineness of any signature or for the genuineness or collectibility of any check and may rely conclusively, and shall be protected in relying upon, and shall have no duty or obligation to investigate, ascertain the correctness or status of, any judgment, order, decree, certificate, notice, request,

consent, statement or other instrument delivered to it in connection with the performance of its obligations hereunder.

(c) The Escrow Agent shall not charge or be paid any fee for its services as escrow agent under this Agreement provided, however, Escrow Agent shall be entitled to reimbursement for its costs and expenses(including reasonable attorney fees) associated with any interpleader action.

(d) Seller and Buyer acknowledge that Escrow Agent is also acting as counsel to Seller in connection with the transaction contemplated by this Agreement. Seller and Buyer acknowledge that they are aware of the potential for actual or apparent conflict of interest which may arise in connection with such representation and Escrow Agent's performance of its duties as Escrow Agent. Seller and Buyer hereby waive all rights to object to such conflict of interest and release Escrow Agent from any liability in connection with such conflict of interest. Buyer hereby consents to Escrow Agent's continuing representation of Seller in connection with the transaction contemplated by this Agreement and thereafter.

21. REPRESENTATIONS AND WARRANTIES:

(a) Seller agrees with Buyer that the following representations, covenants and warranties shall be true and accurate on the Execution Date and on the Closing Date:

(i) Seller has the legal right, power and authority to enter into this Agreement and to perform all of its obligations hereunder; and

(ii) the execution and delivery of this Agreement and the performance by Seller of its obligations hereunder will not conflict with, or result in a breach of, to the best of Seller's knowledge, any judgment, writ, injunction, regulation, ruling, directive or decree of any court or governmental authority, or any agreement or instrument to which Seller is a party or by which Seller is bound.

(b) Buyer agrees with Seller that the following representations, covenants and warranties shall be true and accurate on the Execution Date and on the Closing Date:

(i) Buyer is a Duly Authorized Buyer Entity;

(ii) Buyer has the legal right, power and authority to enter into this Agreement and to perform all of its obligations hereunder;

(iii) The execution and delivery of this Agreement and the performance by Buyer of its obligations hereunder, (A) have been duly authorized by all requisite [membership] action, and (B) will not conflict with, or result in a breach of, any of the terms, covenants and provisions of Buyer's constituent documents, or, to the best of Buyer's knowledge, any judgment, writ, injunction, regulation, ruling, directive or decree of any court or governmental authority, or any agreement or instrument to which Buyer is a party or by which Buyer is bound;

(c) Buyer acknowledges and agrees that Seller is relying on the information contained in Buyer's representations and warranties.

(d) In the event of any permitted assignment pursuant to Paragraph 24 below or any other assignment consented to in writing by Seller, the representations, covenants and

warranties set forth in this Paragraph shall be construed to apply to the assignee. Upon request by Seller, such assignee shall confirm, in writing, the representations, covenants and warranties set forth in this Paragraph.

The provisions of this Paragraph shall survive the delivery of the Deed.

22. BUYER'S DEFAULT; DAMAGES:

In the event that Buyer shall fail to perform, observe or comply with any of its covenants, agreements or obligations hereunder (including, without limitation, Buyer's obligation to pay the Deposit or any part thereof when due) or if Buyer shall otherwise be in default hereunder, the Deposit shall be retained by Seller as Seller's sole and exclusive remedy, at law and in equity, for Buyer's breach and as full liquidated damages for such breach in view of the uncertainty and impossibility of ascertaining such damages to Seller. Both Seller and Buyer agree the aforesaid amount constitutes a reasonable forecast of the damages sustained by the Seller in the event of a breach by Buyer and, in such event, this Agreement shall terminate and become null and void and, except as otherwise provided herein, Buyer and Seller shall be released and discharged of all further liabilities and obligations to each other hereunder.

{If the Buyer shall fail to comply with any term of this Agreement, the Seller may enforce this contract according to law and equity, and to recover all costs of such action, including a reasonable attorney's fee.}

23. SELLER'S DEFAULT; DAMAGES:

In the event that the Seller shall fail to perform, observe or comply with any of its covenants, agreements or obligations hereunder or if Seller shall otherwise be in default hereunder, the Deposit, together with all interest earned thereon, if any, shall be returned to Buyer and Seller shall pay to Buyer the greater of a) $5000.00 or b) the sum of any application fee actually paid by Buyer in connection with any financing plus the cost of Buyer's Property inspection report and title search, if any, plus reasonable attorney fees up to the time of Seller's breach as Buyer's sole and exclusive remedy, at law and in equity, for Seller's breach and as full liquidated damages for such breach in view of the uncertainty and impossibility of ascertaining such damages to Buyer. Both Buyer and Seller agree that the aforesaid amount constitutes a reasonable forecast of the damages that would be sustained by Buyer in the event of breach by Seller, and, in such event, this Agreement shall terminate and become null and void and, except as otherwise provided herein, Seller and Buyer shall be released and discharged of all further liabilities and obligations to each other hereunder.

24. ASSIGNMENT; RECORDING THE AGREEMENT:

(a) Buyer shall not be entitled to assign any or all of its rights under this Agreement to any party without the prior written consent of Seller and any attempt to do so without Seller's written consent shall be null and void. In the event of any permitted assignment, the assignee shall assume responsibility, jointly and severally with Buyer, for all obligations and liabilities of Buyer under this Agreement. Upon request of Seller, the assignee shall execute an agreement in form and substance satisfactory to Seller, pursuant to which such assignee shall confirm such assumption and shall affirm in writing all representations, covenants, warranties and indemnities of Buyer hereunder.

(b) If Buyer either makes an assignment of its rights under this Agreement which is not expressly consented to by Seller in writing or records a copy of this Agreement with the applicable land records office, Seller, at his option, may deem Buyer to be in default of its obligations hereunder and may exercise its rights and remedies for default.

(c) Buyer shall not record a copy of this Agreement nor any short form thereof on the Land Records. Should the Buyer for any reason record this Agreement then the Buyer shall be deemed hereby to have appointed the Seller its Attorney in Fact to file a release thereof and Buyer shall reimburse the Seller for all costs (including attorney fees) incurred in connection therewith.

25. LEASES AND SECURITY DEPOSITS:

(a) Buyer hereby acknowledges that there exist tenants and occupants of the Property pursuant to leases and occupancy agreements (whether written or oral) by and between Seller and said tenants and occupants (the "Leases"). A true and accurate list of the tenants of the Property is attached hereto as Exhibit C. Buyer shall receive a credit at closing for all security deposits, prepaid rents and last month's rents in Seller's possession, and Buyer shall indemnify and hold Seller harmless from all loss, cost and liability arising from all security deposits, prepaid rents and last month's rents with respect to the Leases.

(b) Effective as of the Closing Date:

(i) Seller hereby assigns to Buyer, and Buyer hereby accepts from Seller, all of Seller's right, title and interest in, to and under the Leases in force and effect as of the Closing Date;

(ii) Buyer hereby assumes all of Seller's obligations under the Leases in force and effect as of the Closing Date, and Buyer shall indemnify Indemnitees from and against any and all losses, liabilities, claims or damages arising out of or resulting from the Leases for the period from and after the Closing Date;

(iii) Buyer shall not assume any losses, liabilities, claims or damages arising out of or resulting from the Leases in force and effect as of the Closing Date for the period prior to the Closing Date.

The provisions of this Section shall survive the delivery of the Deed.

26. NOTICES:

All notices required or permitted to be given hereunder shall be in writing and delivered by hand, by facsimile transmission, by nationally recognized overnight courier or mailed postage prepaid, by registered or certified mail, return receipt requested, addressed as shown in Paragraph 1 or to such other address as shall be designated by written notice received by the other party in accordance with the provisions of this Paragraph. Any such notice shall be deemed given when so delivered by hand or confirmed facsimile or one (1) business day after deposited with such nationally recognized overnight courier, or, if so mailed, three (3) business days after deposited with the U.S. Postal Service.

27. MISCELLANEOUS:

(a) This Agreement may be executed in multiple counterparts, is to be construed in accordance with the laws of the State of Connecticut, and is binding upon and inures to the benefit of the parties hereto and their respective heirs, successors and assigns. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this Agreement or to be used in determining the intent of the parties to it.

(b) This Agreement embodies the entire contract between the parties hereto with respect to the Property and the subject matter hereof and supersedes any and all prior

negotiations, agreements and understandings, written or oral, formal or informal, all of which are deemed to be merged herein. No representations, statements, warranties, covenants, undertakings or promises of Seller or any representative or agent of Seller, whether oral, implied or otherwise and whether made before or after the date hereof, shall be considered a part hereof or binding upon Seller unless set forth herein or agreed to by the parties in writing, nor shall any provision of this Agreement be supplemented, terminated, modified or waived except by a writing signed by both parties. No modification or amendment to this Agreement of any kind whatsoever shall be made or claimed by Seller or Buyer, and no notice of any extension, change, modification or amendment made or claimed by Seller or Buyer shall have any force or effect whatsoever unless the same shall have been reduced to writing and fully signed by Seller and Buyer.

(c) All Exhibits attached hereto and incorporated herein by reference are made a part hereof.

(d) This document shall not be considered or construed to be an offer of the Seller. Seller reserves the right to withdraw this proposed Agreement at any time prior to the Seller executing and delivering same.

(e) If any term, covenant or condition of this Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Execution Date.

SELLER:

_____
Name:

_____

BUYER:

By: _____
Name:
Its:

_____

The Escrow Agent is executing this Agreement solely for the purpose of acknowledging receipt of the Deposit and acknowledging and agreeing to be bound by the provisions of Paragraph 20 hereof.

ESCROW AGENT:

By: _____
Name:
Its:

EXHIBIT A

LEGAL DESCRIPTION

PURCHASE AND SALE AGREEMENT

1. REFERENCE DATA AND DEFINITIONS:

The following are definitions and reference data used in this Agreement:

Execution Date:

Seller:

Buyer:

Property: The property is located at _____, _____, Connecticut _____ _____and is more particularly defined and described in Paragraph 2 of this Agreement.

Purchase Price: $
(Paragraph 5)

~~Initial~~ Deposit: ~~$~~
~~(Paragraph 5)~~

~~Additional Deposit:~~ $
(Paragraph 5)

Balance of Funds: $
(Paragraph 5)

Escrow Agent:
(Paragraph 5 and 20)

Closing Date:
(Paragraph 6)

Place of Closing: At the office of Seller's counsel at _____, _____ Connecticut.
(Paragraph 6)

Seller's Broker:
(Paragraph 19)

Co-broker, if any:
(Paragraph 19)

Duly Authorized Buyer Entity:
(Paragraph 21(b)(i))

Buyer is a _____ (type of entity) duly organized and in good standing in the State of Connecticut.

Notices: Seller:
(Paragraph 25)

with a copy to:

Buyer:

with a copy to:

2. PROPERTY DESCRIPTION:

In consideration of the mutual covenants herein contained and other good and valuable consideration, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller those certain premises commonly known as _____, _____, Connecticut more particularly described in Exhibit A attached hereto and made a part hereof ~~(the "Real Property")~~ together with all buildings, structures and improvements now or hereafter existing thereon, and all fixtures ~~therein owned by Seller (collectively, the "Property"). The following~~, plantings and shruberies, lighting fixtures, plumbing, electrical and HVAC systems therein (the "Property") and all personal property ~~shall also be conveyed to Buyer: _____~~ _____owned by Seller at the Property, including, without limitation, <List property included in sale> (the "Personal Property").

3. DEED:

Seller shall convey the Property to Buyer by ~~Quit Claim/Warranty~~Warranty Deed ("Deed"). The Deed shall convey clear record and marketable fee simple title thereto, free from encumbrances except:

(a) Provisions of existing building, zoning and historical laws;

(b) Such taxes for the then current fiscal year as are not due and payable on the date of the delivery of the Deed;

(c) Any liens for municipal betterments or the like;

(d) Easements, rights and restrictions or other matters of record~~;~~ provided the same do not render title unmarketable nor restrict the use of the property as <insert Buyer's intended use of the Property> ; and

(e) Rights of tenants ~~or parties in possession; and~~

~~(f) Acts done or suffered by Buyer or any person claiming by, through or under Buyer.~~

~~(g) Any state of facts which a physical inspection or accurate survey might disclosure.~~

of the Property pursuant to written leases as more particularly described in Exhibit B (the "Leases").

Title to the Property shall not be deemed to be unmarketable for the purposes of this Agreement by reason of any encumbrance, lien or exception to title if~~: (a)~~ the Standards of Title of the Connecticut Bar Association recommend that no corrective or curative action is necessary in those circumstances or in circumstances substantially similar to those presented by such encumbrance, lien or exception to title~~, or (b) a policy of title insurance can be obtained at Buyer's expense at no additional premium, without exception for the alleged title defect or, if additional premium shall be charged therefor, Seller, at its option, shall elect to pay the same~~.

Notwithstanding anything contained in this Agreement to the contrary, Buyer shall, ~~prior to~~within five (5) days of the ~~Due Diligence Date as hereafter defined~~Closing, give Seller written notice of any title encumbrance, lien or exception on the ~~Real~~ Property which requires corrective or curative action. ~~If Buyer fails to give such notice, Buyer shall be conclusively deemed to have accepted the Real Property subject to any and all such encumbrances or defects.~~ In the event that Buyer notifies Seller of any defect, Seller shall then have up to ~~sixty~~thirty (~~60~~30) days to remove the same in accordance with the provisions of Paragraph ~~9~~8 of this Agreement.

~~[If deed is by Quitclaim then: the Deed shall convey such title as Seller possesses to the Property without representations, warranties or covenants of any kind.]~~

4. PLANS:

Seller shall deliver to Buyer such plans as Seller has in Seller's actual possession.

5. PURCHASE PRICE; DEPOSIT:

The agreed to price for the Property is the Purchase Price, which is payable as follows:

(a) The ~~Initial~~ Deposit has been paid by check (subject to collection) or by certified funds by Buyer to the Escrow Agent simultaneously with the execution and delivery of this Agreement.

~~(b) The Additional Deposit shall be paid on or before _____ by bank check or certified funds.~~ The ~~Initial Deposit and the Additional~~ Deposit shall be held in a separate ~~[interest-bearing]~~non-interest-bearing escrow account by the Escrow Agent~~, subject to, and~~ until the Closing or otherwise in accordance with~~, the terms and conditions of~~ this Agreement. ~~The Initial Deposit and the Additional Deposit shall herein collectively be called the "Deposit." All~~

~~references to "Deposit" shall include any interest thereon. The interest earned thereon, if any, shall/shall not be applied against the Purchase Price.~~

~~(c) {All sums paid toward the purchase price hereunder shall be held in escrow by the Escrow Agent until such time as the until the Buyer has received an unconditional written commitment for a mortgage as described in the Contingency section of this Agreement.}~~

(~~d~~b) The Balance of Funds shall be paid at the Closing by certified funds, wire transfer in accordance with instructions to be provided by Seller, bank check or other immediate funds. A lawyer's trustee check will not constitute immediate funds.

6. TIME FOR PERFORMANCE; DELIVERY OF DEED:

The Deed is to be delivered at the closing (the "Closing") on the Closing Date at the Place of Closing, unless otherwise agreed upon in writing and signed by both parties. ~~**THE PARTIES HEREBY AGREE THAT TIME IS OF THE ESSENCE OF THIS AGREEMENT.**~~

7. POSSESSION AND CONDITION OF PROPERTY:

Seller shall deliver full possession of the Property in broom clean condition together with all keys thereto, subject only to ~~all~~the tenancies ~~and agreements~~ in effect as of the Closing Date under the Leases described in Exhibit B, the Property to be then in the same condition as ~~it now is~~of the time and date of Buyer's inspection, reasonable wear and tear excepted. Buyer shall be entitled to ~~an~~a final inspection of the Property prior to the delivery of the Deed in order to determine whether the condition thereof complies with the terms of this Paragraph.

8. EXTENSION TO PERFECT TITLE OR MAKE PROPERTY CONFORM:

(a) **[If Seller shall be unable to convey title to the Property in accordance with Paragraph 3 of this Agreement, or to deliver possession of the Property, all as herein stipulated, or, if, on the Closing Date, the Property does not conform with the provisions hereof, then Seller shall~~, at~~ use its ~~option, have additional time~~best efforts to remove any defects in title, or to deliver possession as provided herein, or to make the Property conform to the provisions hereof, as the case may be, in which event the time for performance hereunder shall be extended to a date determined by Seller, but in no event more than ~~sixty~~thirty (~~60~~30) days from the Closing Date specified in Paragraph 1 of this Agreement.**

~~**(b) Any attempt by Seller to cure any objection to title or condition shall not be deemed an admission by Seller that a defect does in fact exist. Nothing contained in this Agreement shall require Seller (i) to institute or continue with any legal proceedings or make any payment**~~**]**

or

[If Seller shall be unable to convey title to the Property in accordance with Paragraph 3 of this Agreement, or to deliver possession of the Property, all as herein stipulated, or, if, on the Closing Date, the Property does not conform with the provisions hereof, then Seller shall have the right to extend the Closing Date by no more than thirty (30) days in order to remove any ~~**objection to title or (ii) to continue to pursue any such proceeding.**~~ **defects in title, or to deliver possession as provided herein, or to make the Property conform to the provisions hereof, as the case may be; provided, however, that**

such right of Seller to extend the date of closing shall be subject to the right of the Buyer to terminate this Agreement if said extension of time or delay shall result in loss of Buyer's financing commitment or cause Buyer to suffer any additional cost, penalty or charge made by its lender.]

(b) **[If after the expiration of the aforesaid period of time, Seller shall have failed to remove any defects in title, deliver possession or make the Property conform, as the case may be, all as herein agreed]**

or

[If, Seller by notice to Buyer elects not to cure any objection to title or if, in Seller's opinion, the objection cannot be removed, or if the removal or cure shall require the expenditure of any monies which the Seller does not wish to incur, or the initiation of legal proceedings ~~, then, the sole liability of Seller shall be at Buyer's election, to deliver title in accordance with Paragraph 9 below or refund to Buyer the Deposit. If the return of the Deposit is elected, then upon receipt by Buyer of the Deposit, this Agreement shall terminate, in which event both parties shall be relieved of any further liabilities and obligations hereunder (except as otherwise provided in this Agreement).~~

~~**(c) If Seller shall have elected to cure and if, at the expiration of the aforesaid period of time, Seller shall have failed to remove any defects in title, deliver possession or make the Property conform, as the case may be, all as herein agreed,**].~~

then, at Buyer's option (i) Buyer may elect to purchase the Property in accordance with the terms of Paragraph ~~8~~9 below, or (ii) the Deposit shall be refunded to Buyer, and this Agreement shall terminate, in which event both parties shall be relieved of any further liabilities and obligations to each other hereunder (except as otherwise provided in this Agreement).

~~(d) In the event Seller has effected a cure within said sixty (60) day period, the Closing shall take place three (3) business days after notice to Buyer.~~

9. BUYER'S ELECTION TO ACCEPT TITLE:

Buyer shall have the election, at either the original or any extended time the delivery of the Deed, to accept such title as Seller can deliver to the Property, in its then condition, and to pay the Purchase Price in full, without any reduction, in which case Seller shall convey such title to Buyer.

10. CASUALTY/CONDEMNATION/EMINENT DOMAIN:

(a) If the Property shall have been damaged by fire or other casualty or is the subject of any governmental acquisition proceedings (including condemnation or eminent domain proceedings) (collectively, the "Impairment") ~~-~~which ~~materially~~either impairs the operation or intended operation of the Property ~~for a period of thirty (30) days (the "Impairment Period") or more or the damage is~~or is damaged such that more than ~~Twenty-Five~~Five Thousand Dollars ($~~2~~5,000.00) would be reasonably required to repair or restore such damage, then Buyer shall have the right, at Buyer's option, to terminate this Agreement by written notice (the "Impairment Notice") from Buyer received by Seller within five (5) business days of the ~~discovery~~Seller's notice to Buyer of the Impairment~~ by Buyer~~, in which event the Deposit, together with all interest earned thereon, if any, shall be refunded to Buyer and all liabilities and obligations of the parties under this Agreement shall terminate (except as otherwise provided in this Agreement). ~~If~~

~~Seller does not receive an Impairment Notice within five (5) business days of the discovery of the Impairment by Buyer then Buyer shall not be entitled to terminate this Agreement on account of this subparagraph (a) of this Paragraph 10.~~ **[Prior to Closing, Seller shall be responsible for making all repairs for damage of less than $5,000.00.]**

(b) If, however, Buyer does not elect to terminate this Agreement by reason of such damage, or if the Property shall have been damaged by fire or other casualty or is the subject of any governmental acquisition proceedings (including condemnation or eminent domain proceedings) which does not ~~materially~~ impair the operation or intended operation of the Property for a period of thirty (30) days or more **[or the damage is such that ~~Twenty-Five~~Five Thousand Dollars ($~~2~~25,000.00) or less would be reasonably required to repair or restore such damage]**, Buyer shall accept the Property, ~~without~~with a~~ny~~ reduction of the Purchase Price~~, all as if such damage had not occurred, but Seller shall pay over or assign to Buyer, at the Closing, all amounts recovered or recoverable on account of insurance maintained by Seller on the Property, or condemnation awards paid or payable to Seller by reason of such taking, less any amounts reasonably expended by Seller prior to the Closing Date for security, any partial restoration and the reasonable costs of collection of such insurance proceeds or condemnation awards~~ in an amount sufficient to compensate Buyer for such impairment or damage.

(c) In the event that Buyer and Seller disagree on the cost to repair or restore the Property or material impairment, the determination thereof shall be made by ~~a Seller approved~~an adjuster or contractor ~~reasonably satisfactory to~~approved by Seller and Buyer, the fees of whom shall be borne equally by Seller and Buyer.

11. ACCEPTANCE OF DEED:

The parties agree that the delivery by Seller and the acceptance by Buyer of the Deed shall be deemed to constitute full compliance by Seller with all of the terms, conditions and covenants of this Agreement on its part to be performed.

12. USE OF PURCHASE MONEY TO CLEAR TITLE:

To enable Seller to convey the Property as herein provided, Seller may, at the Closing, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that ~~all instruments so procured are~~copies of payoff letters or other evidence reasonably satisfactory to Buyer and/or Buyer's title insurer is delivered to Buyer simultaneously with the delivery of the Deed~~, or within a reasonable time thereafter in accordance with local conveyancing practice.~~.

13. INSURANCE:

Seller represents Seller currently carries hazard and liability insurance for the Property. Seller shall maintain the insurance currently in effect ~~for the Property from the date it takes title~~ until the Closing Date.

14. CONDITION OF PROPERTY:

~~Buyer agrees that Buyer is responsible for its own inspection and examination of the Property, including records, files, documents and improvements thereon.~~ Subject to the provisions of Paragraph ~~9~~10 hereof, Buyer agrees to accept possession of the Property on the Closing Date in substantially the same condition as at the ~~Execution Date~~time of

Buyer's inspection, reasonable wear and tear excepted. ~~The Buyer's execution of this Agreement and the acceptance by Buyer of the Deed shall constitute an acknowledgement by Buyer that the Property was accepted without representation or warranty, express, implied or statutory, as to the condition or suitability of the Property, or any part thereof, any matter of fact or any matter in any way relating to the Property, this Agreement or otherwise, except as expressly set forth in this Agreement. Buyer shall accept the Property in an "AS IS, WHERE IS" condition, based solely on Buyer's own investigations. Without limiting the generality of the foregoing, Buyer acknowledges that except as otherwise provided in this Agreement, that neither Seller nor any broker, agent or employee of Seller has made any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to:~~

~~(a) The nature, quality or condition of the Property, including, without limitation, the water, soil and geologic or environmental nature, quality or condition;~~

~~(b) The income derived or to be derived from the Property;~~

~~(c) The suitability of the Property for any and all activities and uses which Buyer may intend to conduct thereon;~~

~~(d) The compliance of or by the Property or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body;~~

~~(e) The habitability, merchantability or fitness for a particular purpose of the Property; or~~

~~(f) Any other matter with respect to the Property.~~

~~**15.**~~

~~15.~~ **ENVIRONMENTAL MATTERS:**

~~(a) Seller does not make, has not made and specifically disclaims any representation or warranty, express or implied, regarding the environmental condition (the "Environmental Condition") at, on, under or about the Property or the compliance or non-compliance of the Property with Environmental Laws (as hereinafter defined), including any administrative or judicial interpretation thereof. For purposes of this Agreement "Environmental Laws" shall mean the Comprehensive Environmental Response, Compensation and Liability Act, the Superfund Amendment and Reauthorization Act, the Resource Conservation Recovery Act, the Federal Water Pollution Control Act, the Clean Water Act, the Clean Air Act and any and all other applicable federal, state and local statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, codes, plans, injunctions, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions regulating, relating to or imposing liability (including strict liability) or standards of conduct in regard to the environment or to emissions, discharges, releases or the presence of pollutants, contaminants, oils, petroleum or petroleum products, asbestos, lead paint, chemicals or other industrial, toxic or hazardous substances or wastes into the environment, including, without limitation, ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, oils, petroleum or petroleum products, asbestos, lead paint, chemicals or other~~

~~industrial, toxic or hazardous substances or wastes or the cleanup or other remediation thereof.~~

~~(b) Buyer acknowledges and agrees that Buyer is satisfied with its opportunity (either before or after the Execution Date) to inspect the Property and to conduct such investigations and studies on and of the Property as it deems necessary, and hereby waives any and all objections to or complaints about the Environmental Condition of the Property. Buyer hereby indemnifies and holds Seller, his heirs, successors and assigns) (collectively, "Indemnitees") harmless with respect to the Environmental Condition at, on, under or about the Property caused by or resulting from the act or omission of Buyer or any person acting on behalf of or at the direction of Buyer, including, without limitation, any agent, employee, tenant, contractor or consultant of or to Buyer.~~

~~The provisions of this Paragraph shall survive the delivery of the Deed or earlier termination of this Agreement.~~

<To be inserted>

16. ADDITIONAL DOCUMENTS:

(a) In addition to the Deed, which shall be in recordable form, Seller shall deliver to Buyer, at the Closing, the following documents, duly executed and acknowledged as provided therein:

(i) evidence of authority of persons executing this Agreement and the other documentation to be executed and delivered by Seller hereunder.

(ii) an affidavit relative to the status of mechanics liens, tenants in possession and survey update in the usual form used by title insurers doing business in Connecticut;

(iii) deliver to Buyer State and local conveyance tax statements signed by Seller representative stating the applicable conveyance taxes (if any),together with Seller's checks to pay such taxes;

(iv) if applicable, an affidavit executed by Seller under oath stating that Seller is not a "foreign person" under the provisions of §1445 of the Internal Revenue Code;

(v) assignment of rents and leases pursuant to the terms of Paragraph 25 below; ~~and~~

(vi) ~~all other documentation required or contemplated by this Agreement.~~

~~(vii) a Quitclaim~~a Bill of Sale in the form attached hereto as Exhibit ~~B~~C as to the Personal Property~~.~~;

(vii) Original executed copies of the Leases;

(viii) An assignment all assignable warranties and guaranties with respect to the Property or Personal Property;

(ix) A reaffirmation of Seller’s representations and warranties hereunder;

(x) Any documentation reasonably required by Buyer's lender, including, without limitation, a certified rent roll and tenant estoppel and subordination agreements; and

(xi) All other documentation required or contemplated by this Agreement.

(b) Buyer shall deliver to Seller, at the Closing, the following documents, duly executed and acknowledged as provided therein:

(i) evidence reasonably satisfactory to Seller of the authority of persons executing this Agreement and the other documentation to be executed and delivered by Buyer hereunder; and

(ii) all other documentation required or contemplated by this Agreement and any other documentation reasonably and customarily required by Seller.

17. ADJUSTMENTS:

(a) To the extent applicable, collected rents, escalations, amounts collected from tenants/occupants on account of taxes and operating expenses, electricity, water, gas, sewage and other utilities, operating expenses and taxes for the then current tax period and all other items of revenue and expense which, by custom and practice, are prorated between sellers and buyers of real property similar in kind to the Property, shall be prorated as of the Closing Date, and the net amount thereof shall be added to or deducted from the Purchase Price, as the case may be. ~~Real estate property taxes shall be adjusted in advance based upon the Uniform Fiscal Year Method. Uncollected rents attributable to the period prior to the Closing Date, less the reasonable expenses of collection thereof, shall be paid to Seller if and when collected by Buyer on account of such period. Any escalations on account of taxes or other charges not yet due and payable or which may be delinquent but attributable to the period prior to the Closing Date, less the reasonable expenses of collection thereof, shall be paid to Seller to the extent received by Buyer. It is understood and agreed that the first such rents and escalations collected by Buyer will be allocated to Seller as past due rents and escalations due under any leases affecting the Property. Buyer shall use reasonable efforts to collect such rents and escalations. Seller retains the right (but not the obligation) to collect or to engage an agent (including a property manager or collection agency) to collect all past due rents and escalations and any other amounts due to Seller.~~

~~(b)~~ If the amount of real estate taxes is not known on the Closing Date, they shall be prorated on the basis of the taxes assessed for the preceding year~~, with a proration as soon as the new tax rate and valuation can be ascertained. Maintenance, utilities and operating expenses applicable to the Property shall be prorated between Seller and Buyer as of the Closing Date based on estimates of the amounts that will be due and payable on the next payment date, unless final readings therefor as of the Closing Date shall have been obtained, in which case such final readings shall be utilized as the basis for adjustment. As soon as the actual amount of such expenses shall be known, Seller and Buyer shall recalculate the adjustments with the result that Buyer shall pay for those expenses attributable to the period of time commencing with the first day after the Closing Date.~~

~~(c~~. Seller shall transfer all key deposits and security deposits and interest accrued thereon to Buyer at Closing.

(b) Buyer acknowledges that it shall be responsible for all fees relating to any financing obtained by Buyer in connection with its acquisition of the Property, all title costs, recording fees and Buyer's attorneys' fees, and Seller acknowledges that Seller shall be responsible for Seller's attorneys' fees and for recording fees associated with clearing any encumbrances of record.

(~~d~~c) Buyer assumes and agrees to pay all taxes and assessments which become due and payable at or after the Closing Date.

The provisions of this Paragraph shall survive the delivery of the Deed.

18. CONTINGENCIES:

A. PROPERTY INSPECTION/ZONING CONTINGENCY:

(a) From and after the Execution Date through and including _____ (the "Due Diligence Deadline Date") Seller shall afford to Buyer and authorized representatives of Buyer reasonable access to the Property in order that Buyer may have full opportunity to inspect and take measurements, conduct surveys and perform tests of the Property, ~~subject to the following: (i) Seller shall be entitled, at Seller's election, to have a representative of Seller participate in the foregoing; (ii) Buyer and its agents, officers, directors, partners, members, contractors, employees, successors and assigns (collectively, "Buyer's Representatives")~~including, without limitation, environmental site assessments, inspections of the roof, foundations, heating, ventilating and air conditioning systems and investigations into other matters Buyer deems necessary provided that Buyer shall restore the Property to its prior condition, reasonable wear and tear excepted~~; (iii)~~ and provided further that Buyer ~~and Buyer's Representatives~~ shall indemnify and hold ~~Indemnitees~~Seller and ~~their~~Seller's agents, officers, directors, partners, contractors, employees, successors and assigns harmless from all loss, cost or damage, direct or indirect, including, without limitation, attorneys' fees, arising from the aforesaid investigations~~; and (iv) Buyer and Buyer's Representatives shall keep confidential and not disclose the information or results of any such investigations to any third party (except as otherwise required by applicable law or to any lawyer advising Buyer with respect to the transaction contemplated hereby or any lender financing Buyer's acquisition of the Property); and (v) Buyer's obligations pursuant to clauses (i), (ii), (iii) and (iv) shall survive the delivery of the Deed or earlier termination of this Agreement for any reason. It is understood that the inspections as aforesaid are in lieu of Seller making any representations as to the condition or state of repair of the Property.~~

~~(b) In furtherance of the foregoing, Buyer, at its sole cost, may perform or cause to be performed, on its own behalf and at its own expense, engineering and other "due diligence" studies, tests and analyses of the Property, including, without limitation, environmental site assessments, inspections of the roof, foundations, heating, ventilating and air conditioning system and elevators, if any, by one or more engineers, contractors and/or exterminators selected by Buyer, and such other investigations as Buyer deems necessary.~~

~~[(c.~~

[(b) In addition, from and after the Execution Date through and including _____ (the "Zoning Due Diligence Deadline Date") the Buyer may attempt to obtain any necessary zoning approvals necessary in order to enable Buyer to _____ <insert Buyer's intended use of the Property> . If necessary, Seller shall sign Buyer's zoning application for such approvals. In no event shall the Seller be responsible for reimbursement to Buyer for expenses incurred in obtaining any ~~approval, regardless of any increase in value to the Property caused by the existence of such~~zoning approval. In the pursuit of any permit, the Buyer shall be subject to the conditions contained in subparagraph (a) of this Section.]

(~~d~~c) If, on or before the Due Diligence Deadline Date [or the Zoning Due Diligence Deadline Date as the case may be,] Buyer, in its sole discretion, determines that the results of any investigation conducted by Buyer pursuant to this Paragraph are not satisfactory to Buyer, or is unable to obtain necessary zoning approvals, then, notwithstanding anything contained in this Agreement to the contrary, Buyer may, at its option, notify Seller in writing on or before 5:00 pm on the Due Diligence Deadline Date [or the Zoning Due Diligence Deadline Date, as the case may be,] of its election to terminate this Agreement. If Buyer so elects to terminate this Agreement pursuant to this provision, then the Deposit, shall be returned to Buyer and this Agreement shall thereupon terminate without recourse to the parties (except as otherwise provided in this Agreement). In the event Buyer fails to so notify Seller: (i) the Deposit shall become non-refundable and shall be deemed earned by Seller regardless of whether the transaction is consummated (unless the transaction is not consummated pursuant to any other provision of this Agreement under which Buyer would otherwise be entitled to return of the Deposit), and (ii) Buyer shall be deemed to have waived this condition. ~~Buyer agrees that, in the event this transaction is not consummated for any reason, Buyer shall furnish to Seller copies of any written reports or documents in respect of the Property.~~

B. FINANCING CONTINGENCY:

In order to finance the acquisition of the Property, Buyer shall have until _____ to obtain a mortgage commitment in an amount not to exceed $_____ at market rates and on prevailing terms and conditions. If, after using ~~its best efforts~~reasonable diligence, Buyer is unable to obtain such a commitment, then Buyer may terminate this Agreement by written notice ~~—~~thereof ("Buyer's Financing Notice") to Seller~~, which notice must be accompanied by evidence documenting Buyer's efforts to obtain financing and the basis for denial of financing, if applicable~~. If Buyer's Notice is received prior to 5:00 pm on _____ this Agreement shall terminate and be void and without recourse to the parties hereto and the Deposit~~, together with all interest earned thereon, if any,~~ shall be forthwith returned to Buyer, in which event Buyer and Seller shall be relieved of any further liabilities and obligations hereunder (except as otherwise provided in this Agreement). If Buyer shall fail to timely deliver Buyer's Financing Notice to Seller within the time period provided above, then this Agreement shall continue in full force and effect, and Buyer shall not be entitled to terminate this Agreement by reason of this Section.

C. LEASES:

The Leases shall remain in full force and effect as of the Closing Date in accordance with their terms. Seller shall not enter into any new leases without Buyer's prior written consent, which consent shall not be unreasonably withheld.

D. FURTHER CONDITIONS

Purchaser's obligations to close title under this Agreement on the Closing Date shall be subject to the satisfaction of the following conditions precedent prior to the Closing Date:

(i) unless otherwise expressly indicated in this Agreement, all of Seller's representations and warranties made in this Agreement shall be true and correct in all material respects as of the Closing Date as if they were made on that date;

(ii) Seller shall have substantially performed all obligations and agreements undertaken by it herein to be performed at or prior to the Closing Date; and

(iii) all Contingencies as referred to in this Agreement have been fulfilled or waived pursuant to the terms and conditions of this Agreement.

19. BROKER:

(a) Buyer represents and warrants to Seller that Buyer has dealt with no real estate broker or other party entitled to a commission ~~is involved~~ in connection with this transaction other than Seller's Broker and Co-Broker, if applicable. The Seller represents to the Buyer that no other broker or agent has any exclusive sale or exclusive agency listing on the premises. Such ~~warranty~~warranties and representations shall survive the delivery of the Deed hereunder or earlier termination of this Agreement for any reason.

(b) Buyer agrees to indemnify, defend, and to hold ~~Indemnitees~~Seller harmless from, any judicially proven claim, loss, damage, cost or liability, including, without limitation, reasonable attorneys' fees, incurred as a result of claims for brokerage commissions asserted against ~~Indemnitees~~Seller by anyone (other than Seller's Broker or Co-broker) claiming to have dealt with Buyer in connection with the purchase of the Property by Buyer. This indemnity shall survive delivery of the Deed or earlier termination of this Agreement for any reason.

20. TERMS OF ESCROW:

(a) The Deposit shall be held by Escrow Agent in a separate ~~[interest-bearing]~~non-interest-bearing account at a bank insured by the Federal Deposit Insurance Corporation. ~~[The amount of the interest shall be applied against the Purchase Price.]~~ Provided Seller is not in default hereof, Escrow Agent shall distribute the Deposit~~,~~ to the Seller on the Closing Date or otherwise in accordance with the terms of this Agreement, unless otherwise directed by written notice to Escrow Agent signed by both Buyer and Seller. In the event of a dispute between the parties, Escrow Agent shall deposit the funds with a court of competent jurisdiction until a final order, judgment or decree, beyond appeal, directing the disposition of the Deposit, has been issued and shall thereafter disburse or cause such court to disburse the Deposit, in accordance therewith.

(b) Escrow Agent shall not be liable for any act or omission taken by it in good faith. Escrow Agent shall be liable for any gross negligence or willful misconduct in the performance of its duties pursuant to this Agreement. Escrow Agent shall not be responsible for the genuineness of any signature or for the genuineness or collectibility of any check and may rely conclusively, and shall be protected in relying upon, and shall have no duty or obligation to investigate, ascertain the correctness or status of, any judgment, order, decree, certificate, notice, request, consent, statement or other instrument delivered to it in connection with the performance of its obligations hereunder.

(c) The Escrow Agent shall not charge or be paid any fee for its services as escrow agent under this Agreement ~~provided, however, Escrow Agent shall be entitled to reimbursement for its costs and expenses(including reasonable attorney fees) associated with any interpleader action.~~

~~(d) Seller and Buyer acknowledge that Escrow Agent is also acting as counsel to Seller in connection with the transaction contemplated by this Agreement. Seller and Buyer acknowledge that they are aware of the potential for actual or apparent conflict of interest which may arise in connection with such representation and Escrow Agent's performance of its duties as Escrow Agent. Seller and Buyer hereby waive all rights to object to such conflict of interest and release Escrow Agent from any liability in connection with such conflict of interest. Buyer hereby consents to Escrow Agent's continuing representation of Seller in connection with the transaction contemplated by this Agreement and thereafter.~~

.

21. REPRESENTATIONS AND WARRANTIES:

(a) ~~Seller agrees with Buyer that the following representations, covenants and warranties shall be true and accurate on the Execution Date and on the Closing Date:~~

~~(i) Seller has the legal right, power and authority~~ To induce Buyer to enter into this Agreement and to ~~perform all of its obligations hereunder; and~~

~~(ii) the execution and delivery of~~purchase the Property from Seller, Seller makes the following representations, all of which Seller represents are true as of the date hereof and, except to the extent the same shall be expressly related to an earlier date, shall be true as of the Closing Date and shall be deemed remade as of that date:

A. Seller is the sole owner of the Premises and is authorized, pursuant to the terms of the Trust to enter into this Agreement and ~~the performance by Seller of its obligations hereunder will not conflict with, or result in a breach of, to the best of Seller's knowledge, any judgment, writ, injunction, regulation, ruling, directive or decree of any court or governmental authority, or any agreement or instrument~~to convey the Property without the permission of any court, governmental agency or other third party.

B. The execution, delivery and performance of this Agreement in accordance with its terms will not violate any contract, agreement, commitment, order, judgment or decree to which Seller is a party or by which Seller ~~is bound.~~ or the Property is bound.

C. Seller has a the full right, power and authority to sell and convey the Property to Buyer as provided herein and to carry out its obligations hereunder.

D. Upon execution, this Agreement shall be the valid and binding obligation of Seller, enforceable in accordance with the terms hereof.

E. The Leases are and will be on the date of Closing in full force and effect and Seller has no notice of any event which is or with the passage of time would be an event of default by landlord or tenant under the Leases. All rents payable under the Leases are current (but not prepaid) and no notice has been received by Seller

from any tenant claiming any violation of any term, covenant or condition of the Leases on the part of Seller.

F. There has been no written request, application or consent by or on behalf of Seller for or to any pending zoning change or variance with respect to the Property. The Property has been used, and to the best of Seller's knowledge may continue to be used, for <insert use of the Property> .

F. Seller has received no notice of violation of any applicable federal, state or local law and there are no pending or threatened appeals, revocations or suspensions of any permits, approvals or consents relating to the current use or proposed use of the Premises.

H. The Premises are in compliance with all Environmental Laws (as defined below), including without limitation all restrictions, conditions, standards, limitations, prohibitions, requirements, obligations, schedules and timetables contained in the Environmental Laws or contained in any regulation, code, plan, order, decree, judgment, injunction, notice or demand letter issues, entered, promulgated or approved thereunder. The "Environmental Laws" means all federal, state and local laws, regulations, rules and ordinances relating to pollution or protection of the environment, including, without limitation, laws relating to releases or threatened releases of hazardous substances, oils, pollutants or contaminants into the indoor or outdoor environment (including, without limitation, ambient air, surface water, ground water, land, surface and subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, release, transport or handling of hazardous substances, oils, pollutants or contaminants.

I. Seller has heretofore delivered to Buyer true and complete copies of all environmental studies in Seller's possession made in the last five (5) years relating to the Property.

J. To the best of Seller's knowledge, there is no civil, criminal or administrative action, suit, demand, claim, hearing, notice of violation, investigation, proceeding, notice or demand letter pending relating to Seller, the Property or, to the best knowledge of Seller, threatened against Seller, any tenant occupying any part of the Property or the Property relating in any way to the Environmental Laws or any regulation, code, plan, order, decree. judgment, injunction, notice or demand letter issued, entered, promulgated or approved thereunder.

K There are no existing or pending litigation, claims, condemnations or sales in lieu thereof with respect to any aspect of the Property nor, to the knowledge of Seller, have any actions, suits, proceedings or claims been threatened or asserted.

L. As of the Closing Date, there will be no outstanding contracts or agreements, other than the Leases affecting the Property except as may be approved by Buyer in writing. Seller shall not enter into any new leases without Buyer's prior written consent, which shall not be unreasonably withheld.

M. Between the date hereof and the Closing Date, Seller will not take any action or permit any action which will create a lien, charge, mortgage or encumbrance on the Property in whole or in part.

N. Except as required by Buyer, between the date hereof and the Closing Date, except as requested in writing by Buyer, Seller shall not grant any easements, licenses or other rights or restrictions affecting all or any part of the Property.

O. Seller has received no notice and has no knowledge of any pending tax increases, reassessments, improvements, liens or special assessments to be made against the Property by any governmental authority, and has received no notice indicating that the Property or its condition violates any law, ordinance, rule or regulation, including, without limitation, zoning and use restrictions, applicable to the Property.

P. There are no tenants of the Property other than those listed in Exhibit B.

Q. During the period between the date hereof and the Closing Date (herein the "Contract Period"), the Seller shall not cause or permit an event or condition to exist affecting the Property which would, or could with the giving or notice or passage of time, or both, result in a violation of any Environmental Law.

R. During the Contract Period Seller shall:

(i) Comply with all state and municipal laws, ordinances, regulations and orders relating to the Property.

(ii) Comply with all the terms, conditions and provisions of any liens, mortgages, agreements and other contractual arrangements referred to herein and make all payments required to be paid thereunder and suffer no default.

(iii) Operate, manage and maintain the Property in the same general manner as the same has been operated by Seller to the date hereof.

(iv) Promptly give notice to Buyer of the occurrence of any event materially modifying the substance of any of the representations made by Seller in this Agreement or result in a breach of the terms an conditions of this Agreement.

S. Perform all obligations of Lessor under the Leases.

T. Seller has not received a written notice or requests from any insurance. company issuing any of said paid policies for the Premises which have not been complied with Seller.

U. No service, maintenance, property management or other contracts affecting the Premises will be in existence as of the closing except as disclosed to and approved by Buyer, and in no event shall there be in existence as of the closing any contracts relating to management or leasing (other than currently existing leases and agreements for future leases) of the Improvements.

V. Seller has not made any alterations or additions or modified the use of the Premises without having obtained the proper building and zoning permits and final approvals

All representations, warranties and covenants of Seller contained in this Agreement or other document delivered in connection herewith shall be true and correct as of the Closing Date and shall survive the Closing. At Closing the Seller shall execute a certification remaking each of the aforesaid representations and warranties.

(b) Buyer agrees with Seller that the following representations, covenants and warranties shall be true and accurate on the Execution Date and on the Closing Date:

(i) Buyer is a Duly Authorized Buyer Entity;

(ii) Buyer has the legal right, power and authority to enter into this Agreement and to perform all of its obligations hereunder;

(iii) The execution and delivery of this Agreement and the performance by Buyer of its obligations hereunder, (A) have been duly authorized by all requisite [membership] action, and (B) will not conflict with, or result in a breach of, any of the terms, covenants and provisions of Buyer's constituent documents, or, to the best of Buyer's knowledge, any judgment, writ, injunction, regulation, ruling, directive or decree of any court or governmental authority, or any agreement or instrument to which Buyer is a party or by which Buyer is bound;

(c) Buyer acknowledges and agrees that Seller is relying on the information contained in Buyer's representations and warranties.

(d) In the event of any permitted assignment pursuant to Paragraph 24 below or any other assignment consented to in writing by Seller, the representations, covenants and warranties set forth in this Paragraph shall be construed to apply to the assignee. Upon request by Seller, such assignee shall confirm, in writing, the representations, covenants and warranties set forth in this Paragraph.

The provisions of this Paragraph shall survive the delivery of the Deed.

22. BUYER'S DEFAULT; DAMAGES:

In the event that Buyer shall fail to materially perform, observe or comply with any of its covenants, agreements or obligations hereunder ~~(including, without limitation, Buyer's obligation to pay the Deposit or any part thereof when due)~~ or if Buyer shall otherwise be in default hereunder, the Deposit shall be retained by Seller as Seller's sole and exclusive remedy, at law and in equity, for Buyer's breach and as full liquidated damages for such breach in view of the uncertainty and impossibility of ascertaining such damages to Seller. Both Seller and Buyer agree the aforesaid amount constitutes a reasonable forecast of the damages sustained by the Seller in the event of a breach by Buyer and, in such event, this Agreement shall terminate and become null and void and, except as otherwise provided herein, Buyer and Seller shall be released and discharged of all further liabilities and obligations to each other hereunder.

~~{If the Buyer shall fail to comply with any term of this Agreement, the Seller may enforce this contract according to law and equity, and to recover all costs of such action, including a reasonable attorney's fee.}~~

23. SELLER'S DEFAULT; DAMAGES:

In the event that the Seller shall fail to perform, observe or comply with any of its covenants, agreements or obligations hereunder or if Seller shall otherwise be in default hereunder, the ~~Deposit, together with all interest earned thereon, if any, shall be returned to Buyer and Seller shall pay to Buyer the greater of a) $5000.00 or b) the sum of any application fee actually paid by Buyer in connection with any financing plus the cost of Buyer's Property inspection report and title search, if any, plus reasonable attorney fees~~

~~up to the time of Seller's breach as Buyer's sole and exclusive remedy, at law and in equity, for Seller's breach and as full liquidated damages for such breach in view of the uncertainty and impossibility of ascertaining such damages to Buyer. Both Buyer and Seller agree that the aforesaid amount constitutes a reasonable forecast of the damages that would be sustained by Buyer in the event of breach by Seller, and, in such event, this Agreement shall terminate and become null and void and, except as otherwise provided herein, Seller~~Escrow Agent shall return the Deposit to Buyer and Buyer shall be ~~released and discharged of all further liabilities and obligations to each other hereunder.~~

~~**24. ASSIGNMENT; RECORDING THE AGREEMENT:**~~

~~(a) Buyer shall not~~entitled to pursue any and all available remedies at law and/or in equity.

24. ASSIGNMENT:

Buyer shall be entitled to assign any or all of its rights under this Agreement to any party without the prior written consent of Seller ~~and any attempt to do so without Seller's written consent shall be null and void~~. In the event of any ~~permitted~~such assignment, the assignee shall assume responsibility~~, jointly and severally with Buyer,~~ for all obligations and liabilities of Buyer under this Agreement. Upon request of Seller, the assignee shall execute an agreement in form and substance satisfactory to Seller, pursuant to which such assignee shall confirm such assumption and shall affirm in writing all representations, covenants, warranties and indemnities of Buyer hereunder.

~~(b) If Buyer either makes an assignment of its rights under this Agreement which is not expressly consented to by Seller in writing or records a copy of this Agreement with the applicable land records office, Seller, at his option, may deem Buyer to be in default of its obligations hereunder and may exercise its rights and remedies for default.~~

~~(c) Buyer shall not record a copy of this Agreement nor any short form thereof on the Land Records. Should the Buyer for any reason record this Agreement then the Buyer shall be deemed hereby to have appointed the Seller its Attorney in Fact to file a release thereof and Buyer shall reimburse the Seller for all costs (including attorney fees) incurred in connection therewith.~~

25. LEASES AND SECURITY DEPOSITS:

(a) Buyer hereby acknowledges that there exist tenants ~~and occupants~~ of the Property pursuant to ~~l~~the Leases ~~and occupancy agreements (whether written or oral)~~ by and between Seller and said tenants ~~and occupants (the "Leases")~~. ~~A true and accurate list of the tenants of the Property is attached hereto as Exhibit C.~~ Buyer shall receive a credit at closing for all security deposits~~, prepaid rents~~ and last month's rents in Seller's possession, and Buyer shall indemnify and hold Seller harmless from all loss, cost and liability arising from all security deposits~~, prepaid rents~~ and last month's rents with respect to the Leases.

(b) Effective as of the Closing Date:

(i) Seller hereby assigns to Buyer, and Buyer hereby accepts from Seller, all of Seller's right, title and interest in, to and under the Leases in force and effect as of the Closing Date;

(ii) Buyer hereby assumes all of Seller's obligations under the Leases in force and effect as of the Closing Date, and Buyer shall indemnify Seller from and against any and all losses, liabilities, claims or damages arising out of or resulting from the Leases for the period from and after the Closing Date;

(iii) Buyer shall not assume any losses, liabilities, claims or damages arising out of or resulting from the Leases in force and effect as of the Closing Date for the period prior to the Closing Date.

The provisions of this Section shall survive the delivery of the Deed.

26. NOTICES:

All notices required or permitted to be given hereunder shall be in writing and delivered by hand, by facsimile transmission, by nationally recognized overnight courier or mailed postage prepaid, by registered or certified mail, return receipt requested, addressed as shown in Paragraph 1 or to such other address as shall be designated by written notice received by the other party in accordance with the provisions of this Paragraph. Any such notice shall be deemed given when so delivered by hand or confirmed facsimile or one (1) business day after deposited with such nationally recognized overnight courier, or, if so mailed, three (3) business days after deposited with the U.S. Postal Service.

27. MISCELLANEOUS:

(a) This Agreement may be executed in multiple counterparts, is to be construed in accordance with the laws of the state of Connecticut, and is binding upon and inures to the benefit of the parties hereto and their respective heirs, successors and assigns. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this Agreement or to be used in determining the intent of the parties to it.

(b) This Agreement embodies the entire contract between the parties hereto with respect to the Property and the subject matter hereof and supersedes any and all prior negotiations, agreements and understandings, written or oral, formal or informal, all of which are deemed to be merged herein. No representations, statements, warranties, covenants, undertakings or promises of Seller or any representative or agent of Seller, whether oral, implied or otherwise and whether made before or after the date hereof, shall be considered a part hereof or binding upon Seller unless set forth herein or agreed to by the parties in writing, nor shall any provision of this Agreement be supplemented, terminated, modified or waived except by a writing signed by both parties. No modification or amendment to this Agreement of any kind whatsoever shall be made or claimed by Seller or Buyer, and no notice of any extension, change, modification or amendment made or claimed by Seller or Buyer shall have any force or effect whatsoever unless the same shall have been reduced to writing and fully signed by Seller and Buyer.

(c) All Exhibits attached hereto and incorporated herein by reference are made a part hereof.

(d) This document shall not be considered or construed to be an offer of the Seller. Seller reserves the right to withdraw this proposed Agreement at any time prior to the Seller executing and delivering same.

(e) If any term, covenant or condition of this Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Execution Date.

SELLER:

_____
Name:

WITNESS: _____
Name:

BUYER:

By: _____
Name:
Its:

WITNESS: _____
Name:

The Escrow Agent is executing this Agreement solely for the purpose of acknowledging receipt of the Deposit and acknowledging and agreeing to be bound by the provisions of Paragraph 20 hereof.

ESCROW AGENT:

By: _____
Name:
Its:

EXHIBIT A

LEGAL DESCRIPTION

COMMERCIAL REAL ESTATE CLOSINGS
LENDER ISSUES

A PRACTICAL APPROACH

"**Neither a borrower nor a lender be"--- Hamlet Act 1, Scene 3**
Caveat: However, if you are going to represent either, you better get it right!

1. Loan Commitment Letter

A. Commitment as a lender's marketing document
  (i) Who is to prepare it?
  (ii) All encompassing vs. short form
  (iii) Minimum Terms
    (a) Loan Amount
    (b) Maturity Date
    (c) Interest Rate
    (d) Payment Terms
    (e) Collateral
    (f) Prepayment Issues
    (g) Events of Default?
    (h) Closing Requirements re: title policy appraisals, entity documents and other conditions to closing
    (i) Fees
    (j) Omnibus clause

2. Closing Agenda

A. Should be prepared by lender's counsel.
  (i) Should detail closing requirements with reasonable specificity
B. Invaluable tool for assigning responsibility and maintaining order
C. Borrower's counsel must contract lender's counsel if any question as to items requested
D. Borrower's counsel should organize file based on closing agenda
E. A copy of all items on the agenda should be sent prior to closing
F. A sample Closing Agenda is attached has **Schedule A**

3. Core Financing Documents

A. **Negotiation in General**
B. **Promissory Note**
  (i) Is the primary evidence of the Borrower's obligation to pay

(ii) Can take as many forms as there are banks and lawyers
(iii) Borrower should only sign one note
(iv) A sample form of Promissory Note is attached as **Schedule B**.

C. **Mortgage Deed**

(i) The document by which an owner of real property gives a creditor an interest in the property (lien v. title theory)
a. A sample form of mortgage is attached as **Schedule C**

(ii) Mortgage safe - harbors
(a) Fully funded fixed rate - C.G. S. §47-31(b)
(b) Future Advances (Open-End), Commercial Revolving Loans, or letters of credit - C.G.S. §49-2(c)
(c) Construction - C.G.S. §49-3(a)
(d) Securing a Guaranty - C.G.S. 49-4b

(iii). A mortgage must be in writing, signed by the mortgagor, witnessed by two individuals and acknowledged. It must contain a granting clause, a description of the property and must be recorded in order to be effective against third parties. C.G.S. §§47-5, 47-36b, 47-36c and 47-10.

(iv) Statutory Form - C.G.S. §47-36h

(v) Commonly Negotiated Provisions
(a) use of insurance proceeds – see **Schedule D** for optional provisions
(b) defaults
(c) death of guarantor

D. **Assignments of Leases and Rents**

(i) Arguably not needed in title theory state
(ii) Typically, a separately recorded document
(iii) Not often seriously negotiated but:
a. Note leasing restrictions of residential v. commercial property
(iv) A sample form of an Assignment of Leases and Rents is attached as **Schedule E**

E. **Security Agreement**

(i) Creates a security interest in Article 9 Collateral
(ii) Often is combined in the Mortgage itself
(iii) Perfection - use actual and trade names for financing statements
- State
- Local
- Mortgage is fixtures filing

4. Additional Loan Documentation

A. **Guaranty**

(i) Credit Enhancement

(ii) Many different types which may or may not be collateralized

a. Open-End and continuing

b. Limited

a. Dollar, percentage or time

b. Non recourse

c. Carve-Outs for specific or intentional acts

a. Fraud

b. Misappropriation

c. Misuse

d. Springing

e. Exploding

(iii) A sample form is attached as **Schedule F**

B. **Environmental Indemnity Agreement**

(i) A sample form is attached as **Schedule G**

C. **Prejudgment Remedy/Jury Waiver**

(i) Prejudgment Remedy

(ii) Jury Waiver - L & R Realty, et al. v. Connecticut National Bank, 246 Conn. 1 (1998)

(iii) A sample form is attached as **Schedule H**

D. **Closing Affidavit**

(i) Use as a catch all

E. **Post Closing Compliance Agreement**

(i) A sample form is attached as **Schedule I**

5. **Due Diligence**

A. **Entity Documentation**

(i) Borrower

(ii) Entities comprising borrower

(iii) Guarantor

B. **UCC/Litigation Searches**
(i) Borrower
(ii) Seller
(iii) Guarantor

C. **Insurance**
(i) Types
(a) Hazard
(b) Liability
(c) Loss of Rents
(d) Flood
(ii) Acord Form 25 v. Acord 27 v. Acord 28--

D. **Lender Lease Review**
(i) As to general area of Lender concern see **Schedule J**
(ii) Sometime counsel review is a question of cost.
(iii) Use of Subordination, NonDisturbance And Attornment Agreements and Estoppel Certificates and/or Estoppel Certificates.
(a) "Subordination"
(b) "Non-Disturbance"
(c) "Attornment"
(iv) A sample form of SNDA is attached as **Schedule K**

E. **Permits And Approvals**

F. **Borrower's Counsel's Opinion**
(i) Why is it necessary?
(ii) Is there a conflict of interest?
(iii) Use of CBA Real Property Section Form
(iv) Zoning and Other Issues
(v) A copy of the Real Property Section Opinion is attached as **Schedule L**

G. **Environmental Reports**

H. **Survey**
(i) "A-2"
(ii) Should show easements and rights of way, flood zone, type of zone property is in, parking spaces (?)
(iii) Certification
(iv) Title insurance coverage without a survey.

I. **Title Insurance**

(i) get copies of exceptions
(ii) must see before closing
(iii) Endorsements
    a. Variable Rate
    b. Comprehensive/Affirmative Language
    c. Gap
    d. “Survey or “Same As” Endorsement
    e. Access to Public Street
    f. Construction/Revolving Loan
    g. contiguity
    h. Waiver of Arbitration

J. **Closing**

(a) Organization
(b) Signing Ceremony
(c) Review Documents with Borrower Prior to Closing
(d) Post Closing Follow Up

[date]

[Lender]

Re: ___ (Lender/Client) to
___ (Borrower)
$___ Note secured by Mortgage with Non-Recourse Carve-Out Guarantees (the Loan)(the Transaction) of ___ (the "Guarantors")

Dear ___:

Thank you for retaining THE CAVA LAW FIRM LLC to act as Connecticut counsel for Lender with respect to the captioned transaction. This letter sets forth the terms of this representation.

It is our understanding that the transaction consists of new financing for the Borrower in connection with ___. Your firm, the Client's principal counsel will take the lead in handling the Transaction and this firm will act as Connecticut (local) counsel to review the proposed loan documents, advise your firm on Connecticut-specific issues, supervise any closing to the extent required by state law, and to undertake specific tasks that may be identified by you. The representation will consist of reviewing (1) the term sheet, loan agreement, the note, the mortgage, any assignment of leases and rents, security agreement (if there is a separate security agreement), the UCC financing statements, the collateral assignment of interest rate protection agreement, errors and omissions affidavit, borrower's certificate, guarantee(s), environmental indemnity, assignment of contracts, licenses and permits, the opinion of Borrower's counsel, and such other instruments and documents to be executed in connection with the loan which you may provide (collectively the "Loan Documents") and (2) such further instruments, e.g., the proposed title insurance policy, as may be furnished to us for Connecticut-specific concerns.

Your client has not engaged us (1) to assist with or coordinate the delivery of due diligence investigations, e.g., environmental, building, mechanical, and architectural reports, (2) to review or opine on any interest rate swap agreement, and you anticipate the closing will be completed by execution of documents delivered into escrow.

The legal fee for the representation will be charged on a time and expenses basis, at an hourly rate of $___ per hour charged in minimum six-minute increments, plus any disbursements and out of pocket expenses incurred. Time and expenses will be billed for payment at the closing which is anticipated to occur on _____, 20__, or if the closing has not occurred within thirty (30) days of this letter, never occurs, or is otherwise aborted, approximately monthly and shall be due and payable upon receipt of an invoice therefor. Any invoice remaining unpaid after

thirty (30) days will incur an interest charge of the lesser of (i) 1.5% per month, and (ii) the maximum legal interest rate. Because nonpayment can negatively impact the attorney-client relationship, this firm reserves the right to stop work immediately and terminate the Representation in the event any invoice remains unpaid for thirty (30) days.

If this arrangement is acceptable, kindly have this document signed confirming Client's agreement to retain this firm on the foregoing basis, and return this letter to the undersigned, or with your client's permission, you may sign the agreement.

Be advised, that effective October 1, 2019, Connecticut passed a law that requires real estate closings be performed by a Connecticut-admitted attorney in good standing, with failure to comply constituting a violation of our Unauthorized Practice of Law statute which imposes criminal penalties for the unauthorized practice of law. I have sent a copy of the statute and a white paper prepared by the Real Property Section of the Connecticut Bar Association analyzing the statute and its repercussions. While the legislature appears to have been primarily concerned with problems that had developed in connection with residential real estate closings, the statute is not limited to residential closings, and specifically includes mortgage loan transactions secured by Connecticut real property, so we should discuss closing procedures necessary to insure compliance.

In addition, we should discuss procedures for any instruments signed other than at a table closing at which parties, signatories, and attorneys are present.

Sincerely,

Gregory J. Cava

Accepted and Agreed:

___

By:_____

Connecticut Real Estate Law Journal

Volume 10, Number 6 *Butterworth Legal Publishers* *1993*

OPINION LETTERS IN CONNECTICUT MORTGAGE LOAN TRANSACTIONS

Statement of Policy Regarding Borrowers' Counsels' Opinion Letters in Commercial Mortgage Loan Transactions

Special Committee on Borrowers' Counsels' Opinion Letters
for Real Estate Transactions
Real Property Section, Connecticut Bar Association

Editor's Comment

This special edition of The Connecticut Real Estate Law Journal *will be of critical importance to all counsel involved in commercial mortgage loan transactions. It is devoted entirely to the printing for dissemination of* A Statement of Policy Regarding Borrowers' Counsels' Opinion Letters in Commercial Mortgage Loan Transactions. *The policy statement with supporting model documents was prepared and adopted by the Real Property Section of the Connecticut Bar Association after many years of work.*

The Policy Statement and Form Opinion answer a real need by attempting to provide a basis of agreement to simplify negotiations surrounding opinion letters in commercial mortgage transactions. The Connecticut Real Estate Law Journal *is printing the culmination of such a major effort in order to provide a copy to each member of the Real Property Section. Reprints will be made available.*

Deep appreciation is expressed by Butterworths and the Real Property Section of the Connecticut Bar Association for the significant contributions made by Connecticut Attorney's Title Insurance Company in facilitating publication of this document. This has been a unique collaborative effort ultimately benefitting all involved in commercial real estate transactions. We are pleased to be able to have played a part.

Robin Messier Pearson

Chairman's Statement

This project is probably one of the most significant projects of the Real Property Section of the Connecticut Bar Association in the past several years. The level of frustration and anger by lenders, borrowers and their counsel in the negotiation of borrowers' counsels' opinion letters in commercial loan transactions for the past few years has reached virtually an emergency peak. As transactions become more complicated and attorneys' liability becomes more serious, these negotiations have generated unwanted costs and protracted delay in the closing transaction with little added value or worth to the parties. The lawyers seem bent on only protecting their own liability exposure without benefitting the clients or the transaction.

The Statement of Policy and the Form Opinion were extensively negotiated by both borrowers' and lenders' representatives on the Special Committee over a period of four years. Every definition and point of law were carefully researched, every opinion rendered was based on a review of current Connecticut practice and law

and what could be expected in a routine commercial transaction, and each qualification and limitation was balanced between lender needs and necessary borrower exposure. The result is what the Section considers a balanced approach to the opinion, providing a level of due diligence, counsel liability and responsibility, and opinion limitations that both a lender can reasonably expect and a borrower can reasonably afford.

It is hoped by the Real Property Section of the Connecticut Bar Association that this form Opinion Letter and the extensive standard, balanced "boiler plate" qualifications and definitions will act as a basis for standard borrowers' counsels' opinion letters, and the negotiations will concentrate on the essential differences from the Form Letter, informing and enlightening clients and lenders as to the real underwriting and exposure conditions of the closing.

Connecticut Real Estate Law Journal

Volume 10, Number 6, March/April 1993

EDITOR
Robin Messier Pearson

This journal may be cited as 10 CONN. REAL EST. L.J. XXX (1993).

Connecticut Real Estate Law Journal (ISBN 1-56257-342-3) is published six times per year by Butterworth Legal Publishers, 90 Stiles Road, Salem, New Hampshire 03079. Telephone: (603) 898-9664. Subscription price is $95.00 for one year.

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By lenders including the standard opinion as a requirement of commitments, or borrowers' and lenders' counsel agreeing that the Statement of Policy represents a balanced approach to the opinion form and negotiations, extensive and protracted time and expense can be saved in future commercial real estate financing transactions.

At the time of this writing, the "Accord" of the Business Law Section of the American Bar Association has been promulgated, and a special committee of the ABA Real Property, Probate & Trust Law Section of the ABA, the American College of Real Estate Lawyers, and representatives of the drafting committee of the Accord from the Business Law Section of the ABA are negotiating a reconciliation of the Accord designed for unsecured transactions, and the necessities of a standard opinion for secured transactions such as the one contemplated in the Statement of Policy of the Connecticut Bar Association Real Property Section.

Thus, as a part of the approval of the Statement of Policy, the Section kept the Special Committee in place and on call to further revise the Statement of Policy to conform to the product of the negotiations on the ABA Business Law Section's Accord as adapted to Connecticut law and practice. As the results of the negotiations and the Connecticut adaptation will not be forthcoming for some time, this Statement of Policy will serve as a base for Connecticut transactions until then.

We must caution that this Statement of Policy was adopted by the Real Property Section of the Connecticut Bar Association, not the Connecticut Bar Assocation, and does not represent the position of the Connecticut Bar Association.

Gurdon H. Buck
Chair, Special Committee on Borrowers' Counsels' Opinion Letters, Real Property Section, Connecticut Bar Association.

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"In our complex society the accountant's certificate and the lawyer's opinion can be instruments for inflicting pecuniary loss more potent than the chisel or the crowbar."[1]

This statement was adopted as a Statement of Policy by the Executive Committee of the Real Property Section of the Connecticut Bar Association on April 23, 1992.

A. INTRODUCTION

The Real Property Section of the Connecticut Bar Association has determined that both lawyers and clients will benefit from the use of a uniform format for lawyers' opinion letters in commercial mortgage loan transactions. In 1987, Diana MacPherson, then Chair of the Section, established a special ad hoc committee to study and recommend a Form Opinion letter for the counsel of the borrower ("Borrower's Counsel") to deliver to the lender ("Lender") in commercial real estate loan transactions, with liaison from the Banking Law Section. The following report is a recommendation for a standard format, together with considerations and interpretations, that was accepted by the Executive Committee of the Real Property Section on April 23, 1992, to be recommended for use by its members.

As used in this Statement of Policy, the Form Opinion, and the Borrower Certificates, the terms which are initial capitalized are as specifically defined in the Statement of Policy.

The Statement consists of four form documents:

(1) A **Statement of Policy** includes the disclaimers, definitions, qualifications, levels of due diligence, and much of the "boiler plate" customarily included in borrower's counsel opinion letters in mortgage loan transactions, extended by thoughtful and detailed research and commentary not usually found in the form opinions in such transactions. These limitations are deemed to be reasonable for the majority of transactions, however, nothing in this Statement of Policy mandates any particular form, or suggests that it is unreasonable in a given transaction to ask or expect greater or fewer limitations or greater or less explanation and diligence than those elements which are assumed in the following Statement of Policy.

(2) A **Form Opinion** is a form Borrowers' Counsel opinion to be used as base for negotiations in a commercial mortgage loan transaction and consists of a relatively short opinion, a blank form draft, which is attached to this Statement of Policy. The Form Opinion will incorporate by reference the disclaimers, definitions, qualifications and assumptions included in the text of the Statement of Policy. When filled out and completed with respect to any transaction, this Statement refers to the letter as the "Opinion Letter."

(3) A **Borrower Certificate** may be any of the attached form certificates of the Borrower as required for each of three separate forms of entities: corporation, limited partnership and partnership. These provide the factual basis for much of the Form Opinion, pursuant to the standards of the Statement of Policy.[2]

(4) A **Borrower Resolution** may be any of the attached form resolutions for each type of borrower entity, and which will satisfy the requirements for corporate or entity authorization for the actions to be taken to borrow the money and execute the Loan Documents, also provided in forms appropriate for each of the business entities.

It is expected that mortgage loan commitments will refer to this Statement of Policy and the Form Opinion, and that a mortgage lender may reasonably expect the diligence and procedures suggested in this Statement of Policy in the rendering of a opinion in compliance with the commitment request. Likewise, the parties may expect and expressly vary the standards set forth in this Statement of Policy to require more or less diligence, and more or less qualifications and assumptions depending on

the loan amount and the complexity of the transaction.

This Statement of Policy and the Form Opinion are intended to be a restatement of custom, practice and the intention of the parties in commercial real estate loan transactions, except where a change is specifically stated. Failure to incorporate this Statement of Policy into an opinion is intended to have no implications, that assumptions and limitations either were or were not to be included in that particular opinion. If this Statement of Policy is incorporated, then any variation from the principles of this Statement of Policy must be expressed in the Opinion Letter itself.

The promulgation of this Statement of Policy is significant to the Bar. It will set a standard of competence and diligence for all borrowers' counsels' opinions in commercial mortgage loan transactions, and in some instances require much greater care than some practitioners have been exercising. It will also define the level of expectation of lenders. In other instances it will reduce unnecessary effort previously required of practitioners.

This Statement of Policy should foreshorten the posturing and seemingly endless negotiations over the level of diligence, qualifications, assumptions and assurances which have often been debated between borrowers' and lenders' counsel. It is hoped that this will make the commercial mortgage loan closing negotiations more efficient and less protracted, and increase the efficiency of the provision of legal services by both sides in these transactions, thus potentially reflecting favorably in the fees charged to clients.

In developing the Statement of Policy many sources have been consulted. In recent years there have been numerous state bar projects underway throughout the country to develop uniform protocols for borrowers' counsels' opinion standards. The American College of Real Estate Lawyers ("ACREL") has a national project for uniform standards in these letters. On December 3, 1991, the Board of Governors of ACREL adopted a Statement of Policy on Mortgage Loan Enforceability Opinions. The Committee has consulted and included language from the ACREL statement to assure that this Statement of Policy does not depart in significant ways from the acceptable national standard. The Section of Business Law of the American Bar Association promulgated an "Exposure Draft" of its "Third Party Legal Opinion Report, Including the Legal Opinion Accord" in *The Business Lawyer* of December 21, 1990, the final form of which was published in the November 1991 issue of *The Business Lawyer*. (The "Accord"). This was consulted in the drafting of this Statement of Policy. The Accord specifically did not deal with secured financing. However, the Accord included much compromise language arrived at after diligent negotiations covering borrowing and corporate enforceability generally. The ACREL project drew from the Accord, and some of the language approved for enforceability opinions depended on Accord exceptions and definitions. To the extent that this Statement of Policy incorporates the ACREL policy, the Accord definitions may be consulted in interpretation.

In addition, the Committee reviewed the opinion projects of several bar committees from other states and decided that a Form Opinion with commentary in the form of the Draft Texas Bar Opinion[3] would be more useful to the Connecticut Bar than a treatise on legal opinions in the form of the report by the Joint Committee of the Real Property Sections of the State Bar of California and the Los Angeles County Bar Association,[4] or the Joint Committee of the Maryland State Bar Association and the Bar Association of Baltimore City.[5] The Form Opinion with commentary also follows the precepts of the latest "Joint Mortgage Loan Opinion Report" of the Tribar Committee of New York, but with a specific reference and inclusion of the commentary (Statement of Policy) without setting it forth in full.[6]

A bibliography of the sources consulted by the Committee in this project is appended to this Statement of Policy. (This bibliography appears at the end of this article.)

It has been an operating assumption in the drafting of this Statement of Policy and the Form Opinion that a Connecticut transaction was involved and that counsel (or local counsel providing general advice on local affairs) for both sides of the transaction were Connecticut counsel and generally familiar with the mortgage laws of Connecticut. Thus, many items that would have to be spelled out in detail in a treatise on Connecticut real estate and mortgage lending practice were left unsaid. For instance, Connecticut has a number of rather obscure and Byzantine provisions respecting construction loans and their validity and enforceability. This Statement of Policy merely states that a particular set of loan documents creates enforceable obligations. It is expected that Connecticut counsel will examine them to determine if this conclusion is correct. The Statement of Policy does not outline in detail the elements of creating such enforceability.

If the Form Opinion were to be used with counsel from outside of Connecticut, this Statement of Policy would not be satisfactory as a complete explanation of the risks and the requirements of Connecticut practice. However, the Borrower's Counsel should never render an opinion that he or she knew was incorrect even if Lenders' Connecticut counsel would be presumed to know it to be incorrect.

B. PRELIMINARY CONSIDERATIONS

1. Purposes of Opinion Letters

The real estate law opinion is similar to, but departs significantly from, the business law opinion in a business transaction. Generally, the law of situs will govern the significant aspects of a real estate transaction,

and the law of the situs as to real estate varies significantly from state to state.[7]

In the mortgage loan context opinion letters serve the purpose of providing the Lender with comfort regarding specified legal aspects of the transaction. If the lawyer is unable to give such an opinion, the recipient may be alerted to the existence of potential problems in the transaction or the need to seek comfort from other sources. In giving an opinion, a lawyer is not providing a guaranty of the transaction or an insurance policy against loss to the party requesting the opinion.[8] The specific task of the opinion writer is as follows:

(a) to assist the Lender in attempting to assure that the loan transaction is valid and that the rights and duties expressed in the Loan Documents are enforceable (or, if exceptions or qualifications exist to describe those exceptions or qualifications); and

(b) to assist the Lender and the Borrower in attempting to assure that legal conditions of the loan commitment which are to be satisfied by the Borrower have in fact been satisfied.

Gamesmanship is to be avoided in the Opinion Letter process. The Lender should not require the Borrower's Counsel to give any opinion which, after full disclosure of the relevant facts, the Lender's lawyer would not also give. The Borrower's Counsel should not attempt to weaken an opinion in a manner which he or she would not accept if the roles were reversed. In addition, a lawyer rendering an opinion letter should not be required or feel compelled to prepare a treatise on mortgage law, nor should be obligated to assume the role of an investigator of fact. Nevertheless, the lawyer should be obligated to disclose material defects of which he or she has Current Actual Knowledge (defined in the same manner as is explained below in paragraph 2(h) of Article C to this Statement of Policy) if they relate to matters discussed in the Opinion Letter.[9]

If, in the opinion of the Borrower's Counsel, a set of documents or the facts or principles behind the statements in the documents contain defects or do not conform to the transaction, the Borrower's Counsel should not be forced to opine to the contrary without correction or amendment. In such case, Lender's Counsel should be willing to accept correction of the defective elements, with advice to his or her client as to the implication of the corrections, or, if the corrections require a new business decision on the part of the Lender, to provide such advice as is appropriate to assist that decision. Provided, however, if the Borrower's Counsel's inability or failure to provide a required legal opinion violates the Lender's underwriting requirements or conditions of the mortgage loan commitment, the Lender is not required to make or fund the loan, and there will be no implications that the Lender will be responsible to the Borrower in damages if the loan is not closed on that basis.

The Opinion Letter does not deal with law in the abstract, but with rather specific laws as they are applied to the particular facts of the transactions. The lawyer is not the warrantor of the facts; however, the distinction between questions of law and questions of fact may at time be difficult to separate in certain areas which are commonly treated by an opinion.[10]

2. Inappropriate Requirements for Opinions

It is inappropriate to give or request opinions as to the following matters, and no opinion is to be implied with respect thereto:

(a) Conclusions regarding omnibus terms such as "compliance with all federal, state and local laws, rules and regulations."

(b) Financial condition of the Borrower, except to the extent this Statement of Policy provides for a determination that there is no pending litigation revealed that would affect such financial status.

(c) Solvency or insolvency of the Borrower.

(d) Factual matters, except as to Current Actual Knowledge of pending litigation. The truth of factual matters, other than factual conclusions from evidence revealed in the Borrower Certificate, provided counsel has no Current Actual Knowledge contrary to the factual conclusions.[11]

(e) Status, qualifications, authority or legal requirements of the Lender to make the loan, do business, or obtain access to the courts of Connecticut to enforce the loan.

(f) The enforceability of any provision of the loan documents which as a matter of law may not be enforceable, such as: (i) restricting access to legal or equitable remedies; (ii) purporting to establish evidentiary standards; (iii) purporting to waive the right to trial by jury or the right to assert a counterclaim; (iv) covenanting to take actions the taking of which are discretionary with or subject to the approval of a third party or which are otherwise subject to a contingency, the fulfillment of which is not within the control of the parties so covenanting; (v) providing for non-judicial foreclosure or self-help remedies; (vi) imposing penalties for late payments, prepayments or defaults if it is determined that such penalties bear no reasonable relation to the damage suffered by the Lender in connection therewith; (vii) purporting to grant exclusive jurisdiction in any court; or (viii) the waiver of personal service in connection with any judicial process.

(g) The enforceability of granting provisions of the mortgage to the extent that they attempt to grant an interest in real property not owned by the Borrower at the time of the grant.

(h) Absent specific statutory authority therefor, the enforceability of any provision of the loan documents providing that future obligations, and supplements, modifications, amendments, renewals or extensions of the present obligations of the Borrower will be secured by the mortgage, or whether any such future obligation or supplement, modification, amendment, renewal or extension of the present obligations of the Borrower might impair or affect the lien of the mortgage or its priority over any subordinate lien.

3. Opinions Not Implied in the Form Opinion

Opinions relating to the following matters, if not expressly given, shall not be implied in the Form Opinion:

(a) Litigation pending that is not revealed in: (i) active files of the Borrower with the Borrower's Counsels' firm after inquiry made in the manner set forth below; (ii) land records as revealed in the title insurance policy or commitment issued for the closing; (iii) the Current Actual Knowledge of the signing partner of the law firm and the other attorneys of the firm participating in the transaction, or, where appropriate under the standards of this Statement of Policy, other attorneys following circulation of an inquiry in the same manner as used for auditors requests for information on pending litigation; or (iv) the Borrower Certificate.

(b) Matters of state or federal laws, rules or regulations, or other administrative proceedings or licenses, covering land use, zoning, environmental law, racketeering and interstate commerce, criminal laws, government forfeiture, labor or safety statutes or civil rights.

(c) Title to specific items of personal property, licenses or permits.

This Statement of Policy does not imply that a Lender may not request additional inquiry or conclusions, other than as to matters set forth in paragraph 2 of Article B of this Statement. Special circumstances relating to the size, nature and scope of the transaction and the relationship of significant legal issues to the transaction may well affect the scope of the Opinion Letter and may justify additional opinions and inquiries concerning specifically requested items.

4. Ethical Considerations

With the repeal of the Model Code of Professional Responsibility (the "Code") and the adoption of the Model Rules of Professional Conduct (the "Rules") in the State of Connecticut, effective October 1, 1986, attorneys in this State became the beneficiaries of clearer and more practical standards for determining their professional responsibilities.

The three major areas of conduct regulated by the Rules which relate to the Form Opinion concern (i) the disclosure of client confidences, (ii) conflict of interest issues which arise when representing multiple clients and (iii) the minimum ethical standards to be exercised by the attorney rendering an opinion letter.

This discussion of legal ethics and professional responsibility in the commercial loan context is cursory only. Each attorney should become familiar with the Rules and applicable case law on the subject and consider carefully the numerous legal and ethical issues that may arise during representation of the client both before, during and after the negotiation of the Opinion Letter.

a. Disclosure of Confidential Information

An attorney who undertakes to deliver a legal opinion as to the authority of the client to complete a loan transaction and the enforceability of the loan documents against the client will find guidance in Rule 2.3, which permits an attorney to prepare an "evaluation" of the client or its business for the use and benefit of another party. Rule 2.3(a)(1) limits that undertaking to circumstances under which "the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client..." Rule 2.3(a)(2) requires that the undertaking commence only after "the client consents after consultation."[12]

A lawyer is generally prohibited from revealing information relating to the representation of the lawyer's client unless the client consents after consultation. There is an additional exception for disclosures that are impliedly authorized in order to carry out the representation so long as neither the client's instructions nor special circumstances limit that authority. For purposes of transmitting the opinion to the Lender under that implied authorization, the attorney must explain to the client: (1) the legal implications of the statements and conclusions made about the client and its business; (2) the importance of the truth and accuracy of representations made by the client in documents provided to the Lender as an inducement to make the loan; and (3) representations made in those documents upon which the Opinion Letter relies.

The custom in Connecticut is that the execution of the commitment letter and the instruction to the Borrower's counsel by the Borrower to close the loan is considered authority to circulate documents containing information concerning the Borrower without further explanation or waiver. However, if there is to be a disclosure of confidential information which is believed by Borrower's Counsel to be prejudicial to the client, this fact must be discussed with the client before such information is disclosed to the Lender, and either a waiver of confidentiality obtained, or if the information is such that the opinion without the information would be misleading or incorrect, the attorney must withdraw his or her representation.

Once the client requests the attorney's services, disclosure of confidences is impliedly authorized to further the client's interests pursuant to Rule 1.6 and the Comment thereto. Counsel should not reveal more than is required under the circumstances. Care should be taken not only about matters communicated in confidence, but information relating to the representation which comes from other sources.

The Comment to Rule 2.3 states that, "The lawyer must be satisfied as a matter of professional judgment that making the evaluation is compatible with other factors undertaken on behalf of the client." Not only does the attorney have an obligation to perform the obligation to the Lender in fulfillment of the client's desires to close the loan in a competent manner, but the client must understand what that obligation entails and that it may include a duty to reveal confidences that the client may in fact want to protect.

Under Rule 4.1 the lawyer shall not knowingly make a false statement of material fact or law to a third person. Thus there is an ethical obligation of truthfulness. If an ethical conflict arises and the client does not want the information disclosed, the attorney may be faced with a decision that must be resolved by an evaluation of the attorney's ethical obligations under the Rules.[13]

If an attorney is permitted to decline representation or to withdraw his or her services after representation has commenced,[14] the confidences of the client must continue to be preserved, except to the extent the Rules permit disclosure.[15] In addition, if an attorney is permitted to withdraw from representation he or she may, if necessary to preserve the integrity of the lawyer's own conduct, disaffirm any opinion, document, affirmation or the like related to the lawyer's services rendered in the course of such representation.[16]

The Rules are not specific about whether and under what circumstances there may be a duty to make disclosure to the third party who receives an evaluation such as an opinion after the transaction is closed. If the attorney finds that the attorney's services were used at or prior to the closing as the instrument of the client's crime or fraud, the attorney has a continuing duty to disclose such fact to the third party even after the Opinion Letter is delivered.[17]

b. Conflict of Interest

When representing a separate but related business entity such as a guarantor, there is an inherent conflict of interest. The custom is that instruction to close the loan from both entities contains the implication that the conflicts are waived and the attorney is engaged to represent both entities.[18] If a material conflict is revealed as a part of the representation, a full disclosure of the implications of the conflict must be made to the two conflicting parties, a waiver obtained, and the issue revealed to the Lender if the issue is relevant to the conclusions of the opinion. If a waiver cannot be obtained, counsel must withdraw.

However, when asked to represent both the Lender and the Borrower, the Committee feels that in a commercial loan context the conflicts are so inherent and potentially irreconcilable that such representation must be declined. This conclusion represents a change in the custom of the past.[19]

An attorney representing an entity must be especially cognizant of circumstances under which the constituent members of the entity (officers, directors, major stockholders, partners, members, employees) may have engaged in or refused to engage in acts that are likely to result in substantial injury to the entity, or who have interests adverse to the entity. In this situation, the entity itself is the client and its interests must be protected. The attorney is required to carefully consider the scope, nature and seriousness of the injurious action and its consequences to the organization and, if such action has been taken, minimize the risk of revealing confidences to third parties.[20]

In undertaking representation the attorney cannot have an undisclosed conflict of interest. Thus it is assumed that except for employment as counsel, and payment of fees for legal services provided, neither the Borrower's Counsel, his or her family, nor his or her law partners have an ownership interest, interest in profits, or other personal financial interest in the Borrower or project for which the loan is being secured, unless full and fair disclosure of that interest was made to the Lender and consent issued as to representation. Such consent is implied by the acceptance by the Lender of an opinion containing this disclosure.

c. Ethical Standards of Care

In the commercial loan context, referred to in this Statement of Policy, the Borrower is the attorney's client and the Lender is a third party with whom the attorney has a quasi-contractual[21] obligation to deliver a legal opinion for his or her client's benefit. At the same time, the attorney has an obligation to act competently in rendering the legal opinion required. The different nature of each relationship and the duties imposed on each deserves close attention by all attorneys.

Rule 1.1 states:

> A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

The Comment to Rule 1.1 states:

> In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required under some circumstances.
>
> Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence.

This is both a standard of negligence and a standard of ethics, and while a lawyer may have acted ethically, he still may be negligent. Standards of negligence are discussed in paragraph 5, below.

5. Standard of Care

In Connecticut, consistent with the general rule, the duty of a lawyer to his or her client is to exercise reasonable care, skill and diligence in the performance and execution of the legal services being furnished, and the level of that duty is to exercise the same degree of care, skill and diligence which other lawyers in the same or similar locality would have exercised in similar circumstances. A lawyer

specializing in a particular field of law is also held to a degree of care which is the same as that which other lawyers in the same line of practice would have exercised.[22] The entire state of Connecticut should be considered the "same locality," and it is axiomatic that an attorney who is representing a borrower in a mortgage loan transaction should be held to the same standard of care that would apply to other lawyers in that line of practice.

A lawyer undertaking to represent a borrower in a mortgage loan transaction must possess, and be held to, a level of knowledge and skill which will enable him or her to competently represent the Borrower in that particular transaction, and must exercise the diligence required to competently handle that transaction.

If a Lender requires Borrower's Counsel to provide specialized expertise or if special counsel is retained to opine on a particular issue, the standard of care for the giving of that opinion may accordingly be higher than that which would otherwise apply. Absent those special circumstances, however, the standard of care which a Borrower's Counsel is required to exercise, in giving an opinion to a Lender in the context of a mortgage loan transaction, is that which would be exercised by lawyers in that line of practice.

If a lawyer is liable to a party, other than the lawyer's own client, to whom he or she has given an opinion, the same standard of care, skill and diligence should apply to the giving of that opinion as would apply to the giving of an opinion to his or her own client. In *Westport Bank v. Corcoran, Mallin and Aresco et al.*, 221 Conn. 490 (1992), the Supreme Court held that striking a count in the complaint alleging negligence in the defendant in breaching their contract with the lender was improper. The court found a direct attorney-client relationship in that the defendant's client had directed the defendant to render the opinion to the lender and did not discuss the possibility of liability to a non-client third party.[23]

The Restatement (Second) of Torts states:

> One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.[24]

Under the principle set forth in the Restatement, a lawyer representing the Borrower in a mortgage loan transaction has a duty of care to the Lender in giving an opinion to the Lender, at the lawyer's client's request; and that duty is the same as is owed to the lawyer's client.

a. General Rule: Strict Contractual Privity

Under the majority rule a lawyer is not liable for services rendered to other than his or her client.[25] Accordingly a Lender has absolutely no rights or causes of action against a Borrower's Counsel for negligence and/or malpractice in the preparation of an erroneous legal opinion, even though the Lender required, accepted and relied upon the legal opinion as a prerequisite to making the loan. In 1880, the United States Supreme Court in *National Bank v. Ward*[26] held that an attorney who had prepared an erroneous title opinion upon which a bank had relied could not be held liable to the bank because the bank was not the attorney's client and therefore the attorney owed no duty to the bank, as he was not in privity with the bank.

However, with respect to the general issue of a lawyer's liability for negligence to parties other than that lawyer's client, there is a reported Connecticut case, regarding the liability of a lawyer to the legatees under an invalid will, in which lack of privity was held not to be a defense.[27] The court in *Licata* applied a three-part test for finding that the lawyer who negligently prepared the will owed a duty of care to the disappointed legatees. The court found that liability should be imposed where: (i) the injury to the third party is foreseeable; (ii) the performance of services is incident to an enterprise of the lawyer; and (iii) there are adequate policy reasons for imposing a duty of care.[28]

b. Exceptions

Notwithstanding the rule of *National Bank v. Ward,* certain courts have extended the liability of a lawyer to third parties in a variety of situations.

(i) *Balancing Factors.* Certain states utilize a six-part balancing test to determine whether such liability can be imposed. The leading case is the California case of *Lucas v. Hamm*,[29] in which the Supreme Court of California concluded that privity of contract is not essential for the imposition of liability if the attorney's work injured a third party. The Court's test adopted the following factors to be considered:

1. the extent to which the transaction is intended to benefit a third party;
2. the foreseeability of harm to the third party;
3. the certainty of the third party's injury;
4. the proximity of the connection between the attorney's conduct and the third party's injury;
5. whether the expansion of attorney liability will cause undue burden on the legal profession; and
6. the policy of preventing future harm to injured third parties.

The balancing test was apparently adopted by several jurisdictions, and the ALR note included Connecticut, citing *Licata.*[30]

(ii) *Third Party Beneficiary Test.* Under the third party beneficiary test, the third party can sue on a contract between the attorney and the client when they have entered into a contract to confer a direct benefit on the third party.[31]

In *Stowe v. Smith*[32] the Connecticut court found that the testatrix and the attorney assumed a direct obligation to the decedent's beneficiaries based on a direct contractual relationship between the attorney and the third party beneficiaries.

In *Krawczyk v. Stingle*,[33] the court noted that while attorneys, generally, are not held liable to third persons for negligently rendering services to their clients, liability has been imposed upon a showing by the third party that he was the foreseeable beneficiary of the attorney's services. Thus far, the court continued, liability has been limited to beneficiaries of wills negligently prepared by an attorney.[34] However, the logic of *Stowe* and *Licata* seemed to apply more broadly.

The third party beneficiary theory has been adopted in Maryland and other states. In *Flaherty v. Weinberg*[35] it was found that both the attorney and the client intended that the third party be the beneficiary of the attorney's services. In Connecticut, in dicta in a federal court case, the court stated that it apparently is the law that such intent must exist. In *Continental Casualty C. v. Pullman, Comley, Bradley & Reeves*, 709 F. Supp. 44 (D. Conn. 1989), the court found that the "primary purpose" of the opinion was not intended to inure to the benefit of the plaintiff, citing *Krawczyk* at 245, 543 A.2d at 735.

In *Westport Bank*, Judge Licari found that a title opinion addressed to the bank did not give rise to liability against the attorney who prepared it. Judge Licari emphasized the importance of the attorney-client relationship which is the attorney's duty of entire devotion to the interests of the client. This position was rejected by the Supreme Court in *Westport Bank v. Corcoran, Mallin and Aresco, et al.*, 221 Conn. 490 (1992). However, as discussed above, the Supreme Court found that there was a direct attorney client relationship by virtue of the rendering of the opinion directly to the lender.[36]

However, after the *Westport Bank* lower court case another lower court case was reported that is completely inconsistent with the holding in that case. In *Terremar, Inc. fka, et al., v. Ginsburg & Ginsberg, et al.*,[37] an attorney had rendered an opinion to a party which was selling a condominium management business to his client, stating in the opinion that there was no pending litigation against his client and that opinion was allegedly wrong. Judge Dorsey found that the condominium associations who were the clients of the selling management company could have relied on that opinion to permit the assignment of their contracts. Thus, the law firm was potentially liable to the condominium associations, even though the opinion had not been addressed to them. Judge Dorsey relied on the Restatement of Torts straightforward liability for misrepresentations if the person supplying the misrepresentation knows that there is a group of persons who will rely on it, and then the group relies to its their detriment, applying it to the attorney situation citing *Krawczyk v. Stingle*. The court concluded that the primary purpose of the opinion letter was to benefit third parties, including the condominium associations. A cause of action was found.

Although the *Westport Bank* case would permit the Lender to rely on the opinion from the Borrower's Counsel as if the Borrower's Counsel were its own counsel, the conflict of interest inherent in the relationship would still require that the Lender exercise caution in reviewing the opinion. The purpose of an opinion under this Statement of Policy is to smoke out underwriting questions that should be evaluated by the Lender. Thus, Lender's Counsel should take an expanded role in reviewing the opinion and the back up data submitted on behalf of his or her client. The Lender's counsel should review the Opinion Letter and any attachments thereto for any obvious omissions or discrepancies and the Lender's Counsel is expected to advise the Lender regarding such matters. However, in suggesting this approach, the Committee does not intend to suggest a lesser standard of care be imposed on the Borrower's Counsel but rather suggests that a more extensive review by the Lender's counsel is appropriate.[38]

The Form Opinion requires that the documentary memoranda, certifications, studies and results of investigation which lead to exceptions to the standard form be attached as exhibits to the Opinion Letter. This is not the present practice in Connecticut;[39] the prudent Lender should rely on the back up analysis by its own counsel to be absolutely sure of an accountable opinion. It is the view of the Committee that the Borrower Certificate should be provided to the lender, together with all attached exhibits. If Lender's Counsel feels that additional exhibits or documentation are necessary to protect the interest of the Lender, he or she should request the right to examine such documentation. Such additional exhibits or documentation should be requested at the time when the opinion is negotiated or in the commitment, unless the requirement for the additional documentation is revealed in evidence generated in the due diligence process. In connection with the closing, the Lender may request the right to examine the back up documentation called for in the Statement of Policy.

In addition, the potential liability imposed on the Borrower's Counsel by the balancing test could be enhanced by an acknowledgement of privity by such counsel, the foreseeability of harm, the intention that the Lender be the beneficiary of the Opinion Letter and the assignment of the rights to the Opinion Letter from the Borrower to the Lender. The acknowledgement of privity, and the acceptance of both the Borrower, the Borrower's Counsel and the Lender of an attorney-client relationship in the documents will thus make the opinion fall squarely within the liability rules of *Westport Bank v. Corcoran, Mallin and Aresco, et al.*, 221 Conn. 490 (1992). Thus, the Form Opinion and the Form Borrower's Certificates include such acknowledgement and assignment.

C. STANDARD FORMAT OF FORM OPINION

1. Use of a Format

The Form Opinion is recommended for use in most mortgage loan transactions. Of course, no format can be expected to serve all purposes and additional provisions may be included when the circumstances require the discussion of matters which are not discussed in the Form Opinion. To the extent possible, if additional provisions or diligence are required, those items should be included in the commitment, so that the effort and diligence required can be reasonably predicted at that time. However, additional requirements may be imposed as a result of due diligence performed subsequent to the commitment letter. Additional requirements imposed after the commitment which can be expected to increase the effort required by the Borrower's counsel and may have increased legal fee ramifications.

2. Words, Terms and Phrases Used in Form Opinion

The Form Opinion uses certain words, terms and phrases which are defined and explained in the order in which they appear in the Form Opinion, as follows:

a. Loan Documents

The following documents are the Loan Documents: (i) promissory note in the principal amount of the loan, made by the Borrower to the Lender, evidencing the loan; (ii) the mortgage deed dated the same date as the note executed by the Borrower in favor of the Lender, with respect to the real property securing the debt (collectively, "Property"); (iii) the assignment of leases and rents or other collateral assignments of property, chattel or choses in action made by Borrower in favor of Lender dated the same date as the note; (iv) the security agreement with respect to personal property, executed by the Borrower as debtor in favor of the Lender as secured party; (v) the building or construction loan agreement, if any, dated the same date as the note made between the Borrower and the Lender with respect to the loan, and (vi) the provisions of the commitment letter from the Lender to the Borrower, to the extent that they survive the closing; and (vii) such other documents as may be identified as such in the Opinion Letter.

For purposes of this Statement of Policy, the note, mortgage deed, security agreement, loan agreement and the collateral assignment and the commitment provisions which survive the closing are collectively referred to as the "Loan Documents." Guaranties and the Borrower Certificate are not Loan Documents.

b. Exists

The term "Exists," when referring to a corporation, means in traditional opinion nomenclature that it "has been duly organized, is validly existing and is in good standing under the laws of its indicated jurisdiction." When referring to a joint venture, a limited partnership, or a partnership, it means that it has been duly formed and is validly existing under the laws of its indicated jurisdiction.

An opinion that an entity exists gives the Lender assurances that: (i) the legal character of the Borrower is such that it can undertake the contractual and security aspects of the loan; (ii) the Borrower has not been dissolved, terminated, or undergone an organic change which would affect the Borrower's ability to consummate the transaction; (iii) no legal disabilities affecting the Borrower as a result of failure to comply with the essential elements of formation and continuance have been identified; and (iv) if it is a corporation, a current certificate of good standing, or if it is a limited partnership a current certificate of formation of limited partnership (or in lieu thereof a certified copy of a filed certificate of limited partnership) has been issued by the Secretary of the State of incorporation of formation.

The Borrower's Counsel need look no further than a Certificate of Good Standing from the Secretary of the State or the corporate registration office of the appropriate jurisdiction with respect to an opinion of good standing. If the Borrower's Counsel has a reasonably current certificate, has no Current Actual Knowledge of any change in standing and the Borrower Certificate reveals no change in standing since the date of the certificate of good standing, then the Borrower's Counsel may opine that the entity is in good standing. As to how current a certificate must be will depend on the size and importance of the transaction. If a certificate is not available because of time constraints, filed copies of the certificate of incorporation and of the report of the organization meeting, certified by the secretary of the corporation and the attorney making the filing as having been duly filed will be sufficient.

It is assumed that the Borrower's counsel has examined the corporate or formation documents to determine the existence of the entity. Unless a specific request has been made for the lawyer to undertake additional investigation in rendering an opinion on the formation (i.e., due incorporation in the case of a corporation or due formation in the case of a partnership) or the organization of the Borrower, a lawyer may assume that the recitals of governmental officials (e.g., certificate of formation, certificate of good standing, certificate of incorporation, certificate of authority, certificate of formation of limited partnership, certificate of registration) are correct and that the events recited in the official documentation with respect to the entity did in fact occur and no further inquiry will be necessary. It is expected that such applicable governmental certificates will have been obtained. Although such presumptions are not always appropriate for a corporate attorney in rendering an opinion as to the proper formation, existence and good standing of a corporation, it is deemed reasonable for mortgage loan opinion letters because such opinions are usually limited to the authority and existence of the borrowing entity. Nevertheless, the lawyer should mention any Current Actual Knowledge

such lawyer may have for questioning the validity of any governmental recitals or the recitals of any official documents.

c. Power and Authority

The phrase "Power and Authority" means that the Borrower is legally authorized to undertake and perform the specified action under its organic organizational documents and the laws defining its basic powers. Although, the word "power" when used with the word "authority" may be considered redundant, the practice of linking these two words into one phrase is considered so prevalent that the Form Opinion adopts this custom (e.g., "The Borrower has all requisite Power and Authority"). This portion of the Form Opinion does not address the term "legal right" which refers to the ability of an individual or entity to conduct certain activities which may be subject to governmental restrictions (e.g., banking, land use or insurance activities). Although this concept is sometimes linked with the "Power and Authority" opinion, it is more properly addressed in the Opinion Letter relating to governmental approvals.

The opinion that the Borrower has the corporate or partnership Power and Authority to enter into and perform under the Loan Documents means that such actions are not ultra vires. It does not mean that the particular loan transaction has been authorized (see paragraph 2(e) below). Conn. Gen. Stat. § 33-292 (1991) provides that the lack of corporate power or capacity will not invalidate a conveyance of real property after such conveyance is completed. Because of the factual uncertainty concerning when any transaction is completed, an attorney must customarily rely on Conn. Gen. Stat. § 33-291(e) (1991) or § 33-428(e) (1991), which provides that a Connecticut corporation has the power to hold, sell and convey real estate and borrow money and secure the same by a mortgage, unless its certificate of incorporation specifies otherwise.

Conn. Gen. Stat. § 34-46 (1991) of the Uniform Partnership Act indicates that certain real and personal property may be purchased by a partnership, but no statutory provision expressly addresses the scope of partnership authority or any limitations with respect to mortgage financing. Conn. Gen. Stat. § 34-11 (1991) specifies that a limited partnership may carry on the same business as a general partnership. However, in the partnership context, the issue is normally one of the authority of an individual partner to act for the partnership rather than the right of the partnership to enter into the transaction involved (See Conn. Gen. Stat. § 34-48 (1991) and Comment 3 to Standard 21.1 of the *Connecticut Standards of Title*.)

Accordingly, a lawyer should examine appropriate copies of the official documents evidencing the borrowing entity's existence and authority to enter into the mortgage loan transaction. In the case of a corporation, this would include, at a minimum, reviewing certified copies of the Certificate of Incorporation (which may be attested where circumstances make it difficult to obtain certified copies) to determine that no restrictions of the powers under Conn. Gen. Stat. § 33-291(e) (1991) exist. With respect to a partnership, the limited or general partnership agreement must be reviewed to determine that the transaction is within the express or implied powers and purposes thereof, that no restrictions are contained therein and that the partners have the Power and Authority to effect transactions of the type contemplated. In the absence of a written general partnership agreement, a contemporaneous memorandum or resolution signed by all the partners may be utilized to evidence partnership existence and authority.

d. Execute and Deliver

The phrase "Execute and Deliver" means that the Borrower has taken the physical actions necessary to render the specified instrument legally effective. While in some states delivery is considered to be an element of execution, Connecticut law treats execution and delivery to be separate acts.[40] It is important to note that execution and delivery do not include recordation of documents affecting title, rather only those acts necessary to make the documents effective between the parties.

Delivery of instruments is defined by Conn. Gen. Stat. § 42a-1-201 (1991) as "voluntary transfer of possession." Delivery, as well as endorsement, of a promissory note is necessary to transfer title.[41]

For promissory notes and other nonconveyance documents "execute" refers to the act of signing. Under Conn. Gen. Stat. § 42a-3-104 (1991), a negotiable instrument must be signed by the maker or drawer. For documents intended to affect real estate titles, such as mortgages and assignments of leases, execution is governed by Conn. Gen. Stat. § 47-5 (1991). As provided by the statute, the document must be (i) signed by the grantor, the grantor's authorized attorney, or a Duly Authorized person, (ii) acknowledged by the signer as his free act and deed before the persons described in Conn. Gen. Stat. § 47-5a (1991), and (iii) attested to by two witnesses.[42] Although acknowledgment and attestation are distinct from signing, they are included in the word "execute" if the instrument requires them, "Clearly . . . the deed was not executed until January 20th, when the grantor's acknowledgment was taken."[43]

For all documents, delivery is essential for a document to be effective.

> To constitute a delivery the grantor must part with the legal possession of the deed and all right to retain it. The present and future dominion over the deed must pass from the grantor. . . . The delivery of a deed includes not only an act by which the grantor parts with the possession of it, but also a concurring intent on the part of the grantor that it shall vest title in the grantee.[44]

Satisfaction of these standards is a question of fact.

Since, in many cases, documents are "delivered" subject to the happen-

ing of a variety of other events such as receipt of other documents, recording of documents, funding, etc., it is important to note that Connecticut recognizes "conditional delivery" if certain rules are complied with. "A conditional delivery is and can only be made by placing the deed in the hands of a third person to be kept by him until the happening of the event upon the happening of which the deed is to be delivered over by the third person to the grantee."[45] A conditional delivery must not be made directly to the grantee since it will then be considered an absolute delivery.[46]

The same general rules apply to notes and other documents as apply to deeds. At common law, delivery, endorsement and acceptance are required to effect a transfer of title to a note.[47] Under Conn. Gen. Stat. § 42a-1-201(14) (1991) delivery is defined as "voluntary transfer of possession." A note no longer in possession of the party whose signature appears on the note gives rise to a rebuttable presumption of valid delivery.[48]

e. Duly Authorized

"Duly Authorized" as used in the Form Opinion refers to "transactional" or "internal authorization." A document that is Duly Authorized is validly made under state law[49] and the Borrower's constitutient documents. Duly Authorized further means the document is authorized through all appropriate action of the Borrower. Duly Authorized does not mean "in compliance with all state and federal laws and regulations."

To determine whether a document is Duly Authorized, a lawyer should examine appropriate copies of official documents evidencing the borrowing entity's Power and Authority to enter into the mortgage loan transaction. Though not an exhaustive list, the lawyer might examine the following where the Borrower is a corporation: statutes, Certificate of Incorporation, bylaws, corporate resolutions and minutes of directors' meetings.[50]

Where the borrowing entity is non-corporate, the lawyer might examine the following non-exhaustive list of documents, as appropriate: statutes, certificate of limited partnership, partnership agreement, participation agreement, trust agreement, joint venture agreement, partnership resolutions and minutes of meetings. "[A]s between themselves, the partners may limit the scope of their mutual agency by special agreement."[51]

The examination should lead to the conclusion based solely upon the review of the Loan Documents, that the execution, delivery and performance of the loan obligations do not conflict with the organic organization documents of the Borrower, and the documents listed above and any contractual obligation set forth in the Borrower Certificate and the documents attached, and such obligations will not conflict with or result in a breach of those documents, or any court decree, or order of any government body binding on the Borrower within the Current Actual Knowledge of the Borrower's counsel.

f. Valid and Binding

The phrase "Valid and Binding" means that: (i) in the judgment of the opinion giver the specified instrument is not contrary to Applicable Laws; (ii) the specified instrument is authorized under the documents creating and evidencing the existence of the Borrower; (iii) the specified instrument was executed with the proper formalities; and (iv) the specified instrument is binding upon the Borrower.

"Valid and Binding" has not been specifically defined by the Connecticut courts, nor does there appear to be much litigation regarding the phrase in other jurisdictions. The reason for this appears to be that the phrase has no distinct legal meaning and thus, the courts that have considered the phrase often look to a standard dictionary for the definition of each word. Courts have held that "Valid and Binding" means: (i) The specified instrument has "legal strength or force"[52]; (ii) the specified instrument was "executed with the proper formalities"[53]; and (iii) the specified instrument is "incapable of being rightfully overthrown or set aside."[54][55]

g. Enforceable; Practical Realization of The Benefits

The traditional language used by many lawyers in opining on the enforceability of loan documents is that they are "enforceable in accordance with their terms." However, in the context of mortgage transactions this phrase could be interpreted to mean that all terms are specifically enforceable against the Borrower. (*See* State Bar of Texas Committee on Lawyers Opinions in Mortgage Loan Transactions.)[56] The problem with such a broad interpretation is that some agreements and/or specific covenants often contained in the Loan Documents may be neither specifically enforceable nor entirely enforceable in accordance with their terms. Many standard mortgage documents used on a national basis include provisions that are simply not enforceable in Connecticut at all. Similarly, the enforceability of many of the provisions in the Loan Documents may be subject to the conduct of the Lender, the discretion of the court or other statutory limitation. Therefore, the Committee felt that the use of the traditional term "enforceable in accordance with their terms" would be misleading. Accordingly, in order to avoid ambiguity and confusion the Committee has elected to use the word "Enforceable" standing alone.

"The ordinary meaning of the word 'enforce' is to compel obedience [or] to cause to be executed."[57] "Enforce" or "enforceable" do not necessarily imply actual force or coercion, but may mean to exact; to obtain authoritatively or to cause to take effect.[58]

"Enforceable" by itself, has also been interpreted to mean that *some* remedy will be afforded, without specifying what remedy. The remedy may be any one or more of damages, specific performance, injunction or other relief.[59] In the Committee's view this is all that an opining lawyer can reasonably be requested to give. The

enforceability opinion is intended to provide a Lender with assurances that some remedy is available if a party to a document does not materially comply with its terms. This does not imply that any particular remedy is available or that every provision in the Loan Documents will be upheld or enforced. The fact that a lawyer opines that the Loan Documents are Enforceable does not imply any opinion with respect to matters for which opinions can not be or have not been requested, inappropriate matters for opinions or matters for which an opinion will not be given without request.

The recommended deviation in terminology is not to suggest a departure from the past practice of subjecting the enforceability opinion to a "laundry list" of assumptions and limitations. On the contrary, because the enforceability of the Loan Documents (as well as other opinions of the Form Opinion) is so interconnected with concepts of materiality, reasonableness, good faith, fair dealing and the like, the Committee believes that the Form Opinion should incorporate just such a "laundry list" of assumptions and limitations. See Section 3 of this Statement of Policy.

Despite the fact that the assumptions and limitations may appear to undermine the opinion, the Form Opinion does assure the Lender that the limitations will not substantially interfere with the Practical Realization of the Benefits expressed in the Loan Documents, assuming there is no violation of those assumptions and limitations, and perforce that *some remedy* is available to reach this realization. By virtue of the incorporation of the American College of Real Estate Lawyers Statement of Policy on Mortgage Loan Enforceability Opinions discussed below, such remedies will include (i) to the extent that the obligation of the Borrower to repay the principal is with recourse, the judicial enforcement of that obligation, and (ii) the foreclosure of the mortgage, subject, in Connecticut, to the provisions on one action in Conn. Gen. Stat. § 49-1.

The remedies set forth in the foregoing clauses (i) and (ii) are what is meant by "Practical Realization of the Benefits."

Clauses are is not intended to give any assurance to the Lender as to the Borrower's ability to satisfy its indebtedness, nor is it intended as an opinion as to laws unrelated to the mortgage aspects of the transaction. Instead, they are intended as a response to the "laundry list" of mortgage enforcement qualifications described in Paragraph 3 below, debate as to which often causes considerable delay in an opinion letter negotiation. Except for the above, no opinion will be given as to whether or not a court would grant specific performance or any other equitable remedy with respect to enforcement of any provision of the Loan Documents.

In its statement of this issue the ACREL, after rejecting the "laundry list of exceptions" approach, states that "certain remedies, waivers and other provisions of the Loan Documents may not be enforceable, but such unenforceabilty will not render the Loan Documents invalid as a whole or preclude (i) the judicial enforcement of the obligation of the Borrower to repay the principal, together with interest thereon, as provided in the note (to the extent not deemed a penalty),[60] and (ii) the foreclosure of the mortgage . . . [and/or any security agreement]."

Thus, the ACREL statement assures the Lender that both foreclosure and collection of the debt are available to the Lender. Because the American College Statement is intended to be used in conjunction with the Accord, this assurance is, of course subject to the Accord's exceptions for bankruptcy, insolvency, and equitable principles.

The ACREL Statement of Policy goes on to discuss its "Revised Generic Qualification" language:

> The revised generic qualifications limits the comfort to the specific statement that the generic qualification will not preclude the judicial (or non-judicial where such remedies are permitted by local law,) enforcement of the obligation of the borrower to repay the principal amount with interest thereon, as provided in the note (to the extent not deemed a penalty) or the foreclosure of the mortgage (or deed of trust) and/or security agreement. As noted above, the comfort concerning judicial enforcement of the obligation means that, subject to the qualifications of bankruptcy and equitable principles, (i) a valid debt has been created and (ii) to the extent that the borrower is personally liable on the obligation, it may be personally enforced against the borrower. Comfort is given as to interest, but no comfort is given as to obligations held to be interest to the extent that they may be found to be a penalty or otherwise unenforceable. The comfort as to foreclosure means that either judicial or nonjudicial foreclosure is available; if both are available, 'judicial and nonjudicial' can be inserted; if only comfort as to judicial foreclosure is available (although non-judicial foreclosure is permitted under the mortgage) that should be so stated. These are the essential remedies of the lender and the nature and extent of the assurance is made clear. This comfort does not mean, however, that every right to accelerate the debt provided in the loan documents is enforceable as written (such as the right to accelerate on further encumbrancing). If the lender wants comfort on other benefits, such as appointment of a receiver or collection of assigned leases or rents, where enforceability may be less certain, the lender must specifically request it. If there is a security agreement either as a separate document or included in the mortgage, the brackets should be omitted if the enforceability opinion is to cover it also.

The ACREL Statement points out that where state law provides for antideficiency laws, or one form of action rules, etc., clause (i) of the revised generic qualification should be omitted. The Committee has incorporated this language in its format by making clause (i) subject to Conn. Gen. Stat. § 49-1.

The ACREL Statement also incorporates the economic consequences of procedural delay, and no opinion given as to title or priority of liens, already covered in the Statement of Policy.

This Statement of Policy thus incorporates the provisions of the American College Of Real Estate

Lawyers Statement of Policy on Mortgage Loan Enforceability Opinions of December 3, 1991, and may be governed by and shall be interpreted in accordance with that Statement.

h. Current Actual Knowledge

Used in other contexts the term "knowledge" has at times been defined to include not only currently possessed information but also information which a reasonably diligent inquiry would disclose.[61] However, as used in the Form Opinion and this Statement of Policy, the phrase "Current Actual Knowledge" does not include constructive knowledge or inquiry knowledge. Instead, it is limited to the current consciousness of the lawyers who are participating in the Opinion Letter file.

No examination of the client's or the lawyer's files except for the current active closing file and no legal or other factual research is required or implied; nor does the phrase require a lawyer to make any special inquiry of the client unless the lawyer actually believes that information supplied by the client is materially incorrect or incomplete for purposes of rendering the opinion.

The phrase does, however, imply that with respect only to Pending and Threatened Litigation, responsible, reasonable inquiry has been made by the firm, such as through normal conflict checking procedures, checking its litigation docket or other firm-wide communications similar to those used in response to auditors' inquiries, general circulation, or individual inquiry, to other members of the firm as to any current actual individual information which other lawyers in the firm may possess (with an allowance, however, for the possibility of time restraints). The phrase also obligates the lawyer to make a reasonable specific inquiry to other members of the lawyer's law firm if the lawyer in charge has Current Actual Knowledge that such other lawyers may have relevant knowledge relating to the Opinion Letter (with an allowance, however, to the possibility of time constraints).

It is otherwise assumed that the attorney has relied on the Borrower Certificate's representations made by the client as to the truth of the facts involved in the conclusions made by the attorney pursuant to his or her Current Actual Knowledge.

Although the Form Opinion makes no conclusions with respect to land use, forfeiture, criminal or other similarly excluded laws, if the attorney or his or her firm, after conducting the inquiry described above, has Current Actual Knowledge of any Pending and Threatened Litigation under any law, including such excluded laws, then they should be revealed in the Opinion Letter. If the Lender expects that the Borrower's Counsel will provide an opinion that the obligations in the transaction are not inconsistent with obligations and terms appearing on instruments in the files of the opinion giver, such a conclusion shall be specifically requested. The Committee believes that a Lender has a right to know about those actual legal proceedings pending against the Borrower, even if no conclusions are drawn as to their validity. Failure to provide that information by disavowing the land use, criminal etc. portion of the Opinion Letter would be misleading and contrary to the basic tenet of the Statement of Policy that the Borrower's counsel should be obligated to disclose material defects of which he or she has Current Actual Knowledge if they relate to matters discussed in the Opinion Letter.

The Current Actual Knowledge of the client assumes the current consciousness of the agent of the client who executes the Borrower Certificate and further assumes (without any duty of inquiry on the part of the Borrower's Counsel) that he or she is an agent who would be reasonably expected to have knowledge of the transaction and has appropriate authority to execute the Borrower Certificate on behalf of the Borrower. No further inquiry of the client would be expected unless the lawyer actually believes that the information supplied by the client is materially incorrect.[62]

i. Perform Its Obligations

The phrase "Perform Its Obligations" when used with the words "Power and Authority" means that the Borrower's status (e.g., as an individual or as a particular entity) does not render it legally unable to perform the specified obligations. The statement that "the Borrower has the requisite Power and Authority to Perform Its Obligations" does not mean that other prerequisites to the performance of the specified obligations have been satisfied. For example, this phrase is not intended to constitute any opinion as to zoning laws, building codes or environmental laws.

j. Governmental Authority

The term "Governmental Authority" means authority from all federal, state and local governmental entities. It does not, however include land use, zoning, environmental or other administrative permits for the use, operation and construction of the improvements or activities on the premises.

k. Applicable Laws

The term "Applicable Laws" means all applicable constitutional, legislative, judicial and administrative provisions, statutes, regulations, decisions, rulings and other laws of Connecticut and the United States, except those laws referred to in subparagraph C.3(r) of the Statement of Policy.

l. Contract

The word "Contract" means any instrument purportedly binding on the specified party, including, but not limited to promissory notes, mortgages, security agreements, loan instruments, leases, covenants, conditions, easements, rights-of-way, franchises, permits and licenses.

m. Pending and Threatened Litigation

The term "Pending and Threatened Litigation" means litigation that is pending or threatened against the client which shall be deemed to relate only to claims that are pending before an adjudicative

tribunal (including arbitration panels) or are overtly threatened by a written communication, and any opinion with respect thereto will be based only upon facts established pursuant to public documents, facts provided by client or client officials and others, and if disclosed in the Opinion Letter, representations as to facts made by the client in the Loan Documents, provided: (i) that the facts do not constitute a statement of the legal conclusions at issue (except where such facts are established in public documents); (ii) the person providing the facts is, in the exercise of professional judgment of the opinion giver, an appropriate source because of that person's relationship with the facts in question; and (iii) if the facts are set forth in a certificate, the opinion giver has exercised professional judgment as to its form and scope. In addition the claims will be those that are pending as revealed in a review of the opinion giver's litigation docket and circulation of the firm as described above, and in the title insurance policy or commitment issued in connection with the loan. It is understood that the opinion giver is not expected to review court or other public records or undertake a broader review of its files.[63]

3. Qualifications and Assumptions Included by Implication

All Opinion Letters which refer to this Statement of Policy will be deemed to include the following qualifications and assumptions (however, no lawyer should feel precluded from commenting on specific additional provisions for which there may be particular concern):

a. Laws, Statutes and Regulations

(i)*Validity of Statutes and Regulations.* Borrower's Counsel may assume that a statute enacted by an official legislative entity is constitutional and valid. Similarly, Borrower's Counsel may assume that a rule or regulation, if issued by an official administrative entity or person pursuant to statutory authority granted to such entity or person, is enforceable and valid. However, the lawyer is deemed to be familiar with any reported case in which the court denied constitutionality, enforceability or validity of such statutes.[64] For purposes of this Statement of Policy, a decision by a federal or state court shall be deemed to be a reported case when, or when (a) such decision has been reported for a reasonable period of time in the applicable official reporter service ("Official Report"), in an unofficial reporter service published by West Publishing Company, or any successor thereto ("West Report"), in the Connecticut Law Tribune or in any advance sheet service published by such Official Report or West Report,[65] or when (b) the lawyer rendering the Opinion Letter has Current Actual Knowledge of such decision.

(ii) *Specified Laws.* The enforceability of the Loan Documents and the enforceability of the Guaranty (if included) is limited by the following specified laws: (a) the rights of the United States under the Federal Tax Lien Act of 1966 as amended; (b) principles in equity which may limit the availability of certain equitable remedies; (c) the rights of the United States and the state as to forfeiture of property for commission of certain crimes; and (d) bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and other laws applicable to creditors' rights or the collection of debtors' obligations generally.

(iii) *General Laws.* The enforceability of certain rights, remedial provisions and waivers of the Loan Documents and Guaranty, may be limited or rendered ineffective by laws in addition to those described in subsection (ii) above. Accordingly, no opinion is rendered with respect to such laws as they may pertain to the following which are given by way of example if not by way of limitation: (a) provisions permitting the Lender upon the occurrence of an event of default without notice, further actions and prior to foreclosure, to enter the premises, remove the owner or lessee, and manage and control the premises, and receive all rents therefrom; (b) waivers of statutory rights, including the right to an appraisal of property in conjunction with a judicial foreclosure, and other statutory protections of debtors in foreclosure proceedings; (c) provisions which purport to provide indemnification against gross negligence or willful conduct; (d) provisions which purport to restrict access to legal or equitable remedies or which purport to consent to future actions by the owner of the note or note holders or to waive any rights to notice, or create agency or attorney-in-fact relationships; (e) provisions relating to subrogation rights, receivership, bankruptcy or creditors' proceedings, delay or omission of enforcement of rights and remedies, disclaimers, waivers or ratification of future acts or defenses, the rights and remedies of third parties, indemnity, marshalling or severance of assets which by their nature are non-transferable; (f) provisions which would permit the Lender to exercise its rights and remedies without notice, by self-help or in a manner which would be deemed "commercially unreasonable" to a Connecticut court; and (g) applicability of zoning, land use and other similar laws not covered by this Statement of Policy to limit the useability of the secured property, including laws described in subparagraph (r) below in this section.[66]

b. Genuineness and Authenticity

Other than with respect to Borrower or the Guarantor Borrower's Counsel may assume the genuineness of all signatures. With respect to Borrower and Guarantor, Borrower's Counsel may not assume genuineness of their signatures on Loan Documents or on any documents witnessed by Borrower's Counsel. He or she may assume the authenticity of all documents submitted to him or her as originals and the conformity to originals of all documents submitted as certified or photostatic copies thereof.

c. Individual Capacity, Power and Authority

Borrower's Counsel may assume the legal and mental capacity of each individual signing the Loan Documents and Guaranty, and that other than the Borrower and the guarantors, all parties executing the respective documents have the Power and Authority to enter into and perform all obligations thereunder.

d. Authority of Lender and Others

Borrower's Counsel may assume that the Loan Documents and the transaction evidenced thereby are valid, binding and enforceable with regard to the Lender, and that the making of the loan by the Lender and the performance of the Lender's obligations under the Loan Documents comply with the all laws pertaining to the Lender and the laws of the jurisdiction of the Lender. No examination of the Lender's authority nor that of any entity or person other than the Borrower (and the guarantors if requested) is expected. If the Lender is a foreign corporation, no opinion is expressed as to whether the Lender will be required under Connecticut Law to qualify to transact business in Connecticut in order to realize or exercise its rights under the Loan Documents and that Lender has complied with the Equal Credit Opportunity Act, if applicable, or any other applicable law.

e. No Contrary Knowledge

Borrower's Counsel may assume that neither the Lender nor the Lender's lawyer has any knowledge of any reason why any portion of the Opinion Letter is not correct.

f. Fraud or Duress

Borrower's Counsel may assume that none of the parties upon whom he or she has relied for purposes of the Opinion Letter has perpetrated a fraud upon either the Lender, the Borrower or the lawyer, nor that the parties have entered into the transactions under duress.

g. Title

Borrower's Counsel need not make any examination of title to any of the Property and is not deemed to express an opinion with respect to title to any real or personal property.

h. Priority of Lien

The Form Opinion does not include any opinion as to priority of any lien created by the Loan Documents unless specifically expressed therein. Borrower's Counsel may assume that the Lender is relying upon title insurance for confirmation of lien priority as to the real property (and upon appropriate security interest searches for confirmation of priority of security interests in personal property).

i. Connecticut and Federal Law

The Form Opinion expresses no opinion with respect to the effect of any laws other than the laws of the State of Connecticut and the United States. None of the opinions extend to the circumstance under which the law of a state or jurisdiction other than Connecticut is applied to any of the Loan Documents by virtue of the application of conflict of law principles and no opinion will be rendered as to whether such principles would be so applied to the Loan Documents.

j. No Outside Agreements

Borrower's Counsel may assume that all terms and conditions of or pertaining to the loan are correctly and completely embodied in the Loan Documents and the Guaranty.

k. No Implied Opinions

No opinion is to be implied or may be inferred beyond the matters expressly stated in the Opinion Letter or this Statement of Policy. This Statement adopts the view taken by the Accord, which also indicates that no opinions can be implied from the language of an express opinion unless there is a compelling reason to do so, such as where the implied opinion would be essential to the express opinion and the implied opinion is fair and reasonable under the circumstances. For example, an opinion of "no contravention of law, etc." is not implied by an enforceability opinion or by any other portion of the opinion.

l. Financial Information

Borrower's Counsel need not make any examination or investigation to verify the accuracy or completeness of any financial, accounting or statistical information furnished to the Lender and expresses no opinion with respect thereto.

m. Subsequent Events

Assuming that the Opinion Letter is dated as of the date of the closing, Borrower's Counsel has no obligation to update the Opinion Letter for events occurring after the date of the Opinion Letter. If not so dated Borrower's Counsel may be requested to update the Opinion Letter to the date of the closing.

The Opinion Letter is issued only with respect to the present status of the laws of the State of Connecticut and no obligation is undertaken to update or supplement the Opinion Letter in response to subsequent changes in the law. Borrower's Counsel however, may have an obligation of disclosure under certain circumstances where there is a client's crime or fraud.[67]

n. Facts

As to various questions of fact material to the Opinion Letter, to the extent deemed necessary for the purposes of the Opinion Letter, the attorney may rely upon the Borrower Certificate and written statements of employees and principals of the Borrower, attached to the Opinion Letter, and representations of the Borrower made in the Loan Documents and in exhibits and schedules delivered in connection therewith. The attorney may also rely on other statements of persons whom the lawyer has reason to believe are trustworthy, provided those statements or memoranda thereof are also attached. The Statement adopts the policy of the Accord that the opinion giver will make the necessary inquiries that the opinion giver deems appropriate in the exercise of professional judgment, not all possible necessary inquiries. The Accord preserves the subjective standard to the giver's professional viewpoint of appropriateness rather than asserting an objective standard of care or due diligence. This is in contrast to the Maryland Bar approach which details

the expected due diligence, and sets a specific standard of care. The Accord specifically sanctions the reliance on information given by others where the information does not constitute a statement of the legal conclusion, where the person is, in the opinion of the giver an appropriate source, and where the giver believes in his professional judgment that it is reasonable to rely on the information.[68] The attorney cannot rely on statements of fact that he or she has Current Actual Knowledge are false.

o. Negotiation, Good Faith and Commercial Reasonableness

Borrower's Counsel may assume that each party to the Loan Documents has negotiated the Loan Documents and the transaction contemplated thereby, and will seek to enforce its rights, in good faith and only in circumstances and in a manner which is equitable and commercially reasonable.

p. Recording and Fees Paid

Borrower's Counsel may assume that all documents which are required to be recorded or filed will have been recorded or filed in the applicable municipal or state records in a timely manner and that all conveyance taxes, and recording fees have been paid.

q. Consideration

Where it is essential for the validity of the transaction, Borrower's Counsel can assume the initial funding of the loan to the extent contemplated by the Loan Documents. It is assumed that adequate consideration has been given by the parties to the Loan Documents, or that the Borrower has a contractual obligation to do so, and no opinion is given as to the adequacy of the consideration.

r. No Opinion: Land Use, Environmental, Criminal and Other Laws

No opinion is given as to the affects of state or federal laws, rules or regulations relating to land use, environment, racketeering and interstate commerce, criminal laws, government forfeiture, civil rights, labor or safety matters. Such laws, however may be the subject of supplemental opinions.

The Borrower's Counsel does not purport to pass upon matters pertaining to physical structure, occupancy or use of the Property, such as the provisions of the Occupational Safety and Health Act, the Fair Housing Act, the Americans with Disabilities Act, and other similar statutes, the nature of the operation or the practical useability of the Property for its intended purpose (except as expressly stated herein).

s. Additional Qualifications

Any additional qualifications or assumptions should be set forth specifically in the Opinion Letter. Documents evidencing such qualifications are also expected to be appended.

4. Usury

Because the issue of usury is so fact sensitive, no opinion will normally be given, except for those instances specifically exempted by statute. No usury opinion is to be implied from the giving of an enforceability opinion.

If a usury opinion is requested concerning an institution or transaction not so protected, a specific analysis of the transaction must be made, all fact patterns listed, and then assumptions given that only those enumerated portions which fall within the usury ceilings are all true, and if non-usurious are so. Although the Form Opinion and this Statement of Policy are not intended to provide usury assurances where there is not a statutory exception, if such a usury opinion is requested, analysis of the facts, and legal research and assumptions can be commenced based upon the following notes.

In giving such usury opinion expressed at Paragraph 8 of the Form Opinion, the lawyer may assume that all prerequisites for corporate, bank, or other conditions necessary to conform to the exemption relied upon exist. Similarly, the lawyer may assume that the Lender is requesting an opinion only that the Loan Documents as executed are not usurious and that no opinion or advice need be given as to the Lender's actions in charging or receiving improper interest or assignment of the loan to a non-exempt entity after the date of execution. For example, if the Loan Documents provide for all or a portion of the interest to be determined by reference to a formula (such as the "prime rate") or the operations from or sale or refinancing of the Property (such as a percentage of "net profits"), the lawyer may assume that the Lender will comply with the usury laws in charging and receiving such interest; moreover, with regard to the latter category of interest determination. The lawyer may assume that no value will be attributable to such interest potential as of the date of execution of the Loan Documents.

The usury laws are now found in Title 37 of the Connecticut General Statutes. The principal usury provision in Connecticut is Conn. Gen. Stat. § 37-4 (1991). The result of the usury laws and the exceptions found in § 37-9, are that all banks are completely excluded from a rate ceiling in making mortgage loans and other loans.

A usury opinion should only be expected if the Lender is exempt under the provisions of Conn. Gen. Stat. § 37 -9 (1991) or the other exemptions described below (paragraph 8 of the Form Opinion).[69] The penalty for usury is extreme in Connecticut. In most states, the penalty is simply the loss of interest. Here, the Lender is barred from recovery of the principal, as well, and may be subject to a fine or imprisonment.[70]

In order to prove intent, the mental state of the Lender is irrelevant. All that must be shown is an intent to charge the usurious amount. Thus, a computational mistake is a defense.[71]

The Federal Monetary Control Act of 1980 (Title V of the Depository Institutions Deregulation & Monetary Control Act) set a ceiling on the interest rates banks could charge which would pre-empt lower states rates. The purpose of the Act was to achieve greater nationwide credit availability. Pursuant to the Act, there is no limit on money loaned by any person for residential

mortgages. Loans made for business purposes can be five percent above the federal discount rate. These provisions override a state's usury laws if those laws set lower rates, but state law controls if the state limits are more favorable to Lenders.[72] Thus, in Connecticut, the more lenient law applies. It is only non-bank lenders who must contend with interest rate limits.

Therefor a clean usury opinion can only be expected for a bank that is exempt as described in the statute. Other usury opinions are so fact sensitive, and subject to so many ambiguous provisions, a usury opinion for such types of Lenders should not be expected in a normal Opinion Letter.

5. Procedures

The following procedures are recommended in completing the Opinion Letter.

a. Timing

The text of the Opinion Letter should be negotiated at the earliest possible time. If there is a loan commitment, if it is reasonably possible, the lawyers should attempt to negotiate the scope of the Opinion Letter at the time the commitment is negotiated subject to the results of the Borrower's Counsel's due diligence.[73]

b. Review by Second Lawyer

Except in the case of a sole practitioner, the lawyer should have the text of the Opinion Letter reviewed by another lawyer in the firm, preferably having no relationship with the transaction.

c. Date

The Opinion Letter normally should be dated as of the date of the closing of the loan. An opinion should not normally be given prior to the closing, however, if the Opinion Letter is dated prior to the closing the circumstances giving rise to such early dating, and the qualifications of the opinion thereby, should be specifically set forth therein.

d. Addressee

The Opinion Letter should be addressed to the Lender under *Westport Bank v. Corcoran, Mallin and Aresco, et al.*, 221 Conn. 490 (1992). The Opinion Letter may also be addressed to the Borrower in order to establish enforceability by the Borrower if the theory of *National Bank v. Ward* is upheld. The Borrower should assign it to the Lender in the Borrower Certificate. There was a discussion as to whether the Opinion Letter should also be addressed to the Guarantor. It was felt that this would extend the liability of the Borrower's Counsel beyond that which was necessary, and the assignment through the Borrower alone was sufficient to provide the privity, beneficial interest and intent, and it was not necessary to address it to the Guarantor.

e. Delivery

Proper delivery to the Lender or its representatives is presumed. However, the Borrower's Counsel may deliver the Opinion Letter into escrow (i.e., conditionally deliver such opinion in the same manner as other closing documents are delivered into escrow).

f. No Proprietary Interest

The Opinion Letter should not be prepared by any lawyer who has a proprietary interest in any matter which is the subject of the opinion unless such proprietary interest is specifically set forth in the Opinion Letter or otherwise described to the Lender in writing prior to the delivery of the Opinion Letter.

g. Reliance Limitation

The final statement in the Form Opinion limits the reliance to the Lender and the subsequent holder of the note. However, permitting a subsequent holder of the note to rely on the Opinion Letter is not intended to extend or expand the potential exposure of, or limitations of action against, the attorney rendering the Opinion Letter.[74] Also, no presumption made under the Statement of Policy will foreclose the attorney from a defense based on the Lender's knowledge or special relationships existing at the time of the rendering of the Opinion Letter not disclosed to the attorney.

h. Signature

Many law firms type the name of the firm but include the signature of an individual partner. Although it is preferred that the individual partner of the firm sign the opinion, some law firms manually sign the name of the firm without reference to any individual partner. Either format is acceptable. However, if the law firm adopts the latter format the Lender is justified in requesting a confirmation of the responsible partner, either by the inclusion of that partner's initials on the signature page of the Opinion Letter or by a separate written confirmation from that partner.

i. Special Counsel

If the opining attorney is placing reliance on special counsel, the Opinion Letter should clearly define the division of responsibility, and may state substantially as follows: "We refer you to the opinion of _____ of even date, which has been delivered to you. We express no opinion as to any of the matters set forth in that opinion." The following may be added: "With respect to matters of _____ law, we have relied exclusively upon that opinion."

RESPECTFULLY SUBMITTED,
SPECIAL COMMITTEE ON
BORROWERS' COUNSELS'
OPINION LETTERS OF THE REAL
PROPERTY SECTION OF THE
CONNECTICUT BAR ASSOCIATION
By Gurdon H. Buck, Chair

Committee Members:

Regular Attendees and Contributors:
Marc B. Friedman
Donald S. Gershman
Steven H. Winkler
Andrew R. Lubin
Ronald Pacacha
Joan Engel
Walter Mayo
Gilbert Lebowitz
Glenn T. Terk

Section on Banking Law Liaison:
William Kosturko
Robert Firger
William Vallee

Case Checking and Citations:
Kathleen Porter

Other Members:
Jeffrey McCormick
Robert Sharaf
Mark Oland

Convening Section Chair:
Diana Macpherson

Section Chair During Development:
Mark Oland

Section Chair at Adoption:
Jeffrey McCormick

D. APPENDICES

DRAFT FORM OPINION

[Letterhead of Law Firm]
[date]
[Addressed to Lender]
[Addressed to Borrower]

Ladies and Gentlemen:

We have acted as counsel to _____, a _____ ("Borrower") in connection with that certain $_____ loan ("Loan") from _____, ("Lender") evidenced by the documents described below. [We have also acted as Counsel to _____, [and _____ ("Guarantor[s]") with respect to their guaranty of the Loan/completion of construction, etc. ("Guaranty").]

A. **Documents Reviewed.** For purposes of this opinion we have examined the following documents which unless otherwise noted are as executed by the Borrower in favor of the Lender in connection with the Loan, and dated as of the date of this letter:

1. Promissory Note [use exact title] ("Note") in the principal amount of $_____, evidencing the Loan;

2. Mortgage Deed [and Security Agreement][use exact title] ("Mortgage") with respect to real property located at _____, Connecticut ("Premises") and personal property (collectively, "Property");

3. Assignment of Leases and Rents [use exact title] ("Assignment of Leases").

[75] 4. Financing Statements (UCC-1), undated.

5. [Security Agreement, (if separate from the Mortgage)].

6. [Building] [Construction] Loan Agreement [use exact title] ("Loan Agreement") made between Borrower and Lender in respect to the Loan; and

7. Guaranty Agreement[s] [use exact title] [or, if applicable, another date executed by _____ (the Guarantor(s)") guaranteeing the payment of the Loan. [or, guaranteeing completion of construction or otherwise if applicable]. (the "Guaranty")

8. Borrower Certificate ("Borrower Certificate") [or, if applicable, dated _____] executed by the Borrower, relating to the Loan, together with all documents and exhibits attached, a copy of which has been provided to Lender;

For purposes of this opinion, the Note, Mortgage Deed, [Loan Agreement] and Assignment of Leases are collectively referred to as the "Loan Documents." The Guaranty[ies] and Borrower Certificate are not Loan Documents.

B. **Underlying Documents, Qualifications and Facts.** In rendering our opinion we have also examined such certificates of public officials, [corporate] [partnership] [joint venture] documents and records and other certificates and instruments as we have deemed necessary for the purposes of the opinion herein expressed including the documents and exhibits attached to the Borrower Certificate, [and the additional documents attached and which may represent evidence of exceptions to this opinion].

We understand that with respect to real property title to the Premises, you will be relying on the title insurance policy issued to you by [name of title insurance company] bearing Policy No. _____. We do not express any opinion as to any matters of title to or the description of the Premises or of any other property (whether real, personal or mixed) or priority of liens.

We express no opinion with respect to the effect of any law other than the Law of the State of Connecticut and federal law of the United States. [Insofar as our opinion pertains to or is affected by matters of (foreign state) law, we have relied exclusively upon the opinion of (foreign state) counsel, _____, dated _____, a copy of which is attached.]

C. **Statement of Policy.** This opinion incorporates by reference and is to be interpreted in accordance with the Statement of Policy Regarding Borrowers' Counsels' Loan Opinion Letters in Commercial Mortgage Loan Transactions adopted by the Executive Committee of the Real Property Section of the Connecticut Bar Association, April 23, 1992, as published in the April 1993 edition of *The Connecticut Real Estate Law Journal* ("Statement of Policy"). The capitalized terms not otherwise defined in this opinion are defined in the Statement of Policy.

D. **Opinions.** Based upon the foregoing and subject to the qualifications and exceptions set forth in this Opinion Letter and in the Statement of Policy, we are of the opinion that:

1. **Existence.** Borrower is
[Alternate 1—Connecticut Corporation][76]
a corporation which Exists under the laws of Connecticut.
[Alternative 2 — Foreign Corporation]
a corporation which Exists under the laws of _____ and is duly qualified to do business, and is in good standing as a foreign corporation, under the laws of Connecticut.
[Alternative 3 — Partnership]
a partnership which Exists under the laws of Connecticut {or other jurisdiction if applicable]
[Alternative 4 — Joint Venture]
a joint venture which Exists as a partnership under the laws of [Connecticut/ under the laws of _____].
[Alternative 5 — Connecticut Limited Partnership]
a limited partnership which Exists under the laws of Connecticut.
[Alternative 6 — Foreign Limited Partnership]
a limited partnership which Exists under the laws of the State of _____ and has duly qualified to transact business in Connecticut under the laws of Connecticut.

[77][Add to subparagraph 1. an appropriate sentence for any Guarantor which is not a natural person.]

2. **Power and Authority.** Borrower has all requisite Power and Authority to borrow the proceeds of the Loan, to Perform its Obligations, and to Execute And Deliver the Loan Documents. [Add appropriate sentence for the Guarantor.]

3. **Loan Documents [and Financing Statements].** The Loan Documents [and the Financing Statements] have each been Duly Authorized and properly Executed And Delivered by Borrower, and each of the Loan Documents is a Valid And Binding obligation of Borrower and is Enforceable.

4. **Proceedings.** We have no Current Actual Knowledge of any Pending or Threatened Litigation against or Borrower [or the Guarantor] or affecting the Premises.

[except as set forth in this opinion or in a schedule thereto.][78]

5. **No Approval or Consent.** We have no Current Actual Knowledge that any further approval or consent from any Governmental Authority or any other person or entity is required in order for the Borrower to Perform Its Obligations, Execute And Deliver or effectuate the validity or enforceability of the Loan Documents [or the Guaranty].

6. **No Conflict.** We have no Current Actual Knowledge that the Loan Documents will violate any Applicable Laws, or conflict with, result in breach of, or constitute a default under or any Contract to which Borrower is a party [except as set forth in this opinion or in a schedule thereto.]. [Insert a comparable sentence for the Guarantor, if applicable].

[79]7. **[Guaranty[s].** The Guaranty has been properly Executed And Delivered by Guarantor and is a Valid And Binding obligation and agreement and is Enforceable.]

8. **[Usury.** [If applicable] The amounts received by the Lender as interest under the Loan constitute lawful interest which is not usurious under Applicable Laws.[80]]

E. **Practical Realization.** Although our opinion as to enforceability is qualified by the Statement of Policy, the General Laws outlined in Subparagraph C.3.(a) of the Statement of Policy will not substantially interfere with the Practical Realization Of The Benefits expressed in the Loan Documents [or in the Guaranty], except for the economic consequences of any procedural delay which may result from such laws. No opinion is given as to the effect of the Specified Laws therein.

F. **Exclusive Use.** This opinion is a confidential communication to you and any successor holder of the Note, Loan Documents [and Guaranty,] and may not be furnished to, or relied upon by any other person, included in any material filed with any regulatory authority, or used for any other purpose.

G. **Privity, Beneficial Interest, and Assignment.** This opinion is rendered with the intention that it benefit the Lender.Borrower and the undersigned law firm acknowledge that this opinion has been requested directly by Lender, that Borrower has caused this opinion to be rendered directly to Lender, and that thus there is privity between Lender and the undersigned law firm. The undersigned acknowledges that the Lender is relying on the conclusions rendered in this opinion and might be harmed if they are incorrect.

Respectfully Submitted,
[Name of Law Firm]
by_____
Its Partner
(or initials of the partner signing the opinion if the signature is that of the firm)

cc: Client
Guarantor[s]

Note: It is not intended that the footnotes set forth in this Form Opinion be included in an opinion delivered to the Statement of Policy.

BORROWER CERTIFICATES

PREFACE: The following three forms of Borrower Certificate are presented as forms around which a Borrower Certificate may be drafted to conform to the facts of a specific opinion. In order to provide a clean opinion in accordance with the Statement of Policy and the Form Opinion, the Borrower Certificate should have no significant exceptions. If exceptions are listed, they should be reflected in the Form Opinion.

A Lender should not necessarily expect a clean Borrower Certificate and Form Opinion. The system reflected by the Statement of Policy and the concomitant forms is designed to provide the Lender with a clear picture of the exceptions which will then provide a basis for underwriting the loan. The exceptions are those which will require underwriting analysis by the Lender and a legal analysis by the Lender's counsel in order to determine the feasibility of the loan.

BORROWER CERTIFICATE
CONSENT AND ASSIGNMENT
CORPORATION

Re: $_____ [construction] mortgage loan (the "Loan") from [lender] ("Lender") to [corporation] ("Borrower") secured by the land and improvements located at [street address], [city/town], Connecticut (the "Premises") [and guaranteed by [guarantor[s]] ("Guarantor[s]")]

Borrower hereby certifies, to the best knowledge of the individual[s] signing this instrument on behalf of Borrower, that:

A. The representations made by or on behalf of Borrower in the following documents dated, unless otherwise indicated, on or as of _____ (collectively, the "Documents") are accurate and complete:

1. Promissory Note [use exact title] in the principal amount of [up to] $_____, made by Borrower to Lender, evidencing the Loan;

2. Mortgage Deed [use exact title] executed by Borrower in favor of Lender with respect to the Premises and certain personal property described therein (collectively, the "Property");

3. Assignment of Leases and Rents [use exact title] made by Borrower in favor of Lender;

4. Undated Financing Statement[s] (UCC-1) executed by the Borrower as debtor in favor of Lender as secured party;

5. [Building/Construction] Loan Agreement [use exact title] made between Borrower and Lender with respect to the Loan;

6. Guaranty Agreement[s] [use exact title] in favor of Lender executed by Guarantor[s] guaranteeing the [repayment of the Loan/completion of construction]; and

7. Commitment Letter [use exact title] dated _____ from Lender to [Borrower/other addressee (and assigned to Borrower)], and accepted by Borrower on _____ [and accepted by the Guarantor[s] on _____] [as amended by amendment[s] dated _____].

B. Borrower [and Guarantor[s]] [is/are] subject to no federal, state or local governmental programs or other regulations which require governmental consent prior to entering into commercial loan transactions, including, without limitation, the Loan, except as follows: _____
_____.

C. There are no judicial or governmental judgments, orders, injunctions, decrees, or arbitration awards outstanding against Borrower [or the Guarantor[s]], and there are no judicial or governmental actions, suits, or proceedings or any arbitrations or mediations, pending or overtly threatened by written communications against Borrower, [the Guarantor[s],] or any of Borrower's properties, including, without limitation, the Premises, except as follows: _____

_____.

D. The Documents will not constitute a default under any instrument binding upon Borrower including, without limitation, promissory notes, mortgages, security agreements, loan instruments, leases, covenants, conditions, easements, rights-of-way, franchises, permits, licenses, contracts and agreements.

E. The proceeds of the Loan are to be used solely for commercial purposes, specifically to [acquire/finance/ construct improvements upon] the Premises. No portion of the proceeds of the Loan will be used for consumer or household purposes.

F. No proceedings by or against Borrower, or [any of] the Guarantor[s] have been threatened or commenced in bankruptcy or for reorganization, liquidation or for readjustment of debts under the Bankruptcy Code or any other law, whether state or federal, nor has Borrower, or [any of] the Guarantor[s] made an assignment for the benefit of the creditors, admitted in writing inability to pay debts generally as they become due, or filed or had filed against it or him any action seeking an order appointing a trustee or receiver of all or a substantial part of the property of Borrower, or [any of] the Guarantor[s].

G. No judicial or nonjudicial proceeding has been filed or is pending for the dissolution of Borrower pursuant to a resolution of the incorporators, shareholders or directors, or otherwise pursuant to the Stock Corporation Act, Chapter 599 of the Connecticut General Statutes, as amended.

H. The only directors of Borrower are: _____.

I. Borrower's principal office is at: _____.

J. Attached as Exhibit A and made a part hereof is a true and accurate copy of the certificate of incorporation [and of all amendments thereto] of Borrower.

K. Attached as Exhibit B and made a part hereof is a true and accurate copy of the bylaws [and of all amendments thereto] of Borrower.

L. Attached as Exhibit C and made a part hereof is a copy of the Borrowing Resolution of Borrower executed by [the sole/all of the] director[s] of Borrower, which has not been superseded, modified or revoked and continues in full force and effect.

The foregoing representations contained in this Certificate may be relied upon by Lender and by Borrower's [lawyer/law firm] in [his/her/its] opinions addressed to the Lender in connection with the Loan (the "Opinion Letter"). Borrower hereby (i) confirms that Borrower has consented to the issuance of the Opinion Letter and to the circulation of draft copies thereof, and (ii) agrees to the disclosures contained therein including those protected by attorney/ client confidentiality requirements.

Borrower non-exclusively assigns to Lender all of its right and interest in and to the Opinion Letter and waives any right Borrower may have to object to the enforcement of the opinion by virtue of the attorney/client relationship, conflict, confidentiality, or privity, intending that the Lender be the beneficiary thereof.

Dated at _____, Connecticut this ___ day of _____.

[corporation]

By:_____
Its [duly authorized officer]

STATE OF CONNECTICUT)
) ss:
COUNTY OF _____)

On this the ___ day of _____, 19__, before me, _____, the undersigned officer, personally appeared _____ who acknowledged himself to be the _____ of [corporation], a corporation, and that [he/she], as such officer, being authorized so to do, executed that foregoing instrument for the purposes therein contained, by signing the name of the corporation by [himself/herself] as _____.

In witness whereof I hereunto set my hand.

_____
Notary Public
My Commission Expires:_____
Commissioner of the Superior Court

BORROWER CERTIFICATE
CONSENT AND ASSIGNMENT
LIMITED PARTNERSHIP

Re: $_____ [construction] mortgage loan (the "Loan") from [lender] ("Lender") to [limited partnership] ("Borrower") secured by the land and improvements located at [street address], [city/town], Connecticut (the "Premises") [and guaranteed by [guarantor[s]] ("Guarantor[s]")]

Borrower hereby certifies, to the best knowledge of the individual[s] signing this instrument on behalf of Borrower, that:

A. The representations made by or on behalf of Borrower in the following documents dated unless otherwise indicated, on or as of _____ (collectively, the "Documents") are accurate and complete:

1. Promissory Note [use exact title] in the principal amount of [up to] $_____, made by Borrower to Lender, evidencing the Loan;

2. Mortgage Deed [use exact title] executed by Borrower in favor of Lender with respect to the Premises and certain personal property described therein (collectively, the "Property");

3. Assignment of Leases and Rents [use exact title] made by Borrower in favor of Lender;

4. Undated Financing Statement[s] (UCC-1) executed by the Borrower as debtor in favor of Lender as secured party;

5. [Building/Construction] Loan Agreement [use exact title] made between Borrower and Lender with respect to the Loan;

6. Guaranty Agreement[s] [use exact title] in favor of Lender executed by Guarantor[s] guaranteeing the [repayment of the Loan/completion of construction]; and

7. Commitment Letter [use exact title] dated _____ from Lender to [Borrower/other addressee (and assigned to Borrower)], and accepted by Borrower on _____ [and accepted by the Guarantor[s] on _____] [as amended by amendment[s] dated _____].

B. Borrower [and Guarantor[s]] [is/are] subject to no federal, state or local governmental programs or other regulations which require governmental consent prior to entering into commercial loan transactions, including, without limitation, the Loan, except as follows:_____
_____.

C. There are no judicial or governmental judgments, orders, injunctions, decrees, or arbitration awards outstanding against Borrower [or the Guarantor[s]], and there are no judicial or governmental actions, suits, or proceedings or any arbitrations or mediations, pending or overtly threatened by written communications against Borrower, [the Guarantor[s],] or any of Borrower's properties, including, without limitation, the Premises, except as follows: _____
_____.

D. The Documents will not constitute a default under any instrument binding upon Borrower including, without limitation, promissory notes, mortgages, security agreements, loan instruments, leases, covenants, conditions, easements, rights-of-way, franchises, permits, licenses, contracts and agreements.

E. The proceeds of the Loan are to be used solely for commercial purposes, specifically to [acquire/finance/construct improvements upon] the Premises. No portion of the proceeds of the Loan will be used for consumer or household purposes.

F. No proceedings by or against Borrower, [the/any] general partner[s] of Borrower, or [any of] the Guarantor[s] have been threatened or commenced in bankruptcy or for reorganization, liquidation or for readjustment of debts under the Bankruptcy Code or any other law, whether state or federal, nor has Borrower, [the/any] general partner[s] of Borrower, or [any of] the Guarantor[s] made an assignment for the benefit of the creditors, admitted in writing inability to pay debts generally as they become due, or filed or had filed against it or him any action seeking an order appointing a trustee or receiver of all or a substantial part of the property of Borrower, [the/any] general partner[s] of Borrower, or [any of] the Guarantor[s].

G. No judicial or nonjudicial proceeding has been filed or is pending for the dissolution of Borrower under its limited partnership agreement or otherwise pursuant to the Uniform Limited Partnership Act, Chapter 610 of the Connecticut General Statutes, as amended.

H. The only general partners of Borrower are: _____
_____.

I. Borrower's principal office is at: _____
_____.

J. Attached as Exhibit A and made a part hereof is a true and accurate copy of the current limited partnership agreement [and of all amendments thereto] of Borrower.

K. Attached as Exhibit B and made a part hereof is a true and accurate copy of the certificate of limited partnership [and of all amendments thereto] of Borrower.

L. Attached as Exhibit C and made a part hereof is a copy of the Borrowing Resolution of Borrower executed by [the sole/all of the] general partner[s] of Borrower, which has not been superseded, modified or revoked and continues in full force and effect.

The foregoing representations contained in this Certificate may be relied upon by Lender and by Borrower's [lawyer/law firm] in [his/her/its] opinions addressed to the Lender in connection with the Loan (the "Opinion Letter"). Borrower hereby (i) confirms that Borrower has consented to the issuance of the Opinion Letter and to the circulation of draft copies thereof, and (ii) agrees to the disclosures contained therein including those protected by attorney/client confidentiality requirements.

Borrower non-exclusively assigns to Lender all of its right and interest in and to the Opinion Letter and waives any right Borrower may have to object to the enforcement of the opinion by virtue of the attorney/client relationship, conflict, confidentiality, or privity, intending that the Lender be the beneficiary thereof.

Dated at _____, Connecticut this ___ day of _____.

[limited partnership]
By:_____
Its General Partner
[By:_____]
[Its General Partner]
[add additional signature lines, as necessary]

STATE OF CONNECTICUT)
) ss:
COUNTY OF _____)

On this the ___ day of _____, 19__, before me, _____, the undersigned officer, personally appeared _____ who acknowledged himself to be [the/a] general partner of [limited partnership], a limited partnership, and that [he/she], as such general partner, being authorized so to do, executed that foregoing instrument for the purposes therein contained, by signing the name of the limited partnership by [himself/herself] as general partner.

In witness whereof I hereunto set my hand.

_____
Notary Public
My Commission Expires:_____
Commissioner of the Superior Court

[add additional acknowledgements, as necessary]

BORROWER CERTIFICATE
CONSENT AND ASSIGNMENT
PARTNERSHIP

Re: $_____ [construction] mortgage loan (the "Loan") from [lender] ("Lender") to [partnership] ("Borrower") secured by the land and improvements located at [street address], [city/town], Connecticut (the "Premises") [and guaranteed by [guarantor[s]] ("Guarantor[s]")]

Borrower hereby certifies, to the best knowledge of the individual[s] signing this instrument on behalf of Borrower, that:

A. The representations made by or on behalf of Borrower in the following documents dated, unless otherwise indicated, on or as of _____ (collectively, the "Documents") are accurate and complete:

1. Promissory Note [use exact title] in the principal amount of [up to] $_____, made by Borrower to Lender, evidencing the Loan;

2. Mortgage Deed [use exact title] executed by Borrower in favor of Lender with respect to the Premises and certain personal property described therein (collectively, the "Property");

3. Assignment of Leases and Rents [use exact title] made by Borrower in favor of Lender;

4. Undated Financing Statement[s] (UCC-1) executed by the Borrower as debtor in favor of Lender as secured party;

5. [Building/Construction] Loan Agreement [use exact title] made between Borrower and Lender with respect to the Loan;

6. Guaranty Agreement[s] [use exact title] in favor of Lender executed by Guarantor[s] guaranteeing the [repayment of the Loan/completion of construction]; and

7. Commitment Letter [use exact title] dated _____ from Lender to [Borrower/other addressee (and assigned to Borrower)], and accepted by Borrower on _____ [and accepted by the Guarantor[s] on _____] [as amended by amendment[s] dated _____].

B. Borrower [and Guarantor[s]] [is/are] subject to no federal, state or local governmental programs or other regulations which require governmental consent prior to entering into commercial loan transactions, including, without limitation, the Loan, except as follows_____
_____.

C. There are no judicial or governmental judgments, orders, injunctions, decrees, or arbitration awards outstanding against Borrower [or the Guarantor[s]], and there are no judicial or governmental actions, suits, or proceedings or any arbitrations or mediations, pending or overtly threatened by written communications against Borrower, [the Guarantor[s],] or any of Borrower's properties, including, without limitation, the Premises, except as follows: _____
_____.

D. The Documents will not constitute a default under any instrument binding upon Borrower including, without limitation, promissory notes, mortgages, security agreements, loan instruments, leases, covenants, conditions, easements, rights-of-way, franchises, permits, licenses, contracts and agreements.

E. The proceeds of the Loan are to be used solely for commercial purposes, specifically to [acquire/finance/construct improvements upon] the Premises. No portion of the proceeds of the Loan will be used for consumer or household purposes.

F. No proceedings by or against Borrower, any partners of Borrower, or [any of] the Guarantor[s] have been threatened or commenced in bankruptcy or for reorganization, liquidation or for readjustment of debts under the Bankruptcy Code or any other law, whether state or federal, nor has Borrower, any partners of Borrower, or [any of] the Guarantor[s] made an assignment for the benefit of the creditors, admitted in writing inability to pay debts generally as they become due, or filed or had filed against it or him any action seeking an order appointing a trustee or receiver of all or a substantial part of the property of Borrower, any partners of Borrower, or [any of] the Guarantor[s].

G. No judicial or nonjudicial proceeding has been filed or is pending for the dissolution of Borrower under its partnership agreement or otherwise pursuant to the Uniform Partnership Act, Chapter 611 of the Connecticut General Statutes, as amended.

H. The only partners of Borrower are: _____
_____.

I. Borrower's principal office is at: _____
_____.

J. Attached as Exhibit A and made a part hereof is a true and accurate copy of the current partnership agreement [and of all amendments thereto] of Borrower.

K. Attached as Exhibit B and made a part hereof is a true and accurate copy of the trade name certificate [and of all amendments thereto] of Borrower which has been filed with the [City/Town] Clerk of the [city/town] of _____.

L. Attached as Exhibit C and made a part hereof is a copy of the Borrowing Resolution of Borrower executed by all of the partners of Borrower, which has not been superseded, modified or revoked and continues in full force and effect.

The foregoing representations contained in this Certificate may be relied upon by Lender and by Borrower's [lawyer/law firm] in [his/her/its] opinions addressed to the Lender in connection with the Loan (the "Opinion Letter"). Borrower hereby (i) confirms that Borrower has consented to the issuance of the Opinion Letter and to the circulation of draft copies thereof, and (ii) agrees to the disclosures contained therein including those protected by attorney/client confidentiality requirements.

Borrower non-exclusively assigns to Lender all of its right and interest in and to the Opinion Letter and waives any right Borrower may have to object to the enforcement of the opinion by virtue of the attorney/client relationship, conflict, confidentiality, or privity, intending that the Lender be the beneficiary thereof.

Dated at _____, Connecticut this ___ day of _____.

[partnership]

By:_____

By:_____
[add additional signature lines, as necessary]
Its Partners

STATE OF CONNECTICUT)
) ss:
COUNTY OF _____)

On this the ___ day of _____, 19__, before me, _____, the undersigned officer, personally appeared _____ and _____ who acknowledged themselves to be the partners of [partnership], a partnership, and that they, as such partners, being authorized so to do, executed that foregoing instrument for the purposes therein contained, by signing the name of the partnership by themselves as partners.

In witness whereof I hereunto set my hand.

_____
Notary Public
My Commission Expires:_____
Commissioner of the Superior Court

BORROWING RESOLUTIONS

BORROWING RESOLUTION
CORPORATION

The undersigned, _____, _____, and _____ being all of the Directors of [corporation] ("Corporation"), do hereby consent and agree as follows:

RESOLVED, the Corporation shall obtain [construction] mortgage financing in an amount of [up to] $_____ from [lender] ("Lender") pursuant to the terms of a certain loan commitment letter from Lender dated _____ [, as amended on _____].

AND BE IT FURTHER
RESOLVED, that _____ and _____, respectively, the President and Vice President of the Corporation are hereby severally authorized to execute on behalf of the Corporation any and all documents deemed necessary by them in order to close said loan transaction, including, without limitation, a Note, Mortgage, Assignment of Leases, [Loan Agreement,] [Security Agreement and Financing Statement].

AND BE IT FURTHER
RESOLVED, that the Secretary of the Corporation file this consent with the minutes of the Corporation, pursuant to Section 33-316 of the Connecticut General Statutes, as amended.

Dated at _____, Connecticut this ____ day of _____, 19__.

_____
_____
_____

BORROWING RESOLUTION
LIMITED PARTNERSHIP

The undersigned, _____, _____, _____, being all of the general partners of [limited partnership] ("Partnership"), do hereby consent and agree as follows:

RESOLVED, the Partnership shall obtain [construction] mortgage financing in an amount of [up to] $_____ from [lender] ("Lender") pursuant to the terms of a certain loan commitment letter from Lender dated _____ [, as amended on _____].

AND BE IT FURTHER
RESOLVED, that _____, _____, and _____, each a general partner of the Partnership are hereby severally authorized to execute on behalf of the Partnership any and all documents deemed necessary by them in order to close said loan transaction, including, without limitation, a Note, Mortgage, Assignment of Leases, [Loan Agreement,] [Security Agreement and Financing Statement].

Dated at _____, Connecticut this ____ day of _____, 19__.

_____
_____
_____

BORROWING RESOLUTION
PARTNERSHIP

The undersigned, _____, _____, _____, and _____ being all of the partners of [partnership] ("Partnership"), do hereby consent and agree as follows:

RESOLVED, the Partnership shall obtain [construction] mortgage financing in an amount of [up to] $_____ from [lender] ("Lender") pursuant to the terms of a certain loan commitment letter from Lender dated _____ [as amended on _____].

AND BE IT FURTHER
RESOLVED, that _____ and _____, each a partner of the Partnership are hereby severally authorized to execute on behalf of the Partnership any and all documents deemed necessary by them in order to close said loan transaction, including, without limitation, a Note, Mortgage, Assignment of Leases, [Loan Agreement,] [Security Agreement and Financing Statement].

Dated at _____, Connecticut this ____ day of _____, 19__.

_____
_____
_____
_____

E. ENDNOTES

1. Judge Friendly, in United States v. Benjamin, 328 F.2d 854, 863 (2d Cir. 1964).

2. It was decided to have the three sample forms rather than a single form with alternatives in brackets, as the bracketed language became very confusing.

3. State Bar of Texas Committee on Lawyers Opinion Letters in Mortgage Loan Transactions, *Preliminary Draft of a Statement of Policy Regarding Lawyers' Opinion Letters in Mortgage Transactions*, 23 REAL EST. PROB. AND TR. L. No. 2, (Jan. 1984).

4. Joint Committee of the Real Property Law Section of the State Bar of California and the Real Property Section of the Los Angeles County Bar Association, Bell, *Legal Opinions in California Real Estate Transactions*, 22 REAL PROP. PROB. & TR. L. J. 373 (1987), revised, 42 BUS. LAW. 1139 (1987).

5. Special Committee of the Maryland State Bar Association, Inc. and the Bar Association of Baltimore City, Special Committee on Lawyers' Opinions in Commercial Transactions, which attempted to combine a treatise on the commercial opinion with the real estate opinion. ["Maryland Joint Committee Report"].

6. Special Committee on Legal Opinions in Commercial Transactions, New York County Lawyers' Association, *Legal Opinions to Third Parties: An Easier Path*, 34 BUS. LAW. 1891, (1979); and *Addendum—Legal Opinions to Third Parties: An Easier Path*, 36 BUS. LAW. 429 (1981); The Association of the Bar of the City of New York Real Property Law Committee; The New York State Bar Association Real Property Law Section, and the New York County Lawyers' Association Special Committee on Legal Opinions, MORTGAGE LOAN REPORT (November 8, 1989), [hereinafter collectively the "Tribar Reports"].

7. *See, generally*, Dunn and Preble, *Real Property Issues*, a paper presented as a part of an ABA National Institute on Third Party Legal Opinions, October and November 1990.

8. The attorney is not liable for every mistake he may make in his practice; he is not, in the absence of express agreement, an insurer of the soundness of his opinions or the validity of an instrument he is engaged to draft; and he is not liable for being in error as to a question of law on which reasonable doubt may be entertained by well informed lawyers. (citations) These principles are equally applicable whether the plaintiff's claims based on tort or breach on contract. *See* Lucas v. Hamm, 56 Cal. 2d 583, 591-92, 364 P.2d 685, 689, 15 Cal. Rptr. 821, 825 (1961); (cited in the Maryland Joint Committee Report, *supra*, note 3, at 708.

9. Special Committee on Legal Opinions in Commercial Transactions, New York County Lawyers Association, *Legal Opinions to Third Parties: An Easier Path*, 34 BUS. LAW. 1891 (1979).

10. Maryland Joint Committee Report, *supra*, note 3, at 709.

11. Factual matters are not matters upon which legal opinions are given. The lawyer should obtain appropriate certificates upon which he or she may rely as to factual matters. If employees or members of the lawyer's firm have made factual inquiries upon which the opinion is based, it should be disclosed. The opinion should also disclose that the lawyer is relying on the results of those inquiries.

12. The Borrower Certificate includes a consent to such disclosures. Consent can also be implied by the forwarding of the commitment to counsel with a request that the opinion be prepared. However, that consent should be supplemented by "consultation." The consultation and the attorney's analysis should cover whether the rendering of the opinion is compatible with the other aspects of the lawyer's relationship with the client. If the lawyer is unable to render an objective opinion he should decline to render it. Likewise, the lawyer should opine only to aspects within his or her areas of legal knowledge and competence. Special counsel may have to be engaged to cover matters outside of those areas.

13. *See* Model Rules of Professional Conduct, Rule 1.6. The exceptions to the preservation of confidences include inter alia permissive disclosures which may be made in order to prevent the client's commission of a criminal act that may result in substantial injury to the financial interest or property of another, to rectify the consequence of a client's criminal or fraudulent act effected through the use of the lawyer's services, or to establish a claim or dispute on behalf of the lawyer in a controversy between the lawyer and the client.

14. Model Rules of Professional Conduct, Rule 1.6.

15. Model Rules of Professional Conduct, Rules 1.6 and 4.1.

16. *See* comment to Model Rules of Professional Conduct, Rule 1.6.

17. Model Rules of Professional Conduct Rule 1.6.

18. In Westport Bank v. Corcoran, Mallin and Aresco, et al., 221 Conn. 490 (1992), Judge Borden stated:

> In the present case, the complaint alleges that the defendants were ordered by Munigle, pursuant to their attorney-client agreement with Munigle, to conduct a title search and issue a title opinion letter directly to the plaintiff. Thus, the allegations of the complaint, construed in favor of the plaintiff, would permit proof that Munigle consented to the defendants' representation of him even though the defendants also represented the plaintiff.

19. This is contrary to the conclusions allowed in Informal Opinion 1-74 (1974) of the Connecticut Bar Association where it was determined that an attorney could represent multiple parties in a real estate transaction. See also a discussion of the issues in CBA Formal Opinion No. 30 (1978) and CBA Committee on Professional Ethics Informal Opinion 83-5 (1983). These opinions were cited with approval in Westport Bank & Trust Co. v. Corcoran, Mallin and Aresco, et al., 221 Conn. 490 (1992) at 497. However, they were cited in support of the fact that an opinion could

be rendered to the third party lender. In *Westport Bank*, however, the court found that the defendants were, in fact, representing both the borrower and the lender. However, it is the conclusion of the Committee that counsel should not represent both entities as full counsel without independent representation of the parties by separate counsel, even though borrowers' counsel may be deemed to represent lender for purposes of the opinion under the principles of the Corcoran case.

20. Model Rules of Professional Conduct, Rule 1.13.

21. The Borrower Certificate attempts to make this a third party beneficiary contractual relationship, with a specific assignment of the opinion. In the recent case of Westport Bank & Trust Company v. Corcoran, Mallin and Aresco, et al., 221 Conn. 490 (1992), Judge Borden found that an attorney representing a borrower could be liable to a lender to which the attorney had rendered an opinion.

22. *See* Bent v. Green, 39 Conn. Supp. 416, 466 A.2d 322 (1983).

23. Westport Bank v. Corcoran, Mallin and Aresco, et al., 221 Conn. 490 (1992) at 494, note 5.

24. Restatement (Second) of Torts § 522 (1) (1977).

25. Annotation, *What Constitutes Negligence Sufficient to Render Attorney Liable to Person Other than Immediate Client*, 61 A.L.R. 4th, 464 (1988); Annotation, *Attorney's Liability to One Other Than Immediate Client, For Negligence in Connection with Legal Duties*, 61 A.L.R. 4th 615 (1988). The minority position is represented by the Federal Courts interpreting New York decisions, e.g., Crossland Savings FSB v. Rockwood Ins. Co., 700 F. Supp. 1274 (S.D.N.Y. 1988); Vereins-Und Westbank, AG v. Carter, 691 F. Supp. 704 (S.D.N.Y. 1988).

26. 100 U.S. 195 (1880).

27. Licata v. Spector, 26 Conn. Supp. 378, 225 A.2d 28 (1966), *See Comment, Lack of Privity No Defense in Suit by Beneficiaries of Invalid Will*, 41 CONN. B.J. 556 (1967).

28. *Licata, supra*, 26 Conn. Supp. at 380, 225 A.2d at 29-30. See also Terremar. Inc. v. Ginsburg & Ginsburg, Docket No. 29321, New Haven Superior Court, April 5, 1991, discussed below.

29. 56 Cal. 2d 583, 15 Cal. Rptr. 821, 364 P.2d 685 (1961), *cert. denied*, 368 U.S. 987, (1962) *See also* Roberts v. Ball, Hunt, Hart, Brown and Baerwitz, 56 Cal. App. 3d 104, 128 Cal. Rptr. 901 (1976); Cicone v. URS Corp., 183 Cal. App. 3d 194, 227 Cal. Rptr. 887 (1976).

30. *See, e.g.,* Bird v. Rothman 128 Ariz. 599, 627 P.2d 988 Ct. App. 1981); McAbee v. Edwards, 340 So. 2d 1167 (Fla. Dist. Ct. App. 1976); Jenkins v. Wheeler 69 N.C. App. 140, 316 S.E.2d 354 (1980) and the A.L.R. note cited Licata v. Spector, 26 Conn. Supp. 378.

31. *See, e.g.,* Ogle v. Rothman, 128 Ariz. 599, 627 P.2d 988 (Ct App. 1981); McAbee v. Edwards, 340 So.2d 1167 (Fla. Dist. Ct. App. 1976); Jenkins v. Wheeler, 69 N.C. App. 140, 316 S.E. 2d 354 (1980); Licata v. Spector, 26 Conn. Supp. 378, and the ALR Notes cited above.

32. 184 Conn. 194 (1981).

33. 208 Conn. 239, 543 A.2d 733 (1988).

34. 208 Conn. at 239, 543 A.2d at 733 (1988).

35. 301 Md. 116. 492 A.2d 618 (1985). *See also* Kirby v. Chester, 174 Ga. App. 881, 331 S.E.2d 915 (1985), in Orr v. Shepherd, 171 Ill. App. 3d 304, 121 Ill. Dec. 57, 524 N.E. 2d 1105 (1988) the court held that the third party benefit could not be merely an incidental benefit over an above the benefits received by the client, the relevant question is whether the third party was the only person intended to benefit from the attorney's legal services.

36. Westport Bank v. Corcoran, Mallin and Aresco, et al., 221 Conn. 490 (1992) issued in the March 31, 1992, *Connecticut Law Journal*. In the *Westport Bank* case, the court found a direct attorney-client relationship between the lender and the borrower's counsel retained by the borrower to render the title opinion to the lender. This relationship was based on a direct order to search given to the defendant, and the fact that the opinion was rendered to the lender pursuant to that order. The relationship was pursuant to the borrower's consent and instructions. The fact that a potential conflict of interest existed did not preclude the dual representation. Thus, the court did not reach the issue of a pure third party opinion not directed by the third party. Since the Statement recommends that a direct privity relationship be established between the borrowers' counsel and the lender, pursuant to an assignment and direction by the borrower, the Statement falls squarely within the holding of the *Westport Bank* case, although the assignment may be now excessive.

37. Conn. Super. Ct., DKT No. 29431 [Dorsey, New Haven, April 5, 1991], 17 CLT 17 at 438 [Apr. 29, 1991].

38. It is noted that it has not been customary for Lenders' counsel to render written opinions with regard to the validity and enforceability of the transaction that they supervised on behalf of the Lender. Contrary to the impression often expressed by Lenders' counsel, this does not keep them off the hook. The Resolution Trust Corporation is almost exclusively pursuing Lenders' counsel for recourse in real estate transactions that were poorly documented, poorly underwritten, or contained legal impediments. Without an opinion, Lenders' counsel are left without the disclaimers and limitations that such an opinion would contain, and are subject to the broad general obligation of due diligence and competent representation. In unpublished remarks by Harris Weinstein, Chief Counsel, Office of Thrift Supervision of the U.S. Department of Treasury delivered at The University of Michigan Law School, Ann Arbor, Michigan, on March 24, 1992, Mr. Weinstein noted that the FDIC and the RTC have brought over 50 lawsuits against savings and loan lawyers. The OTS has

also brought several significant cases against thrift lawyers, the latest being against the law firm of Kaye, Scholer, Fierman, Hays & Handler. He stated that a bank lawyer must advise on principles of safety and soundness, and that the duties of a lawyer to the "whole law" require that the lawyer not practice courtroom advocacy in misrepresenting facts or providing misleading statements. The duty was to the depositors of the thrifts and the entire system, not just the officers directing the lender and under investigation.

39. It is the present practice in New York, where we understand all documents needed to back up the opinion are attached.

40. Sweeney v. Sweeney, 126 Conn. 391 11 A.2d 806 (1940).

41. City National Bank v. Morrissey, 97 Conn. 480, 117 A. 493 (1922).

42. *See* Standard 9.2, Connecticut Standards of Title.

43. Apstein v. Sprowl, 91 Conn. 421, 425 99 A. 1045, 1046 (1917).

44. Porter v. Woodhouse, 59 Conn. 568, 574–76, 22 A. 299 (1890).

45. *Id.*, 59 Conn. at 574, 22 A. at 300.

46. *Sweeney*, 126 Conn. at 395, 11 A.2d at 808 (1940).

47. City National Bank v. Morrissey, 97 Conn. at 483, 117 A.2d at 494 (1922).

48. W. JAEGER, WILLISTON ON CONTRACTS, § 1138 [3d ed. 1967 & Supp. 1992].

49. *See, e.g.*, Conn. Gen. Stat. § 33-282, et seq. (1991), which addresses Stock Corporations.

50. *See, e.g.*, Czarnecki v. Plastics Liquidating Co., 179 Conn. 261, 268, 425 A.2d 1289, 1293 (1979) (where corporate president's action was outside both the corporation's ordinary business and president's scope of employment, action must be expressly or impliedly authorized or ratified by board of directors); Kolodney v. Kolodney Bros., Inc., 21 Conn. Supp. 308, 311, 154 A.2d 531, 533 (1959) (authority of corporate officer to make contract of employment or pension for life must be shown by "by law, action of board of directors or otherwise"). *See generally*, FLETCHER, CYCLOPEDIA OF CORPORATIONS, §§ 438–444 (1982).

51. Coady v. Igo, 91 Conn. 54, 56, 98 A. 328 (1916). *See generally*, CAVITCH, ZOLMAN, 2 BUSINESS ORGANIZATIONS WITH TAX PLANNING, § 22.02 (1984).

52. Edwards v. O'Neal, 28 S.W.2d 569, (Tex. Civ. App. (*writ dism.*) (1930)).

53. *Edwards*, 28 S.W.2d at 572, Thompson v. Town of Frostproof, 89 Fla. 92, 103 So. 118 (1925), United States v. McCutchen, 234 F. 702, 709 S.D.Cal. (1915).

54. *Edwards* at 572, *Thompson* at 188, *McCutchen* at 709.

55. The approach of this statement contrasts with that of the Accord which combines "Valid and Binding" and "Enforceable" into a single phrase: "Legal, Valid and Enforceable in Accordance with Its Terms." This broad approach integrates the "enforceability" opinion with the "remedies" opinion. The Accord broadly states that this phrase means: (1) a contract has come into existence under the law of contracts and neither the agreement nor any of its provisions will be unenforceable against the client (a) under the law of contracts, or (b) under other laws normally applicable to similar transactions or to parties of the sort against whom the opinion states the agreement to be enforceable; and (2) each obligation imposed by the agreement. each agreement made and each right, benefit and remedy conferred therein will be enforced as stated. To offset this, the opinion of the Accord is subject to "general qualifications" which are the bankruptcy and insolvency exception, the equitable principles limitations and other common qualifications, all detailed in the Accord. This Statement breaks these into two provisions: f. Valid and Binding, and g. Enforceable.

56. Preliminary Draft of Statement of Policy Regarding Lawyers Opinion Letters in Mortgage Loan Transactions, Texas State Bar newsletter, REAL EST. PROB. and TR. L., No. 2, p. 23 (Jan. 1985).

57. Commissioner of Public Health v. Board of Health of Tewksbury, 350 Mass. 507, 215 N.E.2d 745, 746 (1966).

58. Widener v. Sharp, 109 Neb. 766, 192 N.W. 726, 728, (1923).

59. Fuld, *Legal Opinions in Business Transactions - An Attempt to Bring Some Order Out of Chaos*, 28 BUS. LAW. 915, 930–31 (1973).

60. Here it would be appropriate to add "subject to the statutory provision barring further action on the debt when foreclosure has commenced, pursuant to C.G.S. § 49-1."

61. *See* Bay State Milling Co. v. Susman Feuer Co., 91 Conn. 482, 100 A.2d 19 (1917); Meyers v. Burke, 120 Conn. 69, 179 A. 88 (1935); Attardo v. Ambriscoe, 147 Conn. 708, 166 A.2d 458 (1960).

62. The Accord, Sections 6-A and 6-B, limits the knowledge, called "Actual Knowledge," covered by the opinion to the lawyer who signs the opinion and any lawyer in the opinion giver's organization who is actively engaged in the preparation of the opinion letter or who is primarily responsible for providing the response for a particular opinion issue or information regarding factual matters. Under the Accord it is unnecessary to search the files of the client, or to circulate a memorandum to all lawyers. Thus the approach taken in this Statement is substantially similar to the Accord, except that the conclusions as to Pending and Threatened Litigation require a circulation of the Counsel's firm as well as checking its litigation docket.

63. This provision is substantially the same as provided in the Accord in its Section 17 Pending and Threatened Litigation which incorporates its Section 3, Reliance by Opinion Giver on Other Sources. The commentary to those sections is incorporated herein for reference to the meaning and interpretation of these provisions.

64. Any widespread concern by distinguished commentators (as reflected in recognized legal peri-

odicals) as to the enforceability of the rule or regulation can effect the conclusions expressed. However, all lawyers are not expected to be familiar with such concerns.

65. Cases interpreting the relevant law need not be mentioned in the Opinion Letter because all Connecticut counsel are charged with knowledge of such cases. It can be anticipated that out of state counsel can expect mention of such cases, as well as a more fulsome dissertation on Connecticut mortgage and real estate law than this Statement of Policy provides.

66. This provision was adapted from recommended language from Dunn and Preble, "Real Property Issues," ABA National Institute on Third Party Legal Opinions, 1990, at 17–18.

67. Rules of Professional Conduct, § 1.6.

68. *Accord*, Section 3.

69. In order to facilitate the use of this Statement in mortgage loan transactions a reference to this Statement in mortgage loan applications or commitments without specification of the form of usury opinion will not be deemed to include a specific requirement for a usury opinion (Paragraph B.5 of the opinion letter format). No presumption, however, will be deemed with regard to whether specific qualifications are or are not to be included.

Thus, it is recommended that no opinion be given. If any opinion is requested, the above exceptions must be spelled out, or an assumption made that the transaction falls within the exceptions.

If the lender exemptions do not exist, a separately crafted opinion, including the assumptions that would generate a usury claim of the statutes do not exist may be presented, (i.e., without stating that assumption in his or her opinion letter.) The basis of the exceptions can be assumed, that no fees, charges, benefits or other compensation will be paid directly or indirectly to or for the benefit of the Lender except as specified in the Loan Documents, and the Loan Documents do not call for any usurious interest. Because usury without the statutory exemptions is so fact based in Connecticut, and these facts would not be expected to be in the knowledge of the Borrower's Counsel, such an opinion would not normally be requested.

70. See Conn. Gen. Stat. § 37-8 (1991). See Titus, *Review of Connecticut Usury Laws*, 54 CONN. B. J. 549 (1980).

71. Manufacturer's Advertising, Inc. v. Pancoast, 4 Conn. Cir. Ct. 668, 238 A.2d 810 (1967).

72. See Merlo, *Federal Preemption of State Usury Statutes; Legislative and Judicial Modifications*, 99 BANKING L. J. 585 (1982).

73. *See* Fuld, 28 BUS. LAW. at 917, and the Maryland Joint Committee Bar Report, *supra*, note 3, at 724.

74. Extending the rights under the Form Opinion to subsequent holders of the Note is not intended to extend the statute of limitations.

75. Use these succeeding documents references as applicable (and, if applicable, additional documents will be listed).

76. Various alternatives (each being mutually exclusive with other alternatives) are set out in this portion of the opinion letter.

77. Include whichever references may be applicable to the particular loan transaction.

78. Although this opinion makes no conclusions with respect to land use, forfeiture, criminal or other laws not covered, if the undersigned attorney has Current Actual Knowledge of any law suits, claims or proceedings under law, including these, then they should be revealed here, pursuant to the provisions of subparagraph C.2.(h) of the Statement of Policy.

79. These paragraphs are optional as are other opinions which may be required according to the nature of the mortgage loan transaction).

80. This opinion will be given only if the loan falls within the exceptions enumerated in § 37-9 C.G.S. or a residential mortgage made under the exemptions of the Federal Monetary Control Act of 1980.

F. BIBLIOGRAPHY

This Statement of Policy is based to a great extent on the "Preliminary Draft of Statement of Policy Regarding Lawyers' Opinion Letters in Mortgage Transactions," of the Committee on Lawyers' Opinion Letters in Mortgage Loan Transactions, adopted by the Real Estate Probate and Trust Section ("Texas Bar Preliminary Draft"). It was adapted from *Real Estate Probate & Trust Law*, January 1985, Vol. 23, No. 1, of the State Bar of Texas. The preliminary draft was based on numerous law review articles and institute presentations analyzing the responsibilities of a lawyer in rendering legal opinions.

Fuld, "Legal Opinions in Business Transactions—An Attempt to Bring Some Order Out Of Chaos," 28 *The Business Lawyer* 915 (1973).

Fuld, "Lawyers Standards and Responsibilities in Rendering Opinions," 33 *The Business Lawyer* 1295 (1978).

Reid and Maniscalco, "Opinion Letters in Real Estate Financing," 9 *Real Estate Law Journal* 211 (1981).

Wilson, "Legal Opinions in Real Estate Transactions" (presentation to the Real Property Section of the Dallas Bar Association, June 1979).

Hollyfield, "Attorneys Opinions" (presentation to the Texas Mortgage Lending Institute, September 1979).

Sechrest, "Legal Opinions in Real Estate Transactions" (presentation to the State Bar of Texas Advanced Real Estate Law Course, May 1980).

Glast, "The Opinion of Borrower's Counsel—A New Approach" (presentation to the State Bar of Texas Advanced Real Estate Law Course, May 1981).

Wallenstein, "Lawyers Opinion Letters in Mortgage Loan Transactions" (presentation to the Texas Mortgage Lending Institute, September 1983).

Johnson, "Legal Opinions to Third Parties in Business Transactions" (presentation to the State Bar of Texas Advanced Corporate and Business Law Course, May 1984).

Hollyfield, "Opinion Letters" (presentation to the State Bar of Texas Advanced Real Estate Course, May 1984).

Wallenstein, "Lawyer's Opinion Letters in Mortgage Loan Transactions" (presentation to the Texas Mortgage Lending Institute, September 1984).

This subject has also been the discussion topic for a semi-annual meeting of the American College of Real Estate Lawyers.

Dunn, Lane, Levin, Nellis and Schwenke, "Attorney Opinions in Real Estate Transactions" (presentation to the Houston, Texas meeting of the American College of Real Estate Lawyers, November 1982).

And at least one state bar has already sponsored a project attempting to standardize certain aspects of opinion letters in loan transactions.

Subcommittee on Opinion Writing, Committee on Corporate Banking and Business Law Massachusetts Bar Association. Omnibus Opinion for Use in Loan Transactions, 60 *Massachusetts Law Review* 193 (1975).

See also Report of the Committee of Corporations Regarding Legal Opinions in Business Transactions, a pamphlet published by the Business Law Section of the State Board of California (August 1983).

This project, which had been sponsored by the Real Estate Probate and Trust Section of the State Bar of Texas (and, although not endorsed officially for uniform use by lawyers in all states, has been encouraged by the American College of Real Estate Lawyers), represented the first attempt to create uniformity for lawyers opinion letters in mortgage loan transactions. Those participating in the project have borrowed heavily from the successful efforts of the American Bar Association in formulating the Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for information, as published in 31 *The Business Lawyer* 1709 (1976).

The Connecticut Statement of Policy was based in part on the encyclopedic report by the Joint Committee of the Real Property Section of the State Bar of California and the Real Property Section of the Los Angeles Bar Association.

"Legal Opinions in California Real Estate Transactions," 22 *Real Property, Probate and Trust Journal* 373 (1987) *rev.* 42 *The Business Lawyer* 1139 (1987) ("Calif. Bar Real Estate Opinion Report").

Reference was also made to:

Special Joint Committee of the Maryland State Bar Association, Inc., the Bar Association of Baltimore City, "Special Joint Committee of Lawyers' Opinions in Commercial Transactions" 45 *The Business Lawyer*, 706, Feb. 1990 ("Maryland Joint Committee Report").

The Report of the Special Committee on Legal Opinions in Commercial Transactions, New York County Bar Association in cooperation with the Corporation Law Committee of the Bar of the City of New York and Corporate Law Committee of the Banking, Corporation and Business Law Section, New York State Bar Association, The New York City Bar Association, and the City Bar Association New York, "Legal Opinions to Third Parties, An Easier Path," 34 *The Business Lawyer* 1891 (1979) ("Tri-Bar Opinion Report") 1975.

"Addendum to Legal Opinions to Third Parties, An Easier Path," 34 *The Business Lawyer* 1891 (1979).

The Tri-Bar Opinion Report has been again supplemented in "The Tribar Second Addendum to Legal Opinions to Third Parties: An Easier Path," 44 *The Business Lawyer* 563 (1989); and the "Joint Mortgage Loan Opinion Report," *New York State Bar Journal*, July 1990, at 55 ("Joint Mortgage Loan Opinion Report").

The subject of third-party opinions was covered in detail in an ABA National Institute of Third Party Legal Opinions in Chicago, New York and San Francisco, October and November 1990. Materials from the Institute's "Real Property Issues," by William Dunn and Laurence G. Preble, were consulted in completing this report.

In the January 1991 edition of *The Business Lawyer*, the magazine of the Business Law Section, its Committee on Legal Opinions published an Exposure Draft of a report on third party legal opinions. The draft features a legal opinion accord (the "Accord") consisting of 22 "black letter" rules with commentary. The Accord was reported by William Dunn and Steven Weise in the May/June 1991 *Probate and Property* magazine of the ABA Real Property, Probate and Trust Law Section, at p. 19. The final edition of the Accord was published in the November 1991 edition of *The Business Lawyer*. Vol. 47, p. 167, "Third Party Legal Opinion Report, Including the Legal Opinion Accord, of the Section of Business Law, American Bar Association."

Your attention is drawn to "Remarks of Harris Weinstein, Chief Counsel, Office of Thrift Supervision United States Department of Treasury," delivered at The Univer-

sity of Michigan Law School, Ann Arbor, Michigan, March 24, 1992 (unpublished), in which Chief Counsel Harris discussed the enforcement action against Kaye, Scholer, Fierman, Hayes & Handler, [In the Matter of Peter M. Fishbein, Karen E. Katzman, and Lynn Topby Fisher, Kaye, Scholer, Fierman, Hays & Handler, OTS AP-92-19 (March 1, 1992)]. He stated that several important points of professional responsibility derived from well-established rules of professional conduct arise from the savings and loan experience with thrift counsel:

> A lawyer must be sensitive to the role he or she chooses to play, for the rules and principles that govern an advocate in the courtroom do not apply to the lawyer as advisor or to the lawyer in the bank examination process.
>
> There is a need to practice the whole law. So-called "loophole lawyering" must be illuminated by the whole body of law that pertains to an issue.
>
> A lawyer is at all times governed by a duty to deal honestly with the facts and to comply with the disclosure and other regulations that govern submissions to the regulatory agency.
>
> A lawyer must report unlawful client activity up the corporate chain of command, going as far as the corporate board of directors.
>
> A lawyer may not knowingly further a client's unlawful activity.

Remarks, at 8, 9.

Connecticut legal research and memoranda of law were drafted by various members of the committee and the memoranda incorporated into the text substituting for the Texas Bar preliminary draft language, then discussed at length in numberless committee meetings. Blue book and case cites were checked by Kathleen Porter, Esq.

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November 2021

QUICK-REFERENCE GUIDE
KEY CONNECTICUT ENVIRONMENTAL CONSIDERATIONS
COMMERCIAL REAL ESTATE TRANSACTIONS

I. Transfer Act, Conn. Gen. Stat. § 22a-134, *et seq*.

a. Environmental diligence.
   i. DEEP Document Portal: https://filings.deep.ct.gov/DEEPDocumentSearchPortal/ (**Attachment #1**)

b. Evaluation of definition of "establishment".
   i. Categorical "establishment" vs. "establishment" by way of hazardous waste generation.
      1. DEEP Resources: https://portal.ct.gov/DEEP/Waste-Management-and-Disposal/Hazardous-Waste/Obtaining-Manifest-Data (**Attachment #2**)

c. Evaluation of exemptions to the definition of "transfer of establishment".

d. Lease considerations.

e. Impact of associated business transaction, if any (e.g., stock or asset purchase).

f. Statutory default to Seller responsibility absent clear contractual language indicating otherwise. *See* **Attachment #3** (sample contractual provisions)

g. Scope and survival of "Certifying Party" obligations.
   i. Financial assurance; operations and maintenance; inspections; and reporting.

II. Environmental Use Restrictions, Conn. Gen. Stat. § 22a-133n, *et seq*.

a. Environmental Land Use Restriction ("ELUR") and Notice of Activity Use Limitation ("NAUL") – Existing and planned limitations.
   i. DEEP Resources: https://portal.ct.gov/DEEP/Remediation--Site-Clean-Up/Environmental-Use-Restrictions/Environmental-Use-Restrictions; *see* **Attachment #4**

b. Ongoing inspection obligations.

c. Self-subordinating interests.

III. Significant Environmental Hazard Statute, Conn. Gen. Stat. § 22a-6u

a. Owner notification obligations.

b. Exposure mitigation vs. permanent abatement.

IV. Permit Transfer Statute, Conn. Gen. Stat. § 22a-6o

a. Evaluation of transferability.

b. *License Transfer – An Environmental Permitting Fact Sheet:* https://portal.ct.gov/DEEP/Permits-and-Licenses/Permitting-Factsheets/Permit-Transfer-Fact-Sheet; *see* **Attachment #5**

c. Registration within 30 days of transfer of ownership, if required.

V. Other Considerations

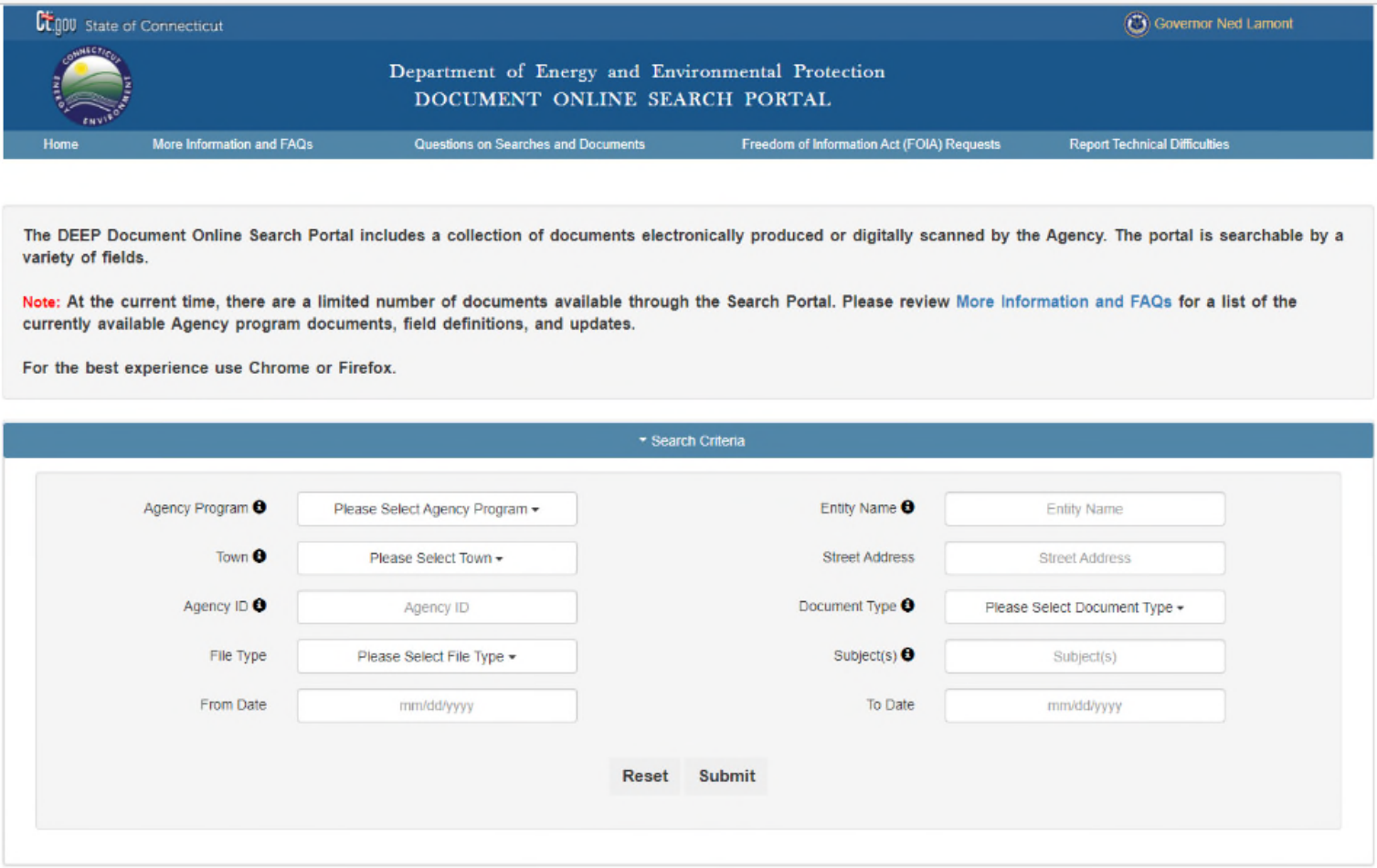
a. Aquifer Protection

b. Hazardous Building Materials

c. Underground and Aboveground Storage Tanks

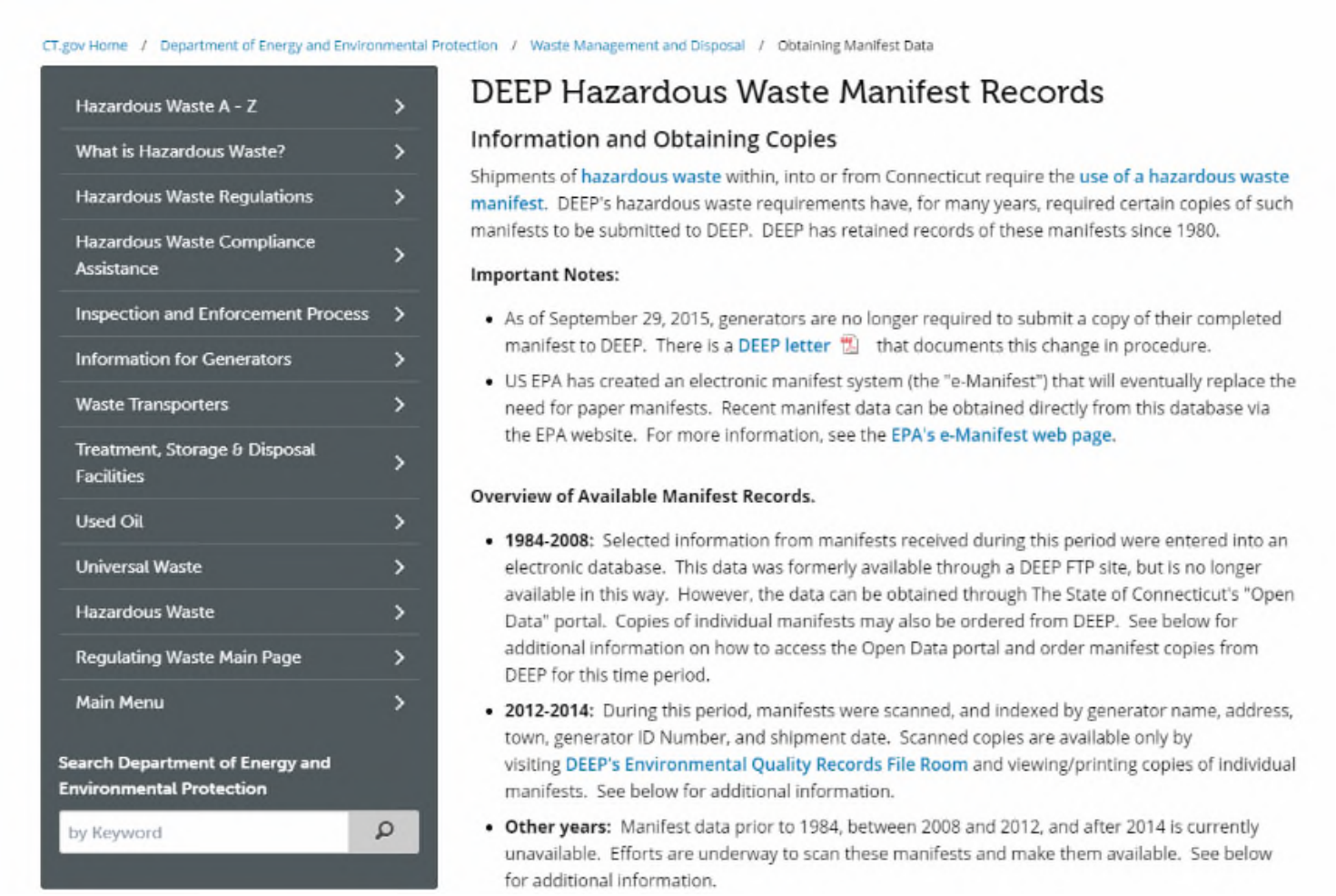
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ATTACHMENT #1



FOR INFORMATIONAL PURPOSES ONLY; NOT LEGAL ADVICE.

ATTACHMENT #2



CT.gov Home / Department of Energy and Environmental Protection / Waste Management and Disposal / Obtaining Manifest Data

- Hazardous Waste A - Z
- What is Hazardous Waste?
- Hazardous Waste Regulations
- Hazardous Waste Compliance Assistance
- Inspection and Enforcement Process
- Information for Generators
- Waste Transporters
- Treatment, Storage & Disposal Facilities
- Used Oil
- Universal Waste
- Hazardous Waste
- Regulating Waste Main Page
- Main Menu

Search Department of Energy and Environmental Protection

by Keyword

DEEP Hazardous Waste Manifest Records

Information and Obtaining Copies

Shipments of hazardous waste within, into or from Connecticut require the use of a hazardous waste manifest. DEEP's hazardous waste requirements have, for many years, required certain copies of such manifests to be submitted to DEEP. DEEP has retained records of these manifests since 1980.

Important Notes:

- As of September 29, 2015, generators are no longer required to submit a copy of their completed manifest to DEEP. There is a DEEP letter that documents this change in procedure.
- US EPA has created an electronic manifest system (the "e-Manifest") that will eventually replace the need for paper manifests. Recent manifest data can be obtained directly from this database via the EPA website. For more information, see the EPA's e-Manifest web page.

Overview of Available Manifest Records.

- **1984-2008:** Selected information from manifests received during this period were entered into an electronic database. This data was formerly available through a DEEP FTP site, but is no longer available in this way. However, the data can be obtained through The State of Connecticut's "Open Data" portal. Copies of individual manifests may also be ordered from DEEP. See below for additional information on how to access the Open Data portal and order manifest copies from DEEP for this time period.
- **2012-2014:** During this period, manifests were scanned, and indexed by generator name, address, town, generator ID Number, and shipment date. Scanned copies are available only by visiting DEEP's Environmental Quality Records File Room and viewing/printing copies of individual manifests. See below for additional information.
- **Other years:** Manifest data prior to 1984, between 2008 and 2012, and after 2014 is currently unavailable. Efforts are underway to scan these manifests and make them available. See below for additional information.

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ATTACHMENT #3

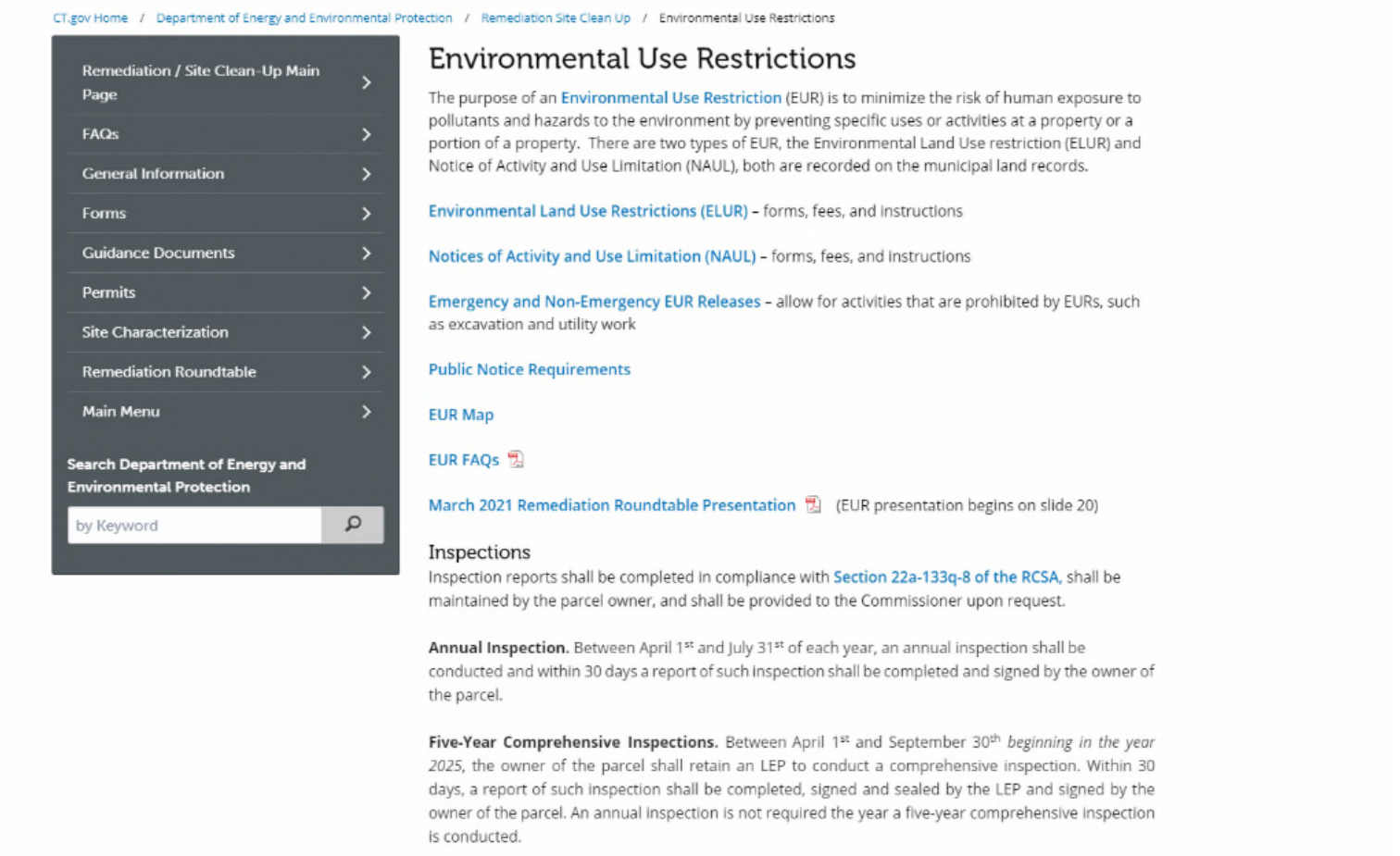
(1) Buyer "Certifying Party"

The Real Property may constitute, in whole or in part, an "Establishment" as the term is defined in the Transfer Act. Accordingly, Seller and Buyer shall prepare an appropriate Transfer Act Form and accompanying Environmental Condition Assessment ("ECAF") for the Real Property to satisfy the requirements of the Transfer Act in connection with the transaction contemplated herein. Seller shall execute as transferor and Buyer shall execute as transferee and Certifying Party (as all such terms are defined in the Transfer Act). Within ten (10) days after the Closing Date, Buyer shall (i) file the fully executed Transfer Act Form and ECAF with the Connecticut Department of Energy and Environmental Protection ("CTDEEP"); (ii) pay the initial filing fee and any and all subsequent Transfer Act fees; and (iii) provide written confirmation to Seller that the Transfer Act filing has been completed (with a copy of such filing). In order to evaluate the potential scope and cost of Transfer Act obligations that may be required, prior to the Closing, Buyer shall have the right to perform a limited Phase II assessment with respect to the Real Property. Buyer or its designee shall conduct and complete, at Buyer's sole expense, any actions required (as determined by Buyer in its reasonable discretion) as a result of the filing of the Transfer Act Form and the ECAF, to comply with the Transfer Act, and, if appropriate, to obtain written approval from CTDEEP or a final "verification" from a "Licensed Environmental Professional" that the Real Property has been remediated in full compliance with the Connecticut Remediation Standard Regulations (collectively "Transfer Act Work"). Buyer shall complete all Transfer Act Work as soon as practicable, but in any event within any deadline defined by or pursuant to the Transfer Act (as the same may be extended). Seller and Buyer agree to execute and deliver all documents reasonably requested by the other to comply with the Transfer Act.

(2) Seller "Certifying Party"

Seller hereby advises Purchaser that the Property is or may be an "establishment" pursuant to, and as defined by the Connecticut Transfer Act, Conn. Gen. Stat. § 22a-134 *et seq*. ("Transfer Act") and that the purchase and sale of the Property as contemplated in this Agreement is or may be a "transfer of establishment," as that term is defined in the Transfer Act. At the Closing, if Seller determines that the Property is or may be an establishment, Seller shall execute and deliver to Purchaser a "Form III" as that term is defined in the Transfer Act, for the transfer of real estate and as promulgated by the Connecticut Department of Energy and Environmental ("DEEP"). If a Form III will be executed in connection with the Closing, at least five (5) business days prior to the Closing, Seller shall deliver to Purchaser the draft Form III for Purchaser's review and reasonable comment. At or prior to the Closing, Purchaser shall sign such Form III as the "transferee" and Seller shall sign the Form III as "transferor" and as the "certifying party," as those terms are defined in the Transfer Act. Seller shall pay all filing fees associated with the Transfer Act as well as any later, supplemental fees, if any, assessed by the DEEP. If a Form III will be executed in connection with the Closing, at least five (5) business days prior to the Closing, Seller shall deliver to Purchaser the draft Environmental Condition Assessment Form ("ECAF") for Purchaser's review and reasonable comment. At or prior to Closing, Seller further agrees to execute and deliver to Purchaser the ECAF. Seller agrees to deliver the executed Form III, executed ECAF and initial filing fees to the DEEP no later than ten (10) days after the Closing and to provide Purchaser with date-stamped copies thereof. In no event shall Purchaser be required to be the "certifying party" under the Transfer Act filing, or form, which may be required by reason of this purchase and sale.

ATTACHMENT #4



CT.gov Home / Department of Energy and Environmental Protection / Remediation Site Clean Up / Environmental Use Restrictions

- Remediation / Site Clean-Up Main Page
- FAQs
- General Information
- Forms
- Guidance Documents
- Permits
- Site Characterization
- Remediation Roundtable
- Main Menu

Search Department of Energy and Environmental Protection

by Keyword

Environmental Use Restrictions

The purpose of an Environmental Use Restriction (EUR) is to minimize the risk of human exposure to pollutants and hazards to the environment by preventing specific uses or activities at a property or a portion of a property. There are two types of EUR, the Environmental Land Use restriction (ELUR) and Notice of Activity and Use Limitation (NAUL), both are recorded on the municipal land records.

Environmental Land Use Restrictions (ELUR) – forms, fees, and instructions

Notices of Activity and Use Limitation (NAUL) – forms, fees, and instructions

Emergency and Non-Emergency EUR Releases – allow for activities that are prohibited by EURs, such as excavation and utility work

Public Notice Requirements

EUR Map

EUR FAQs

March 2021 Remediation Roundtable Presentation (EUR presentation begins on slide 20)

Inspections

Inspection reports shall be completed in compliance with Section 22a-133q-8 of the RCSA, shall be maintained by the parcel owner, and shall be provided to the Commissioner upon request.

Annual Inspection. Between April 1st and July 31st of each year, an annual inspection shall be conducted and within 30 days a report of such inspection shall be completed and signed by the owner of the parcel.

Five-Year Comprehensive Inspections. Between April 1st and September 30th *beginning in the year 2025*, the owner of the parcel shall retain an LEP to conduct a comprehensive inspection. Within 30 days, a report of such inspection shall be completed, signed and sealed by the LEP and signed by the owner of the parcel. An annual inspection is not required the year a five-year comprehensive inspection is conducted.

ATTACHMENT #5

Permits & Licenses Main Page
Professional & Occupational Licenses
Recreational & Natural Resources Licenses
Compliance Assistance
Enforcement
Laws & Regulations
Adjudications and Environmental Hearings
Public Participation
Online Services
Main Menu

Search Department of Energy and Environmental Protection
by Keyword

License Transfer

An Environmental Permitting Fact Sheet

Introduction

No person may act under a Department of Energy and Environmental Protection (DEEP) license issued to someone else unless such license has been transferred to such a person. A transfer is only effective if DEEP notifies the licensee and proposed transferee that the license has been transferred. The licensee and proposed transferee must register the proposed transfer of ownership of a licensed facility or activity within ***30*** *days of the transfer*. For the transfer of Resource Conservation and Recovery Act (RCRA) permits, the licensee and proposed transferee must register the proposed transfer of ownership *within* ***90*** *days of the transfer*. Note that no person may conduct an activity requiring a permit from DEEP without first obtaining a permit.

Authorizing Statutes

Section 22a-6o of the Connecticut General Statutes (CGS). If you are applying for a transfer of a RCRA permit, a National Pollutant Discharge Elimination System (NPDES) permit, or an Air permit, the transfer must also be consistent with the requirements of applicable federal law.

Who Must Comply?

Any person proposing to transfer a DEEP license to another person must submit a License Transfer Form and applicable fee to DEEP. The License Transfer Form may only be used for changes in ownership or operators of the licensed activity. A transferred permit only authorizes the transferee to conduct the activities authorized by the pre-existing permit. If other activities or operational changes are proposed at the facility, the transferee should contact the appropriate DEEP program(s) to determine if a permit modification or new permit application is also required prior to implementation of such changes.

Required Documents

License Transfer Form (DEP-APP-006) including all supporting documentation such as applicant background and compliance information.

Program Procedures

If DEEP determines that the transferee is able to comply with the terms and conditions of the existing permit, DEEP will notify both parties confirming the registration and acknowledging the applicability of the license to the transferee. Upon receipt of DEEP approval of the transfer, the new permittee shall comply with all the terms and conditions of the permit transferred for the remaining period of time the existing permit is in effect. Please note, DEEP may require information in addition to the License Transfer Form to determine whether the transferee can comply with the terms and conditions of the license. The transferee may not conduct the activity without first receiving notice confirming the registration and acknowledging the applicability of the license.

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THE CLOSING CHECKLIST: DUE DILIGENCE

The *sine qua non* of purchaser representation in a commercial real estate closing is preparation. Each transaction is unique, and requires significant advance preparation. In order to properly represent your client, you must familiarize yourself with the requirements that are expected of you and your client in terms of the purchase and sale agreement, the mortgage loan commitment, and the requirements associated with any governmental permits that must be obtained.

Many of the documents you must collect and the requirements you must fulfill take time. Moreover, the closing is far too complicated to be reviewing and presenting documents for the first time at the closing table. Your first step should be taking out your closing checklist and then starting to frame the transaction by meeting with your client to review the nature and particulars of the transaction, determining who you are representing which entails determining who you can ethically represent, whether there are conflicts between the interests of borrowers and guarantors requiring separate counsel, and what diligence is advisable and who will be responsible to perform it, reviewing carefully the purchase and sale agreement and the mortgage commitment against your checklist and determining what needs to be done and what materials need be collected in order to close the transaction. When you have determined what your responsibilities are, then you should include in your retention and fee agreement, a clear delineation of responsibilities and any limitations thereon. Then your task becomes a "simple" process of collecting and vetting the items on your checklist and sharing them, on a need to know basis as appropriate, with lender's counsel, seller's counsel, bond counsel, environmental counsel, principal counsel, local counsel, guarantor counsel, litigation counsel…

By the time you reach the closing table, everything has been carefully reviewed, negotiated, and the closing becomes a signing ceremony.

The materials attached hereto are intended to be a starting point. The closing checklist, while seemingly exhaustive, may or may not contain everything germane to a given transaction. The preparation of a checklist should necessarily entail a careful review of what is required to close the deal. The careful practitioner will keep a draft checklist out when reviewing the purchase and sale agreement, as well as the mortgage loan commitment, constantly updating it, and where possible, completing items early.

COMMERCIAL CLOSING MASTER CHECKLIST

BUYER	
BUYER'S COUNSEL	
ADDRESS	
TELEPHONE	
FACSIMILE	
E-MAIL	

SELLER	
SELLER'S COUNSEL	
ADDRESS	
TELEPHONE	
FACSIMILE	
E-MAIL	

LENDER	
LENDER'S COUNSEL	
ADDRESS	
TELEPHONE	
FACSIMILE	
E-MAIL	

SURVEYOR	
ADDRESS	
TELEPHONE	
FACSIMILE	
E-MAIL	

ENVIRONMENTAL COUNSEL	
ADDRESS	
TELEPHONE	
FACSIMILE	
E-MAIL	

ENVIRONMENTAL CONSULTANT	
ADDRESS	
TELEPHONE	
FACSIMILE	
E-MAIL	

BUILDING/ENG. CONSULTANT	
ADDRESS	
TELEPHONE	
FACSIMILE	
E-MAIL	

PROPERTY	

CLOSING INFORMATION

DATE	
TIME	
LOCATION	
PERSONS PRESENT	

PRE CLOSING DUE DILIGENCE

ORD = ORDERED REC = RECEIVED REV = REVIEWED

PRIORITY ITEMS

ORD	REC	REV	ITEM
			DISCUSS SCOPE OF SERVICES WITH CLIENT
			DISCUSS DILIGENCE AND DIVISION OF RESPONSIBILITY WITH CLIENT
			CLIENT FEE LETTER
			CONDUCT FISA SEARCH ON ALL PARTIES & GUARANTORS
			REVIEW COMMITMENT LETTER
			NEGOTIATE COMMITMENT LETTER
			CREATE ENTITY TO OWN PROPERTY

SURVEY

ORD	REC	REV	ITEM
			IDENTIFY SOIL SCIENTIST TO FLAG WETLANDS IF REQUIRED
			PREPARE LETTER TO SURVEYOR
			CT STANDARDS OR ALTA/ACSM
			MONUMENTATION REQUIRED?
			PREPARE AND FORWARD LONG-FORM CERTIFICATION FORM
			SURVEY MAP ❑ SHOW BUILDING ZONE ❑ SHOW WETLANDS ❑ SHOW BUILDING HEIGHT ❑ LAND-USE GRID ❑ TYPE OF SURVEY ❑ BOUNDARY DETERMINATION CATEGORY ❑ ACCURACY
			OBTAIN MECHANIC'S LIEN WAIVER FROM SURVEYOR
			OBTAIN RED-STAMPED MYLAR OF SURVEY

ENVIRONMENTAL

ORD	REC	REV	ITEM
			IDENTIFY ENVIRONMENTAL COUNSEL
			WITH COUNSEL, IDENTIFY ENVIRONMENTAL CONSULTANT
			CONTRACT WITH CONSULTANT – CONFIDENTIALITY ISSUES
			REVIEW EXISTING ENVIRONMENTAL REPORTS ON PROPERTY
			CONFIDENTIALITY AGREEMENT
			IDENTIFY REQUIRED INFORMATION ❑ SITE ASSESSMENTS ❑ ASBESTOS TESTING ❑ LEAD ❑ ATMOSPHERIC HAZARDS
			PHASE I ENVIRONMENTAL SITE ASSESSMENT
			PHASE II ENVIRONMENTAL SITE ASSESSMENT
			PHASE III ENVIRONMENTAL SITE ASSESSMENT
			WITH ENVIRONMENTAL COUNSEL, DETERMINE IF PROPERTY IS AN ESTABLISHMENT (22a-134, et seq.)

TITLE

ORD	REC	REV	ITEM
			ORDER TITLE SEARCH FROM CATIC
			CHECK TITLE ENCUMBRANCES ❑ RE MARKETABILITY ❑ RE GIVING OF ENDORSEMENTS ❑ RE SURVEY ❑ RE EXISTING LEASES (ARE LEASE USES COMPATIBLE WITH RESTRICTIONS)
			REQUEST ABSTRACT OR LIST OF OWNERS AND KNOWN TENANTS & PROVIDE LIST TO ENVIRONMENTAL COUNSEL AND CONSULTANT
			REQUEST COPY OF TAX STREET CARD
			CHECK FLOOD STATUS FLOOD ZONE: ____ FLOOD MAP# _____ DATE: _____
			CHECK INDICES FOR MAPS OF RECORD
			COPIES OF ALL MAPS OF RECORD IN FILE
			CHECK w/ ZONING OFFICE/TOWN CLERK RE RECORDING SURVEY
			DRAFT NEW LEASE(S) FOR TENANTS

INCOME-PRODUCING PROPERTY

ORD	REC	REV	ITEM
			OBTAIN LIST OF TENANTS
			PRO FORMA
			COPIES OF ALL LEASES
			COPIES OF AMENDMENTS AND EXTENSIONS OF LEASES
			PREPARE ESTOPPEL CERTIFICATES FOR ALL TENANTS
			PREPARE ESTOPPEL CERTIFICATE PROVISION FOR CONTRACT
			DETERMINE IF LEASES ARE SELF-SUBORDINATING
			PREPARE SUBORDINATION, NON-DISTURBANCE & ATTORNMENT AGT
			PREPARE SNDA PROVISION FOR CONTRACT
			OBTAIN FLOOR-PLAN/LAYOUT WITH TENANT LOCATIONS
			REVIEW LEASE RESTRICTIONS/EXCLUSIVES

BUILDING

ORD	REC	REV	ITEM
			IDENTIFY CONSULTANTS ❑ ARCHITECT: ❑ ENGINEER: ❑ BUILDING CONTRACTOR:
			OBTAIN COPY OF BUILDING REPORT
			OBTAIN COPY OF CERTIFICATE OF OCCUPANCY
			OBTAIN COPY OF BUILDING PERMITS
			OBTAIN EXISTING BUILDING FLOOR PLANS

			UTILITIES AVAILABLE ❑ MUNICIPAL SEWER ❑ MUNICIPAL WATER ❑ GAS ❑ ELECTRIC ❑ TELEPHONE ❑ CABLE/DATA/INTERNET
			UTILITIES CONNECTED ❑ MUNICIPAL SEWER ❑ MUNICIPAL WATER ❑ GAS ❑ ELECTRIC ❑ TELEPHONE ❑ CABLE/DATA/INTERNET
			SEWER ASSESSMENT - BALANCE: $_____
			CONNECTION PERMIT REQUIRED FOR: ❑ MUNICIPAL SEWER ❑ MUNICIPAL WATER ❑ GAS ❑ ELECTRIC ❑ TELEPHONE ❑ CABLE/DATA/INTERNET
			CONNECTION PERMIT OBTAINED FOR: ❑ MUNICIPAL SEWER ❑ MUNICIPAL WATER ❑ GAS ❑ ELECTRIC ❑ TELEPHONE ❑ CABLE/DATA/INTERNET

MUNICIPAL LAND USE

ORD	REC	REV	ITEM
			HEALTH DEPARTMENT APPROVAL OF SEPTIC/SEWER SYSTEM
			HEALTH DEPARTMENT APPROVAL OF WELL
			MUNICIPAL DEPARTMENTAL REVIEW ❑ FIRE DEPARTMENT ❑ POLICE DEPARTMENT ❑ PUBLIC WORKS DEPARTMENT ❑ ENGINEERING DEPARTMENT ❑ HARBOR COMMISSION ❑ PORT AUTHORITY ❑ ECONOMIC DEVELOPMENT DEPARTMENT ❑ FLOOD HAZARD COMMISSION (USUALLY P&Z) ❑ DEMOLITION PERMITS ❑ BUILDING AND ANCILLIARY PERMITS ❑ CITY COUNCIL/BOARD OF SELECTMAN REVIEW AND WAIVERS ❑ HISTORIC DISTRICT COMMISSION
			IDENTIFY BUILDING ZONE: _____ IDENTIFY OTHER APPLICABLE ZONES (OVERLAY, HISTORIC OR VILLAGE DISTRICT AND THE LIKE)

			OBTAIN APPLICABLE REGULATIONS FOR ❑ PLANNING ❑ ZONING ❑ COASTAL AREA MANAGEMENT (CAM) ❑ ARCHITECTURAL DISTRICT ❑ HISTORIC DISTRICT ❑ VILLAGE DISTRICT ❑ INLAND AND COASTAL WETLAND ❑ FLOOD DAMAGE AND EROSION CONTROL
			REVIEW APPLICABLE ZONING REGULATIONS
			INTERVIEW: ❑ ZONING ENFORCEMENT OFFICER ❑ INLAND-WETLANDS ENFORCEMENT OFFICER ❑ TOWN PLANNING DIRECTOR
			COMPARE SURVEY WITH ZONING REGULATIONS
			COMPARE LEASES WITH ZONING USE REGULATIONS
			REVIEW EXISTING FILES ON ❑ VARIANCES ❑ SPECIAL PERMITS ❑ SITE PLAN APPROVAL ❑ USE APPROVALS ❑ ZONE CHANGE APPROVALS ❑ PLANNED DEVELOPMENT DISTRICTS (IF APPLICABLE) ❑ CAM APPROVALS ❑ INLAND-WETLAND APPROVALS ❑ ARCHITECTURAL REVIEW BOARD APPROVALS ❑ HISTORIC DISTRICT APPROVALS ❑ VILLAGE DISTRICT APPROVALS

CONNECTICUT STATE AGENCY PERMITS

ORD	REC	REV	ITEM
			STATE TRAFFIC COMMISSION ❑ MAJOR GENERATOR CERTIFICATE (C.G.S §§14-311 & 311A) ❑ STREET OPENING PERMIT ❑ STATE DOT TRANSPORTATION ENCROACHMENT PERMIT
			DEP PERMITS AND CERTIFICATIONS ❑ NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT (NPDES) ❑ WATER DIVERSION PERMIT ❑ COASTAL STRUCTURES, DREDGING & FILL PERMIT ❑ CERTIFICATE OF PERMISSION (ROUTINE MAINTENANCE) ❑ GENERAL PERMIT FOR GROUNDWATER CONTAMINATION RECOVERY SYSTEMS ❑ GENERAL PERMIT FOR DISCHARGE OF MINOR NON-CONTACT COOLING WATER ❑ GENERAL PERMIT FOR DISCHARGE OF WASTEWATER ASSOCIATED WITH COMMERCIAL ACTIVITY ❑ GENERAL PERMIT FOR DISCHARGE OF DEWATERING WASTEWATERS FROM COMMERCIAL ACTIVITY ❑ GENERAL PERMIT FOR DISCHARGE OF STORMWATER ASSOCIUATED WITH INDUSTRIAL ACTIVITY

			❑ GENERAL PERMIT FOR CERTAIN MINOR ACTIVITIES – WETLAND & NAVIGABLE WATERS ❑ STATIONARY SEWERS PERMIT ❑ REGISTRATION OF UNDERGROUND TANKS ❑ NOISE POLLUTION PERMIT ❑ AIR POLLUTION PERMIT ❑ STREAM CHANNEL ENCROACHMENT PERMIT (C.G.S §22a-342 – 349) ❑ WATER QUALITY CERTIFICATION

FEDERAL LAND USE AND PERMITTING ISSUES

ORD	REC	REV	ITEM
			CHECK WITH U.S. ARMY CORPS OF ENGINEERS ❑ DREDGE & FILL PERMITS (INTO WETLANDS) ❑ PERMITS FOR STRUCTURES ❑ §10 OF RIVERS & HARBORS ACT (33 USC §401) ❑ COASTAL AREA MANAGEMENT ACT (16 USC §1451) ❑ MARINE PROTECTION RESEARCH AND SANCTUARY ACT (33 USC §1401) ❑ COASTAL BARRIERS RESOURCES ACT (16 USC § 3501) ❑ WATERSHED PROTECTION AND FLOOD PREVENTION ACT (16 USC §1001) ❑ NATIONAL FLOOD INSURANCE ACT (42 USC §4001) ❑ CHAPTER 444 WETLANDS ISSUES

INSURANCE

COMP	ITEM
	DETERMINE REQUIRED COVERAGES FIRE/EXTENDED RISK FLOOD LIABILITY BUILDER'S RISK
	OBTAIN BINDER
	OBTAIN PAID RECEIPT
	MAKE SURE LENDER NAMED CORRECTLY

PREPARATION FOR CLOSING

COMP	ITEM
	DETERMINE WHO MUST EXECUTE LOAN DOCUMENTS OR OTHER TITLE DOCUMENTS (A "SIGNER")
	DETERMINE IF ALL SIGNERS WILL BE AT CLOSING
	DETERMINE AND CONFIRM STRATEGY FOR REMOTE SIGNERS
	VERIFY REMOTE SIGNERS ARE ALIVE AT CLOSING

AT MORTGAGE CLOSING

DFTD = DRAFTED REV = REVIEWED EXEC = EXECUTED

DFTD	REV	EXEC	ITEM
			EXAMINE IDENTIFICATIONS
			LIMITED GUARANTY AGREEMENT
			CERTIFICATION OF GUARANTORS
			CERTIFICATION OF BORROWER
			DEBT SUBORDINATION AGREEMENT
			PROMISSORY NOTE
			MORTGAGE DEED
			ASSIGNMENT OF LEASES AND RENTS
			UCC-1 ❑ UCC-1 COLLATERAL DESCRIPTION ❑ UCC-1 REAL PROPERTY DESCRIPTION
			ENVIRONMENTAL INDEMNITY AGREEMENT
			WAIVERS OF SUBSTANTIVE RIGHTS ❑ TRIAL BY JURY ❑ PRIOR NOTICE AND HEARING FOR PJR ❑ SERVICE OF PROCESS ❑ LAYING OF VENUE ❑ ARBITRATION OF DISPUTES (I.E., WAIVER OF TRIAL)
			CORRECTION OF CLERICAL ERRORS
			LEASE GUARANTY
			ISDA SWAP AGREEMENT
			SWAP OPINION OF BORROWER'S COUNSEL
			TITLE INSURANCE OWNER AFFIDAVIT/SPECIAL REPORT
			OPINION OF BORROWER'S COUNSEL
			OPINION OF FOREIGN JURISDICTION COUNSEL
			BANK CLOSING/FUNDING STATEMENT

AT TITLE CLOSING

REV = REVIEWED AT LCOSING TABLE EXEC = EXECUTED DEL = COMPLETED, COPIED AND DELIVERED

REV	EXEC	DEL		DOLLAR AMOUNT
			FORM ___ (NEGATIVE) DECLARATION	
			FILING FEE FOR (NEGATIVE) DECLARATION	$
			FILE (NEGATIVE) DECLARATION WITH DEP	
			RESULTS OF PRE-CLOSING INSPECTION	
			ESTOPPEL CERTIFICATES FROM TENANTS	
			CLOSING & DISBURSEMENT STATEMENTS	
			DEED	
			BILL OF SALE	
			ASSIGNMENT OF LEASES & RENTALS	
			BILLS	
			CERTIFICATES OF OCCUPANCY	
			NOTICE TO TENANTS	
			STATEMENT OF DELINQUENCIES	
			EVIDENCE OF CORPORATE/ENTITY AUTHORITY	
			UNSECURED INDEMNITY AGREEMENT	
			CONVEYANCE TAX RETURN	
			CONVEYANCE TAX STATEMENT	
			CHECK FOR CONVEYANCE TAX (STATE TAX)	$
			CHECK FOR CONVEYANCE TAX (LOCAL)	$
			FOREIGN PERSON CERTIFICATION	
			AUTHORIZATION FOR PAYMENT OF PROCEEDS TO ATTORNEY	
			TAX BILL	
			TITLE INSURANCE AFFIDAVIT/SPECIAL TITLE REPORT	
			MECHANIC'S LIEN WAIVERS	
			KEYS & ACCESS CODES	
			CERTIFICATE OF INSURANCE ❑ ALL RISK HAZARD ❑ LIABILITY ❑ FLOOD ❑ BOILER ❑ BUILDERS RISK	
			PAY CASH TO BALANCE	$
			PAY SURVEYOR	$
			OWNER TITLE INSURANCE POLICY	$

CHECKS

AMOUNT	PAYEE
$	COMMISSIONER OF REVENUE SERVICES
$	TOWN OF
$	TOWN CLERK OF
$	LENDER
$	BORROWER'S ATTORNEY
$	CATIC
$	LENDER'S ATTORNEY

POST CLOSING

RECORDING

COMP PAGE	ITEM	DOC NO.	RECORDING TIME	VOLUME	
	RELEASE- MORTGAGE/ALR/UCC-1		___:____ __.M.		
	RELEASE - MORTGAGE/ALR/UCC-1		___:____ __.M.		
	SURVEY		___:____ __.M.		
	DEED		___:____ __.M.		
	MORTGAGE		___:____ __.M.		
	ALR		___:____ __.M.		
	UCC-1		___:____ __.M.		

PAY TAXES

	LIST OF OCT 1, 2020 – FIRST HALF	$
	LIST OF OCT 1, 2020 – SECOND HALF	$

LIST OF SCHEDULES

SCHEDULE A	Closing Agenda
SCHEDULE B	Promissory Note
SCHEDULE C	Mortgage Deed
SCHEDULE D	Use of Insurance Proceeds to Rebuild
SCHEDULE E	Assignment of Leases and Rents
SCHEDULE F	Guaranty
SCHEDULE G	Environmental Indemnity
SCHEDULE H	PJR/Jury Waiver
SCHEDULE I	Post Closing Compliance Agreement
SCHEDULE J	Lender Lease Review Issues
SCHEDULE K	Subordination/Nondisturbance Agreement
SCHEDULE L	Tenant Estoppel
SCHEDULE M	Opinion Letter/ Statement of Policy
SCHEDULE M-1	Borrower Certificate for Opinion Letter

The forms provided in these materials are illustrative only. They must be reviewed carefully for applicability prior to use.

SCHEDULE A

PROVISIONAL CLOSING AGENDA
$000000.00 LOAN FROM

_____ BANK

TO

, 2021

		TO BE PREPARED OR PROVIDED BY
1.	Promissory Note	NPM
2.	Mortgage Deed and Financing Statement (address)	NPM
3.	Collateral Assignment of Leases and Rentals	NPM
4.	Security Agreement	NPM
5.	Financing Statement	NPM
6.	Guaranty - -	NPM
7.	Environmental Indemnity Agreement	NPM
8.	Closing Affidavit	NPM
9.	PJR/Jury Waiver	NPM
10.	Title Insurance Policy a. Comprehensive Endorsement b. Gap Endorsement c. Access Endorsement and Address Endorsements d. Variable Rate e. Authentication Endorsement (if e-policy) f. Waiver of Arbitration g. Additional Endorsements (as required) f. Copies of all exceptions to title	BC

		TO BE PREPARED OR PROVIDED BY
11.	UCC Search/Litigation Searches a. Borrower **b. Seller**	BC
12.	Post-Closing Compliance Agreement	NPM
13.	Debt Subordination Agreement	NPM
14.	Opinion Letter (Form To Be Supplied By NPM)	BC
15.	Evidence of Insurance (each entity as appropriate) * a. Liability Insurance b. Hazard Insurance (must be on ACORD Form 27 or 28) i. Real Estate ii. Personal Property iii. Loss of Rents c. Flood (If Applicable) **Condominium Association** **a. Liability Insurance** **b. Hazard Insurance** **Please see insurance information below**	BC
16.	Entity Documentation (Borrower) a. Certified Copy of Articles of Organization b. Operating Agreement c. Authorizing Resolution (NPM to Provide) d. Certificate of Legal Existence e. EIN Entity Documentation ( ) a. Certificate of Legal Existence b. Certified Copies of Bylaws and Certificate of Incorporation c. Incumbency Certificate - Officers and Shareholders d. Authorizing Resolution (NPM to Provide) e. EIN	BC BC
17.	Rent Roll/Certified Copy of Leases	BC

		TO BE PREPARED OR PROVIDED BY
18.	Subordination Non-Disturbance Agreements (as required) (Form To Be Supplied By NPM)	BC
19.	A-2 Survey Long Form Certified To Bank and Title Company	BC
20.	Certificates of Zoning Compliance/Certificates of Occupancy	BC
21.	Environmental Site Assessment	BC
22.	Appraisal	Lender
23.	Licenses, Permits and Approvals	BC
24.	Title Acquisition Documents -Purchase Agreement -Deed/Assignment of Leases/Purchase Closing Statement	BC
25.	Closing Statement /Pay Proceeds Letter	NPM

NPM = Neubert, Pepe& Monteith, P.C.
BC = Borrower's Counsel

The above listed items are not necessarily all inclusive. In the event additional documents are required, you will be so advised. This Agenda is not intended to modify or waive any requirements or conditions that may be set forth in the Commitment Letter.

Insurance Certificates for all properties must be on an Acord Form 27 or 28. The Certificate holder should be "_____/ Its successors and assigns / ATIMA, _____Attn: Loan Administration". Bank should get 30 days' notice of cancellation and should be listed as both mortgagee and loss payee.

This form is illustrative only.
It should be reviewed carefully
for applicability prior to its use.

SCHEDULE B

COMMERCIAL TERM PROMISSORY NOTE

$000,000.00 , Connecticut
, 20

FOR VALUE RECEIVED, a Connecticut limited liability company with a principal place of business at , , Connecticut, (the "Borrower"), promises to pay to the order of (the "Bank"),at its place of business at , Connecticut, or at such other place as the Bank or subsequent holder of this Note (hereinafter including Bank, the "Holder") shall from time to time designate, the sum of THOUSAND AND 00/100 DOLLARS ($000,000.00), or so much thereof as shall be outstanding hereunder, all as conclusively evidenced by the books and records of the Bank, together with interest in arrears on the outstanding principal balance hereof at the rate per annum of percent (0.00%)(the "Initial Interest Rate") until adjusted as hereinafter set forth. Interest on the unpaid balance hereof shall be computed on the basis of a three hundred sixty (360) day year for the actual number of days elapsed.

(The following provisions provide for a change in the interest rate. Care must be used to incorporate the fixed or variable rate(s), payment provisions and maturity date based upon the Commitment Letter)

Commencing upon (the "Change Date"), the Initial Interest Rate payable on this Note shall change to a rate per annum equal to the average weekly yield on United States Treasury Securities adjusted to a constant maturity of five (5) years as published from time to time (the "Index") in effect thirty (30) days prior to the Change Date (or, if not a business day, the previous business day) plus two percentage points (2.00%)(the "Revised Interest Rate"). In the event the Index shall cease to exist or shall no longer be published, Holder shall, in its sole discretion, substitute a comparable index therefor.

This Note shall be paid as follows: Interest from the date hereof through 20__ shall be paid to Holder this date. Commencing and on the first (1st) of each month thereafter through and including the first Change Date, Borrower will make monthly payments of principal and interest in the amount of $ each. Commencing , and on the first (1st) day of each successive month thereafter until the Maturity Date as hereafter defined, Borrower will make payments of principal and interest each in an amount sufficient to fully amortize the outstanding principal balance of this Note at the Revised Interest Rate, in equal payments, based upon the number of years (or parts thereof) remaining until the Maturity Date.

Notwithstanding the forgoing, unless sooner paid, the entire outstanding indebtedness evidenced by this Note, including, but not limited to, all outstanding and unpaid interest as herein provided, shall be due and payable in full on (the "Maturity Date").

Said sums shall be paid together with all taxes levied or assessed on this Note or the debt evidenced hereby against the Holder, and together with all costs, expenses and reasonable attorneys' fees incurred in any action to collect this Note or to realize on any collateral securing this Note or to protect or sustain the lien of the Bank, or in any litigation or controversy arising from or connected with this Note, an Open-End Mortgage Deed and Financing Statement of real property and improvements located at , Connecticut of even date herewith securing this Note (the "Mortgage") or any Loan Document, as defined in the Mortgage.

In the event Holder shall fail to receive any installment of interest or principal due hereunder or upon the occurrence of an Event of Default as defined in the Mortgage, the entire principal sum with accrued interest thereon due under this Note shall, at the option of Holder, become due and payable forthwith without demand or notice and without regard to the scheduled Maturity Date. No failure to exercise such option shall be deemed a waiver on the part of the Holder of any right accruing thereafter. After the occurrence of an Event of Default as defined in the Mortgage or after maturity or demand and including the period after any judgment has been rendered with respect hereto, Borrower agrees that the interest rate on the outstanding principal balance of this Note shall be three percentage points (3.00%) per annum higher than the rate of interest otherwise payable under this Note.

The Borrower and each and every other endorser, guarantor and surety of this Note, and all others who may become liable for all or any part of this obligation, do hereby agree that their liability hereunder shall be joint and several and hereby waive demand, presentment for payment, protest, notice of protest and notice of nonpayment of this Note, and do hereby consent to any number of renewals or extensions of the time of payment hereof, and agree that any such renewal or extension may be without notice to any of said parties and without affecting their liability hereunder, and further consent to the release of any part or parts or all of the security for the payment hereof and to the release of any party or parties liable hereon, all without affecting the liability of the other persons, partnerships or corporations or other entities liable for the payment of this Note.

The Borrower hereby gives the Holder a lien and right of setoff for all the Borrower's liabilities to the Holder upon and against the Borrower's deposits, credits and property now or hereafter in the possession or control of the Holder or in transit to it. The Holder may, at any time, or from time to time, apply the same or any part thereof, to any of the Borrower's liabilities to the Holder, though unmatured, without notice and without first resorting to any other collateral.

Without in any way affecting any other remedy that Holder may have, in the event any payment of principal and interest due hereunder is not received by Holder within ten (10) days after the same is due, then Borrower agrees to pay Holder a "late charge" equal five percent (5.00%) of the amount of such late payment to cover the additional expenses of Holder's handling of such late payment. Such charge shall be made on a monthly basis for each payment and for each month such payment is delinquent.

This Note may be prepaid, in whole or in part [without the payment of any prepayment fee**][** only upon the payment of a prepayment fee as follows: **Prepayment provisions based upon the Commitment Letter must be included**(the "Prepayment Fee").

Borrower agrees that the Prepayment Fee is a bargained for consideration, is reasonable under the circumstances of the transaction evidenced by this Note and is not intended to and does not constitute a forfeiture, penalty or other method to compel performance.

Any partial prepayments will be applied in the inverse order of maturity and will not relieve Borrower from making the next scheduled payment hereunder. The acceleration of the indebtedness evidenced hereby for any reason shall be considered a prepayment of principal and shall subject Borrower to the payment of the Prepayment Fee applicable at the time of acceleration.

All payments made hereunder shall be applied first to accrued interest then to principal and the balance to any late charges or fees due Holder.

Borrower further promises to pay to the Holder, as incurred, and as an additional part of the unpaid principal balance, all reasonable costs, expenses and reasonable attorneys' fees incurred (i) in the modification, collection, defense or enforcement of all or part of this Note or any guaranty hereof, or (ii) in the foreclosure or enforcement of any mortgage or security interest which may now or hereafter secure either the debt hereunder or any guaranty thereof, or (iii) with respect to any action taken to protect, defend, modify or sustain the lien of any such mortgage or security agreement, or (iv) with respect to any litigation or controversy arising from or connected with this Note or any mortgage or security agreement or collateral which may now or hereafter secure this Note, or (v) with respect to any act to protect, defend, modify, enforce or release any of its rights or remedies with regard to, or otherwise effect collection of, any collateral which may now or in the future secure this Note or with regard to or against Borrower or any endorser, guarantor or surety of this Note.

This Note and all agreements between Borrower and Holder are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of maturity of the indebtedness evidenced hereby or otherwise, shall the amount paid or agreed to be paid to Holder for the use or the forbearance of the indebtedness evidenced hereby exceed the maximum permissible under applicable law. As used herein, the term "applicable law" shall mean the law

of the State of Connecticut in effect as of the date hereof provided, however, that in the event there is a change in the law which results in a higher permissible rate of interest, then the Loan Documents shall be governed by such new law as of its effective date. In this regard, it is expressly agreed that it is the intent of Borrower and Holder in the execution, delivery and acceptance of the Note to contract in strict compliance with the law of the State of Connecticut from time to time in effect. If, under or from any circumstances whatsoever, fulfillment of any provisions hereof or of any of the Loan Documents at the time when performance of such provision shall be due, shall involve transcending the limit of that prescribed by applicable law, then the obligation to be fulfilled shall automatically be reduced to the limits of such validity, and if under or from any circumstances whatsoever Holder should ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the principal balance evidenced hereby and not to the payment of interest. This provision shall control every other provision of all agreements between Borrower and Holder.

This Note, the Loan Documents and the rights and obligations of the parties hereunder and thereunder shall be construed and interpreted in accordance with the law of Connecticut. The Borrower hereby acknowledges that this Note and the underlying obligations of the Borrower are primarily to be performed in the State of Connecticut. The Borrower agrees that the execution of this Note and the rights and obligations of the parties hereunder and under the Loan Documents shall be deemed to have a Connecticut situs and the Borrower shall be subject to the personal jurisdiction of the courts of the State of Connecticut with respect to any action the Holder, its successors or assigns, may commence hereunder. Accordingly, the Borrower hereby specifically and irrevocably consents to the jurisdiction of the courts of the State of Connecticut with respect to all matters concerning this Note and/or any Financing Agreement or the enforcement of any of the foregoing. Borrower consents to any such forum Holder may choose.

BORROWER ACKNOWLEDGES THAT THE TRANSACTION OF WHICH THIS NOTE IS A PART IS A COMMERCIAL TRANSACTION, AND HEREBY WAIVES ITS RIGHT TO NOTICE AND HEARING UNDER CHAPTER 903a OF THE CONNECTICUT GENERAL STATUTES, OR AS OTHERWISE ALLOWED BY ANY STATE OR FEDERAL LAW WITH RESPECT TO ANY PREJUDGMENT REMEDY WHICH HOLDER OR ITS SUCCESSORS OR ASSIGNS MAY DESIRE TO USE AND FURTHER WAIVES THE POSTING OF ANY BOND IN CONNECTION WITH ANY PREJUDGMENT REMEDY SOUGHT. THE BORROWER FURTHER AUTHORIZES THE ATTORNEY FOR ANY HOLDER OF THIS NOTE TO ISSUE A WRIT FOR A PREJUDGMENT REMEDY WITHOUT COURT ORDER. BORROWER ACKNOWLEDGES THAT THIS WAIVER IS MADE KNOWINGLY AND VOLUNTARILY AFTER CONSULTATION WITH ITS ATTORNEY.

THE BORROWER HEREBY WAIVES TRIAL BY JURY IN ANY COURT IN ANY SUIT, ACTION OR PROCEEDING ON ANY MATTER ARISING IN CONNECTION WITH THIS NOTE OR IN ANY WAY RELATED TO THE FINANCING TRANSACTIONS OF

WHICH THIS NOTE IS A PART AND/OR THE DEFENSE OR ENFORCEMENT OF ANY OF HOLDER'S RIGHTS OR REMEDIES. BORROWER ACKNOWLEDGES THAT THIS WAIVER IS MADE KNOWINGLY AND VOLUNTARILY AFTER CONSULTATION WITH ITS ATTORNEY.

If any term or provision of this Note or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Note, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Note shall be valid and enforceable to the fullest extent permitted by law.

The Holder may assign or participate this Note, the Financing Agreements, or any portion thereof, and any other document executed in connection therewith. Any such assignment or participation by Holder shall be deemed to have been made in pursuance of this Note and not to be a modification hereof. In connection with any such assignment or participation, Holder is authorized to deliver the Financing Agreements, or any other documents executed in connection therewith and all credit and financial information concerning Borrower and any guarantors to Holder's assignee or participant. Borrower acknowledges that any assignee or assignees of Holder shall be entitled to enforce the provisions of the Loan Documents as though such assignee or assignees were named therein as Holder. Borrower agrees to cooperate fully with Holder in effecting any such assignment or participation without the requirement to expend any of the Borrower’s funds in connection therewith.

This Note is secured, inter alia, by the Mortgage on real property and improvements known as , Connecticut.

BORROWER

Return to:

This form is illustrative only.
It should be reviewed carefully
for applicability prior to its use.

SCHEDULE C

OPEN-END MORTGAGE DEED AND FINANCING STATEMENT

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

KNOW YE, THAT , LLC, a Connecticut limited liability company with a place of business at , Connecticut (the "Grantor"), for the consideration of One Dollar ($1.00) and other good and valuable consideration received to its full satisfaction of _____, a Connecticut bank, having a place of business at _____(the "Grantee") does hereby freely give, grant, bargain, sell, alienate, convey and confirm unto the said Grantee, its successors and assigns forever, the following property, interest and rights (the "Mortgaged Property"):

(a) All that certain piece or parcel of land, with the buildings and improvements now or hereafter placed thereon, commonly known as **, Connecticut** and more particularly bounded and described in **Schedule A** annexed hereto and made a part hereof (the "Premises").

(b) All the right, title and interest of the Grantor, now or hereafter, in or to the land lying in the bed of any street, road or avenue, opened or proposed, and any and all sidewalks, plazas, alleys, strips and gores, in front of, adjoining or adjacent to the Premises; and all and singular the privileges, tenements, hereditaments, licenses, easements, rights, royalties, mineral, oil and gas rights, rents, issues and profits, water, water rights, water stock, and appurtenances, reversion or reversions and remainder or remainders belonging or in any way appertaining to the Premises.

(c) All the right, title and interest of the Grantor in or to all fixtures of every kind and nature whatsoever, now or hereafter located in, upon or about the Premises, or any part thereof, and used or usable in connection with any present or future occupancy or operation of said Premises, and all renewals and replacements thereof and additions and accessions thereto, (hereinafter collectively referred to as the "Fixtures"). The Fixtures shall be deemed to include, but without limiting the generality of the foregoing, all heating, lighting, laundry, incineration and power equipment, engines, pipes, pumps, tanks, motors, dynamos, boilers, fuel, conduits, switchboards, plumbing, lifting, refrigerating, ventilating, and communications apparatus, sprinkler system and other fire prevention and fire extinguishing apparatus, air cooling and air

conditioning apparatus, elevators, escalators, shades, blinds, awnings, screens, storm doors, and windows, stoves, refrigerators, refrigerating plant, attached cabinets, partitions, ducts and compressors, gas and electric fixtures, ranges, stoves, disposals, rugs, and all right, title and interest of the Grantor in and to any Fixtures which may be subject to any security agreement, conditional bill of sale, or chattel mortgage superior to the rights of the Grantee under this Mortgage, and the Grantor agrees to execute and deliver, from time to time, such further documents and instruments as may be requested by the Grantee to confirm, preserve, and enforce the lien of this Mortgage on any Fixtures; and all the proceeds and products of any and all Fixtures, including, but not limited to, any deposits or payments now or hereafter made thereon.

(d) Any and all unearned premiums, accrued, accruing or to accrue under insurance policies now or hereafter obtained by Grantor and all proceeds of the conversion, voluntary or involuntary, of the Mortgaged Property, the improvements and/or any other property or rights encumbered or conveyed hereby, or any part thereof, into cash or liquidated claims.

(e) Any and all awards or payments, including interest thereon, and the right to receive the same, which may be made with respect to the Mortgaged Property as a result of the exercise of the right of eminent domain, the alteration of the grade of any street, or any other injury to or decrease in the value of the Mortgaged Property, to the extent of all amounts which may be secured by this Mortgage at the date of receipt of any such award or payment by the Grantee, and of the reasonable attorneys' fees, costs and disbursements incurred by the Grantee in connection with the collection of such award or payment, and the Grantor agrees to execute and deliver, from time to time, such further instruments as may be requested by the Grantee to confirm such assignment to the Grantee of any such award or payment.

(f) Any and all further estate, right, title, interest, property, claim and demand whatsoever, either in law or in equity, of the Grantor, in or to any of the above.

TO HAVE AND TO HOLD the above granted and bargained Mortgaged Property, with the privileges and appurtenances thereof, unto the said Grantee, its successors and assigns forever, to its and their own proper use and behoof. And also, the said Grantor does for itself and its successors and assigns covenant with the said Grantee, its successors and assigns, that at and until the ensealing of these presents it is well seized of the Mortgaged Property as a good indefeasible estate in FEE SIMPLE; and has good right to bargain and sell the same in manner and form as above written; and that the same is free from all encumbrances whatsoever except as provided in Schedule B-1 of the Title Insurance Policy _____ issued by _____ Insurance Corporation which insures this Mortgage.

AND FURTHERMORE, it the said Grantor does by these presents bind itself and its successors and assigns forever to warrant and defend the above granted and bargained Mortgaged Property to the said Grantee, its successors and assigns, against all claims and demands whatsoever.

THE CONDITION OF THIS DEED IS SUCH THAT WHEREAS, the Grantor is justly indebted to Grantee for the sum of _____AND 00/100 DOLLARS ($000000.00) as evidenced and provided in a Commercial Term Promissory Note of even date herewith, a copy of which note is attached hereto as **Schedule B** and made a part hereof (the "Note"); and

WHEREAS, the Grantee is desirous of securing the prompt payment of the Note together with interest thereon and any additional indebtedness accruing to it pursuant to the terms of the Note or hereof (all sometimes hereinafter referred to collectively as the "indebtedness");

WHEREAS IN CONSIDERATION OF THE FOREGOING, AND IN ORDER MORE FULLY PROTECT THE SECURITY OF THIS MORTGAGE, GRANTOR REPRESENTS, WARRANTS, COVENANTS AND AGREES AS FOLLOWS:

1. Competence to Execute Financing Agreements. The Grantor has full power and authority to execute and deliver the Financing Agreements, and the execution and delivery of the same is not in violation of and will not result in default of any agreements or understanding the Grantor may have with any person or persons.

The term "Financing Agreements", as used herein, shall mean and refer to any and all agreements evidencing, securing or relating in any way to the past, present or future indebtedness or obligations or liabilities of every kind, nature and description of the Grantor and any Guarantor owing to the Grantee, including, but not limited to the Note, this Mortgage Deed, and the Collateral Assignment of Leases and Rentals of even date, and such other agreements as are executed by the Grantor and any Guarantor in connection therewith on this date or in the future, and any modification, supplementation or amendment thereof made from time to time.

"Guarantor(s)" shall mean _____or any other guarantor of the Financing Agreements.

2. Legal Tender and Application of Payments. The Grantor shall pay all the indebtedness evidenced by the Note, including, but not limited to, all outstanding principal and the interest thereon in lawful money of the United States at the times and in the manner set forth in the Note.

3. Taxes, Assessments and Other Charges. The Grantor shall pay promptly, before the same shall become delinquent, all taxes, assessments, sewer rents, water rates and other charges of any kind now or hereafter levied or assessed upon the Mortgaged Property or any part thereof, or upon the Note, or upon the interest of the Grantee in the Mortgaged Property, and any governmental or municipal charges and impositions for which lien rights exist; and upon request

of the Grantee, the Grantor shall exhibit to the Grantee receipts for the payment of all items specified in this Article prior to the date when the same shall become delinquent.

4. Insurance. Grantor (and **the association administering the condominium of which the Mortgaged Property is, or is intended to be a part)** shall provide, maintain, and deliver (at Grantee's request), an original physical hazard insurance policy covering the Mortgaged Property and shall deliver to Grantee an Acord Form 27 or 28 evidencing a "Special Form" insurance policy, insuring against loss by fire and broadened to include "All Risk of Physical Loss" with companies, in format and in amounts approved by Grantee. All insurance must be in sufficient amounts to prevent the application of any insurance policy co-insurance contribution on any loss. Grantee shall also be provided with additional insurance in forms, amounts and with companies approved by Grantee which provide for contingent liability insurance pertaining to non-conforming property if any part of any present or future buildings on the Mortgaged Property do not conform to applicable zoning requirements. Grantee shall also be provided with additional insurance in forms, amounts and with companies approved by Grantee which provide for: (a) loss of rent insurance in an amount not less than the aggregate rental value of the Mortgaged Property for a period of one year, if available, or business interruption insurance in an amount acceptable to Grantee; (b) public liability insurance in an amount not less than $1,000,000.00 and (c) workman's compensation insurance, if applicable. The Grantee may, at its option, require such other insurance in forms, amounts and with companies as it deems reasonably necessary. Grantor shall assign and deliver to the Grantee with satisfactory mortgagee clauses attached, all insurance policies of any kind or in any amount that may be issued with respect to the Mortgaged Property. All insurance policies shall name Grantee as mortgagee and as loss payee and shall provide that they shall not be canceled, terminated, materially changed or the coverage reduced prior to thirty (30) days' written notification to Grantee. Grantor shall give immediate notice in writing to the Grantee of any loss or damage to any buildings, structures or improvements now in existence or hereafter erected, constructed or placed on the Mortgaged Property caused by any casualty.

Full power is hereby conferred on the Grantee to settle and compromise in good faith any and all claims under any and all policies and to demand, receive and receipt for all moneys becoming payable thereunder and to assign any or all policies to any endorsee of the Note or to any subsequent owner of the Mortgaged Property in the event of the foreclosure of this mortgage or other transfer of title to the Mortgaged Property. Grantee may apply the proceeds of any such policies to the indebtedness in such manner as the Grantee in its sole discretion may see fit, and remit the excess, if any, to the Grantor, or Grantee may, at its sole option, apply such proceeds to the restoration of the Mortgaged Property upon terms and conditions satisfactory to Grantee.

If the Premises is located in an area designated by the Federal Emergency Management Agency or the Flood Disaster Protection Act of 1973 (P.L. 93-234) as being in a "special flood hazard area" or as having specific flood hazards, whether now or at any time hereafter, Grantor shall also furnish Grantee with flood insurance policies which conform to the requirements of said Flood Disaster Protection Act of 1973 and the National Flood Insurance Act of 1968, as

either may be amended from time to time. Renewals of such policies shall be so delivered at least ten (10) days before any such insurance shall expire.

If Grantor shall fail to provide any such insurance, or shall fail to replace any of the same within ten (10) days after being notified that the insuring company is no longer approved by Grantee, or if any such insurance is cancelled or lapses without replacement, Grantee may, at its option, procure the same in such amounts as Grantee may reasonably determine and the cost thereof together with interest thereon at the highest rate provided for in the Note per annum from the date of expenditure by Grantee to the date of repayment by Grantor to Grantee shall be repaid by Grantor to Grantee on demand and shall be part of the indebtedness secured hereby.

5. Maintenance and Repair. The Grantor shall maintain the Mortgaged Property in good condition and repair, shall not commit or suffer any waste of the Mortgaged Property, and shall comply with, or cause to be complied with, all statutes, ordinances and requirements of any federal, state, municipal, or other governmental authority relating to the Mortgaged Property. The Grantor shall promptly repair, restore, replace or rebuild any part of the Mortgaged Property which may be damaged or destroyed by any casualty whatsoever or which may be affected by any proceeding of the character referred to in the Article hereof entitled Eminent Domain.

6. Alteration or Demolition. The Grantor agrees that no building or other property now or hereafter covered by the lien of this Mortgage shall be removed, demolished, or structurally altered, without the prior written consent of the Grantee, except that the Grantor may remove or dispose of, free from the lien of this Mortgage, any Fixture as from time to time may become worn out or obsolete, provided that prior to such removal, any such Fixture shall be replaced with another Fixture of value and utility at least equal to that of the replaced Fixture and free from any title retention or security agreement or other encumbrance, and by such removal and replacement, the Grantor shall be deemed to have subjected such other equipment to the lien of this Mortgage. The Grantor shall immediately notify the Grantee of any such replacement and shall further execute such mortgage, security agreement, or other documents as the Grantee may require with respect thereto.

7. Restrictions on Use of Property and Prohibition Against Sale. The Grantor will not sell, lease (except as provided pursuant to a Collateral Assignment of Leases or Rentals of even date in favor of Grantee), mortgage, encumber, suffer change in title or ownership of, or otherwise transfer, or vest title in anyone other than the Grantor to all or any part of the Mortgaged Property while any part of the indebtedness secured hereby remains unpaid. Further, unless required by applicable law or unless the Grantee has otherwise agreed in writing, the Grantor shall not allow changes in the nature of the occupancy for which the Premises were intended on the date of this Mortgage, including, but not limited to, any change in any private restrictive covenant or private restrictions, if any, limiting or defining the uses which may be made of any part of the Premises; nor shall the Grantor initiate or acquiesce in a change in the zoning classification of the Premises, without the prior written consent of the Grantee.

For purposes of this paragraph, the conveyance of an interest in the Mortgage Property shall include but not be limited to: (a) any sale, transfer or hypothecation of any membership interest in Grantor whether such sale, transfer or hypothecation be beneficial or of record; (b) the issuance of any additional membership interests in the Grantor; or (c) any change in the management of the Grantor.

8. Eminent Domain. In the event that the whole or any part of the Mortgaged Property shall be taken by eminent domain, or in the event of any alteration of the grade of any street or highway, or of any other injury to or decrease in value of the Mortgaged Property, or the reacquisition of the whole or any part of the Mortgaged Property pursuant to the terms of any redevelopment plan or agreement affecting the Mortgaged Property or if any agreement shall be made between the Grantor and any entity vested with the power of eminent domain, any and all awards and payments on account thereof shall be deposited with the Grantee. The Grantor shall give the Grantee immediate notice of the actual or threatened commencement of any of the foregoing proceedings and shall deliver to the Grantee copies of all papers served in connection with any such proceedings. The Grantee shall have the right to intervene and participate in any proceedings for and in connection with any such taking, unless such intervention shall be prohibited by the Court having jurisdiction over such taking, in which event the Grantor shall consult with the Grantee in connection with such proceedings; and the Grantor shall not enter into any agreement with regard to the Mortgaged Property or any award or payment on account thereof unless the Grantee shall have consented thereto in writing. The Grantor hereby appoints the Grantee its Attorney-in-fact, coupled with an interest, and authorizes, directs and empowers such Attorney, at its option, on behalf of the Grantor, to adjust, compromise or settle the claim for any such award or payment, to collect, receive and retain the proceeds thereof, and to give proper receipts therefor. The Grantor further agrees, on request, to make, execute, and deliver to the Grantee any and all assignments and other instruments, as the Grantee may require, to confirm or assign all such awards and payments to the Grantee free and clear of any and all encumbrances of any nature whatsoever.

Notwithstanding any such taking, alteration of grade, other injury to or decrease in value of the Mortgaged Property, or reacquisition of title, or agreement, the Grantor shall continue to pay interest on the principal sum secured hereby at the rate provided in said Note, and to make any and all payments required by said Note and this Mortgage. Any reduction in the principal sum resulting from the application by the Grantee of such award or payment as hereinafter set forth shall be deemed to take effect only on the date of such application. The proceeds of any award or payment, after deducting the expenses of collection, including, but not limited to, the counsel fees, other costs and disbursements, incurred by the Grantee, may be applied by the Grantee, at its sole option, toward payment of the indebtedness secured hereby whether or not same shall be then due or payable, or be paid over wholly or in part to the Grantor for the purposes of altering or restoring any part of the Mortgaged Property which may have been damaged as a result of any such taking, alteration of grade, or other injury to the Mortgaged Property, or for any other purpose or object satisfactory to the Grantee, but the Grantee shall not

be obligated to see to the proper application of any amount paid over to the Grantor, nor shall the amount so paid over to the Grantor be deemed a payment on any indebtedness secured hereby.

If prior to the receipt by Grantee of such award or payment, the Mortgaged Property shall have been sold on foreclosure of this Mortgage, the Grantee shall have the right to receive said award or payment to the extent of the debt secured by this Mortgage remaining unsatisfied after such sale of the Mortgage Property, with interest thereon at the rate set forth in the Note, whether or not a deficiency judgment on this Mortgage shall have been sought or recovered or denied, and to the extent of the reasonable counsel fees, costs and disbursements incurred by the Grantee in connection with the collection of such award or payment.

9. Right to Cure. At its option, the Grantee may pay any expense or item (including, but not limited to, taxes, rates, assessments, other charges, insurance premiums, maintenance and repair expenses, expenses incurred in protection of the lien of this Mortgage, etc.) which the Grantor herein agrees to pay in case the Grantor shall fail to pay the same when due, and may perform any acts or covenants which the Grantor herein agrees and shall fail to perform, and may add the same, and the expense thereof, including, but not limited to, counsel fees and other costs, charges and disbursements incurred by the Grantee in connection therewith, to the indebtedness secured hereby or may at its option deduct the same from any part of money thereafter advanced; and the Grantor agrees to repay immediately, on demand, the same to Grantee, together with interest thereon at the rate set forth in the Note, from the date on which such payment or expense is made by the Grantee, and the same shall be a lien upon the Mortgaged Property prior to any right, title, interest, lien or claim thereto or thereon attaching or accruing subsequent to the lien of this Mortgage and shall be secured by this Mortgage.

10. Waiver of Liens. The Grantor shall furnish to the Grantee all such waivers and releases of liens or claims upon any Fixtures as the Grantee may require, and shall keep and maintain the Mortgaged Property free from the claim of all persons supplying labor or materials in connection with the construction or repair of any improvements on the Premises, notwithstanding by whom such labor or materials may have been contracted. If any mechanics lien is filed against the Mortgaged Property, the Grantor shall cause the same to be canceled and discharged of record within sixty (60) days after the date of filing thereof.

11. Protection of Lien. The Grantor shall pay all costs, expenses and counsel fees incurred by the Grantee in protecting or sustaining the lien of this Mortgage. The Grantor shall indemnify and save the Grantee harmless from all such costs and expenses, including, but not limited to, reasonable counsel fees, recording fees and costs of a title search, continuation of abstract and preparation of survey, incurred by reason of any action, suit, proceeding, hearing, motion or application before any court or administrative body in which the Grantee may be a party by reason hereof, including, but not limited to, condemnation, bankruptcy and administrative proceedings, as well as any other proceedings wherein proof of claim is required to be filed or in which it becomes necessary, in the Grantee's sole opinion, to defend or uphold the terms and priority of this Mortgage. All money paid or expended by the Grantee in that

regard, together with interest thereon from date of such payment at the rate set forth in the Note shall be additional indebtedness secured hereby, and shall be immediately and without notice due and payable to the Grantee by the Grantor.

12. Indemnification. Any and all expenses incurred in connection with the loan evidenced by the Note and secured by this Mortgage, shall be paid by the Grantor, including, but not limited to, the cost of title insurance premiums and charges, recording fees, survey costs, brokerage fees, fees charged for servicing said loan, appraisal fees, fee charged by consulting architects and engineers, and Grantee's reasonable attorneys' fees. The Grantor agrees to pay all such fees and indemnify and save Grantee harmless against the claims of any person(s) claiming any fee(s), reimbursement(s), commission(s) and/or costs arising out of said loan.

13. Late Charge. In addition to constituting an Event of Default, the failure of Grantee to pay when due any sum under any of the Financing Agreements, shall also enable the Grantee to collect a “late charge” in an amount equal to five percent (5.0%) of any said installment which is not received within ten (10) days of the due date thereof.

14. Estoppel Certificate. Grantor upon request, made either personally or by mail, shall certify, by a writing duly acknowledged, to the Grantee or to any proposed assignee of this Mortgage, the amount of principal and interest then owing on this Mortgage and whether any offsets or defenses exist against the indebtedness secured hereby, within five (5) days if the request is made personally, or within ten (10) days after the mailing of such request if the request is made by mail.

15. Statement on Encumbrances. The Grantor shall obtain, upon request by the Grantee, from all persons hereafter having or acquiring any interest in or encumbrance on the Mortgaged Property or any part thereof, a writing duly acknowledged, and stating the nature and extent of such interest or encumbrance and that the same is subordinate to this Mortgage and no offsets or defenses exist in favor thereof against this Mortgage or the Note secured hereby, and deliver such writing to the Grantee.

16. Books, Records and Accounts. The Grantor will keep and maintain or will cause to be kept and maintained proper and accurate books, records and accounts reflecting all items of income and expense in connection with the operation of the Mortgaged Property or any part thereof, including, but not limited to, any services, equipment or furnishings provided in connection therewith, whether such income or expenses be realized by the Grantor or by any other person or entity whatsoever. The Grantee or its designee shall have the right from time to time at all times during normal business hours to examine such books, records and accounts at the office of the Grantor or other person or entity maintaining such books, records and accounts and to make copies or extracts thereof as the Grantee shall desire.

17. Financial Statements. **Adapt to Commitment Letter.** Grantor and all Guarantors shall promptly provide Grantee with such additional financial information as the Grantee may reasonably request from time to time.

18. Right to Enter Premises. The Grantee and any persons authorized by the Grantee shall have the right to enter and inspect the Mortgaged Property at all reasonable times.

19. No Waiver, Etc. Any failure by the Grantee to insist upon the strict performance by the Grantor of any of the terms and provisions hereof shall not be deemed to be a waiver of any of the terms and provisions hereof, and the Grantee, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by the Grantor, of any and all of the terms and provisions of this Mortgage and the Note to be performed by the Grantor; and neither the Grantor nor any other person now or hereafter obligated for the payment of the whole or any part of the sums now or hereafter secured by this Mortgage shall be relieved of such obligation by reason of the failure of the Grantee to comply with any request of the Grantor or of any other person so obligated to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or of any obligation secured by this Mortgage, or by reason of the release, regardless of consideration, of the whole or any part of the security held for the indebtedness secured by this Mortgage; and, regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien on the Premises, the Grantee may release the obligation of anyone at any time liable for any of the indebtedness secured by this Mortgage or any part of the security held for said indebtedness and may extend the time of payment or otherwise modify the terms of the Note and/or this Mortgage without, as to the security or the remainder thereof, in any way impairing or affecting the lien of this Mortgage, or the priority of such lien, as security for the payment of said indebtedness as it may be so extended or modified, over any subordinate lien; and the holder of any subordinate lien shall have no right to terminate any lease affecting the Premises whether or not such lease be subordinate to this Mortgage; and the Grantee may resort for the payment of the indebtedness secured hereby to any other security therefor, held by the Grantee in such order and manner as the Grantee may elect.

20. Partial Foreclosure. The Grantee may, at its option, foreclose this Mortgage for any portion of the debt or any other sums secured thereby which are then due and payable, subject to the continuing lien of this Mortgage for the balance not then due, but nothing in this Article contained shall impair or affect any right or remedy which the Grantee might now or hereafter have, were it not for this Article, but the right given by this Article shall be in addition to any others which the Grantee may have hereunder.

21. Marshaling. Except as hereinafter provided, the Grantee shall not be compelled to release, or be prevented from foreclosing or enforcing this Mortgage upon all or any part of the Mortgaged Property, unless the entire indebtedness and all items hereby secured shall be paid in lawful money as aforesaid; and shall not be required to accept any part or parts of the Mortgaged Property, as distinguished from the entire whole thereof, as payment of or upon the said

indebtedness to the extent of the value of such part or parts; and shall not be compelled to accept or allow any apportionment of the said indebtedness to or among any separate parts of the Mortgaged Property. In case of a foreclosure sale, the Mortgaged Property, may be sold in one parcel and as an entirety or in such parcels, manner or order as the Grantee in its sole discretion may elect.

22. Rights and Remedies Cumulative. To the extent permitted by law, the rights and remedies provided for in this Mortgage, or which the Grantee may have otherwise, at law or in equity (including, but not limited to, the right to damages by reason of the failure of the Grantor to keep, observe and perform any of the covenants or agreements contained in this Mortgage), shall be distinct, separate and cumulative, and shall not be deemed to be inconsistent with each other, and none of them, whether or not exercised by the Grantee, shall be deemed to be in exclusion of any other, and any two or more of all such rights and remedies may be exercised at the same time. Further, the Grantee may resort for the payment of the indebtedness secured hereby to its several securities therefor in such order or manner as it may think fit.

If the Grantor has given the Grantee one or more mortgages other than this Mortgage with respect to the Mortgaged Property or any portion thereof, then all such mortgages, and all rights and remedies provided for in all such mortgages shall remain distinct and separate and none of them shall merge or be merged with this Mortgage or any other mortgages.

Without in any way limiting the generality of the foregoing, the Grantee shall have the right from time to time to take action to recover any sums, whether interest, principal or any installment of either, or any other sums required to be paid under the terms of this Mortgage or the Note, as the same become due, without regard to whether or not the principal sum secured, or any other sums secured, hereby shall be due, and without prejudice to the right of the Grantee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by the Grantor existing at the time such earlier action was commenced.

23. Foreclosure Expenses. If this Mortgage shall be foreclosed, there shall be included to the extent permitted by law in the computation of the indebtedness secured hereby, the amount of a reasonable fee for the services of the attorneys retained by the Grantee in the foreclosure action or proceeding, as well as any and all disbursements, costs and other expenses incurred by the Grantee in connection with such foreclosure action or proceeding.

24. Change of Law. If the adoption of, any material change in or any material change in the interpretation of, any law, regulation or guideline applicable to financial institutions including (a) the Dodd-Frank Wall Street Reform and Consumer Protection Act and (b) the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, or (c) any other rule by any governmental authority exercising control over Grantee similar to (a) or (b) (collectively, a "Governmental Rule"), or the compliance by Grantee with a Governmental Rule (including, without limitation, Regulation D of the Board of Governors of

the Federal Reserve System and regulations of the Securities Exchange Commission relating to financial instruments),which imposes any reserve, deposit, allocation of capital or similar requirement or any tax (other than taxes on Grantee's income) on Grantee which materially reduces the rate of return on Grantee's capital or materially increases the amount of capital required to be maintained by Grantee then, and in each such case, Grantee may require Grantor to pay the amount necessary to compensate Grantee or for such materially reduced rate of return or increased capital requirement. Grantee will deliver to Grantor a statement of the justification for the payment(s), and the good faith determination by Grantee shall be conclusive absent obvious error and shall be payable by Grantor to Grantee within 30 days of Grantee's written demand. In determining any such amount, Grantee may use reasonable averaging and attribution methods.

25. Waiver of Rights. THE GRANTOR ACKNOWLEDGES THAT THE TRANSACTION OF WHICH THIS MORTGAGE IS A PART IS A COMMERCIAL TRANSACTION, AND HEREBY VOLUNTARILY AND KNOWINGLY WAIVES ITS RIGHT TO NOTICE AND HEARING UNDER CHAPTER 903a OF THE CONNECTICUT GENERAL STATUTES, OR AS OTHERWISE ALLOWED BY THE LAW OF ANY STATE OR FEDERAL LAW WITH RESPECT TO ANY PREJUDGMENT REMEDY WHICH THE GRANTEE MAY DESIRE TO USE AND SPECIFICALLY AUTHORIZES THE ATTORNEY FOR THE GRANTEE TO ISSUE A WRIT FOR ANY PREJUDGMENT REMEDY WITHOUT COURT ORDER. THE UNDERSIGNED HEREBY FURTHER WAIVES ANY REQUIREMENT FOR THE POSTING OF A BOND AND ANY RIGHT TO REQUEST A COURT TO REQUIRE THE GRANTEE TO POST A BOND IN CONNECTION WITH ANY PREJUDGMENT REMEDY SOUGHT. Further, the Grantor hereby waives, to the extent permitted by law, the benefits of all valuation, appraisement, homestead, exemption, stay, redemption and moratorium laws, now in force or which may hereafter become laws.

26. Reliance on Documents, Etc. The Grantee, in making any payment herein authorized in the place and stead of the Grantor which (i) relates to taxes, assessments, water rates, sewer use and rentals and other governmental or municipal charges, fines, impositions or liens asserted against the Mortgaged Property, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy thereof or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (ii) relates to insurance premiums, may do so according to any notice, bill, statement or estimate procured from the appropriate insurer without inquiry into the accuracy or validity thereof; or (iii) relates to any apparent or threatened adverse title, lien, statement of lien, encumbrance, claim or charge shall be the sole judge of the legality or validity of same; or (iv) relates to the expense of repairs or replacement of any buildings, improvements, Fixtures or any other Mortgaged Property shall be the sole judge of the state of repairs and the necessity for incurring the expense of any such repairs or replacement; or (v) otherwise relates to any other purpose not specifically enumerated in this Article, may do so whenever, in its judgment and discretion, such payment shall seem necessary or desirable to protect the full security intended to be created by this Mortgage, and provided further that in connection with any such payment, the Grantee, at its option, may and is

hereby authorized to obtain a continuation report of title prepared by a title insurance company, the costs and expenses of which shall be repayable by the Grantor without demand and shall be secured hereby.

27. Compliance with Local, State and Federal Regulation.

(a) Grantor has to the extent appropriate and obtainable, all necessary certificates, licenses, authorizations, registrations, permits, environmental and zoning resolutions and/or approvals necessary for the operation of all contemplated improvements and businesses at the Mortgaged Property or any part thereof or the commencement or continuance of construction thereof, as the case may be.

(b) Respecting the Mortgaged Property and the use and operation thereof, the Grantor is and shall at all times remain in compliance with all federal, state and local laws and ordinances with respect to conduct of business or business operation, and the Grantor is not and shall not be at any time in violation of any zoning, environmental protection, (including, without limitation, air pollution, water pollution, and inland-wetland proscriptions), health, occupation, safety or other law, regulation or order.

(c) Without limiting in any way the generality of the foregoing respecting the Mortgaged Property and the use and operation thereof, the Grantor is and shall at all times remain in compliance with any statutes, regulations, orders or compliance schedules relating to all orders of the Federal Environmental Protection Agency (hereinafter referred to as "EPA") and/or the Connecticut Department of Energy and Environmental Protection (hereinafter referred to as "DEP") and relating to any requirements of the Federal Occupational Safety and Health Act (hereinafter referred to as "OSHA") or the Connecticut Occupational Safety and Health Act (hereinafter referred to as "COSHA"), and the Grantor has made arrangements so that it will be, within time limits set by the EPA, DEP, OSHA and/or COSHA, in full compliance with any orders or compliance schedules issued in connection therewith relating to the future operations of the Grantor.

28. Event of Default. Upon the occurrence of an Event of Default hereunder, the whole of the outstanding principal sum due on the Note, interest accrued thereon, and any and all indebtedness secured hereby shall become due and payable forthwith at the option of the Grantee without notice or demand, and Grantee may, in addition to all other remedies available to it at law or in equity, foreclose this Mortgage. Each of the following events shall be deemed to be an "Event of Default" hereunder:

(i) the Grantor's or any Guarantor's failure to keep, perform or carry out any obligation under the Note, this Mortgage, or any of the Financing Agreements; or (ii) Grantee shall not

receive interest and/or principal and interest monthly when due pursuant to the Note; or (iii) the Grantor's failure to keep, perform or carry out any of its material obligations under any lease for all or any portion of the Mortgaged Property; or (iv) failure to exhibit to the Grantee, within ten (10) days after payment is due, receipts showing payment of all taxes, water rates, sewer rents, municipal assessments and insurance premiums; or (v) failure to keep in force any insurance required herein, or default after notice and demand either in delivering the policies of insurance or in reimbursing the Grantee for premiums paid on such insurance, as herein provided; or (vi) the actual or threatened waste, removal or demolition of, or structural alteration to, any part of the Mortgaged Property except as permitted herein; or (vii) assignment by the Grantor of the whole or any part of the rents, income or profits arising from the Mortgaged Property other than the Collateral Assignment of Leases and Rentals in favor of Grantee of even date herewith; or (viii) the failure of any Guarantor to observe, perform or comply with any material obligation, condition or covenant under any Guaranty of the indebtedness (the "Guaranty"); or (ix) Grantor shall cease to legally exist or shall be deprived of title, possession or control of the Mortgaged Property by process or operation of law or order of any court, or if any foreclosure proceeding shall be instituted on any lien or mortgage of any kind affecting the Mortgaged Property; or (x) the death, incapacity or dissolution of any Guarantor or (xi) the filing by or against the Grantor or any Guarantor of any petition, arrangement, reorganization, or the like under any insolvency or bankruptcy law, or the adjudication of him as a bankrupt, or the making of an assignment for the benefit of creditors, or the appointment of a receiver for any part of any of their respective properties; or (xii) the occurrence of any event which, in the commercially reasonable judgment of Grantee materially and adversely affects the ability of the Grantor or any Guarantor to pay or perform under any of the Financing Agreements or otherwise impairs any security of the Grantee; or (xiii) any sale, transfer, assignment, pledge or hypothecation of any membership or ownership interest in Grantor or any Guarantor or make a distribution with respect to any capital account, without the Grantee's prior written consent; or (xiv) any merger or consolidation of Grantor or any Guarantor into another entity or change in the ownership, control or management of Grantor or any Guarantor; or (xv) any sale, conveyance, lease, transfer or encumbrance of any of the Grantor's right, title or interest in the Mortgaged Property except as provided herein; or (xvi) any material representation, warranty or disclosure made by the Grantor herein, or any statements, certificate or other data furnished by the Grantor or any Guarantor in connection with the loan, or any material representation, or warranty made by Grantor or any Guarantor or by any officer or third party in any of the Financing Agreements proves to be materially false or misleading on the date as of which made, whether or not that representation or disclosure appears in this Mortgage; or (xvii) the occurrence of a default or Event of Default under any other obligation of Grantor or any Guarantor to Grantee.

(a) Without limiting any of the Grantee's rights, if an Event of Default shall occur, the Grantee may, at its option: (i) enter upon and take possession and control of the Mortgaged Property with those rights and powers more particularly set forth in (b) hereof; (ii) make application to a court of competent jurisdiction for and obtain the immediate ex parte appointment of a receiver authorized to immediately enter upon and take possession and control of the Mortgaged Property with those rights and powers more particularly set forth in (b) hereof;

and (iii) without taking possession and control of the Mortgaged Property, immediately (with or without commencing any legal action or proceeding in any court of competent jurisdiction) collect directly all Premises income in the place and stead of the Grantor with full rights and powers to notify all parties liable to make payments of income to Grantor to make said payments directly to the Grantee or its agents, and the Grantee or its agents shall have the further power and authority to sue for or otherwise collect and receive all income.

(b) In the event the Grantee or a receiver enters upon and takes possession and control of the Mortgaged Property pursuant to (a) hereof, said person or entity shall, in addition to such other rights and powers as may subsequently be authorized, have the right and power to (i) operate, manage and control the Mortgaged Property and exercise all the rights and powers of the Grantor in its name or otherwise with respect to the same; (ii) make all necessary and proper maintenance, repairs, replacements, and improvements to the Property; (iii) collect and receive all income; and (iv) enforce all terms of existing contracts pertaining to the Mortgaged Property and enter into such new contracts as the Grantee or the receiver may determine necessary in their sole discretion.

(c) All income collected by the Grantee, the Grantee's agent or a receiver, pursuant to Section (a) hereof, shall be applied in such order of priority as the Grantee may determine in its sole discretion to (i) interest and principal due on the Note; (ii) taxes, assessments and insurance premiums due with respect to the Mortgaged Property and/or the business operations conducted from the Mortgaged Property; (iii) all costs and expenses of operating, maintaining, repairing and improving the Mortgaged Property; and (iv) the compensation, salaries, expenses and disbursements of any agents, employees, attorneys or other representatives of the Grantee, the Grantee's agent or the receiver in connection with the possession, control and/or operation of the Mortgaged Property and the business operations conducted therefrom.

(d) The Grantee, its agents, or any receiver acting pursuant to (a) hereof shall in no event be liable or accountable for more monies than actually are received from the Mortgaged Property during the period which the Grantee, its agent or any receiver actually is in possession and control of the Mortgaged Property. Neither the Grantee, its agents nor any receiver shall be liable or accountable in any manner for the failure to collect income for any reason whatsoever.

(e) All costs, expenses and liabilities of every character incurred by the Grantee in managing, operating and maintaining the Mortgaged Property, not paid from income as herein above provided, shall be repaid by Grantor to Grantee with interest at the default rate as provided in the Note.

(f) In the event of foreclosure, the Grantee, its agent or any receiver acting pursuant To Section (a) hereof may, if a deficiency exists, remain in possession of the Mortgaged Property until (i) the foreclosure sale; (ii) the redemption of the Mortgaged Property; or (iii) the expiration of any redemption period of the United States of America extending subsequent to the

foreclosure sale. The Grantee, its agents or the receiver shall incur no liability for, nor shall the Grantor assert any claim or setoff as a result of, any action taken while the Grantee, its agent or a receiver is in possession of the Mortgaged Property.

29. Miscellaneous Provisions.

(a) In the event of a foreclosure of this Mortgage, the purchaser of the Mortgaged Property, if the Grantee so consents, shall succeed to all the rights of the Grantor to the Mortgaged Property, including, without limitation, any right to unearned premiums, in and to all policies of insurance assigned and delivered to the Grantee pursuant to the provisions hereof.

(b) A demand upon or notice to the Grantor or any Guarantor under any Financing Agreement shall be deemed effective if sent by facsimile transmission, by recognized overnight courier or by certified mail, first class, postage prepaid, return receipt requested addressed to the Grantor at the following address**:_____, Connecticut**, or directed to the Grantor at the last address furnished in writing to the Grantee, or directed to the address at which the Grantee customarily communicates with the Grantor. Any notice to the Grantee hereunder shall be effective only upon its receipt by the Grantee at the following address: **_____; Attn: Loan Administration**.

(c) The Grantor and the Guarantors shall observe, perform or comply with all obligations, conditions and covenants contained herein and in the Financing Agreements. Any and all provisions of the Financing Agreements are hereby made a part hereof to the same extent as if fully set forth herein.

(d) The security interests, liens and other rights and interests in and relative to any of the real or personal property of Grantor now or hereafter granted to Grantee by Grantor by or in any instrument or agreement, including but not limited to this Mortgage and the Financing Agreements, shall serve as security for any and all liabilities of Grantor to Grantee, including but not limited to the liabilities described in the Note and an Environmental Indemnity Agreement of even date and, for the repayment thereof, Grantee may resort to any security held by it in such order and manner as it may elect.

(e) The Grantor shall immediately give prompt notice to the Grantee of the occurrence of any of the following:

(i) a fire or other casualty causing damage to the Mortgaged Property;

(ii) receipt of notice of eminent domain proceedings or condemnation of the Mortgaged Property;

(iii) receipt of notice from any governmental authority relating to the structure, use or occupancy of the Mortgaged Property or any real property adjacent to the Mortgaged Property;

(iv) receipt of any notice from any tenant of all or any portion of the Mortgaged Property asserting that Grantor is in breach of an obligation to such tenant;

(v) substantial change in the use of the Mortgaged Property;

(vi) commencement of any litigation affecting the Mortgaged Property;

(vii) receipt of any notice of default under any agreement and contract relating to the construction of contemplated improvements at the Mortgaged Property and the operation of Grantor's business at the Mortgaged Property;

(viii) any premises lease with respect to any part of the Mortgaged Property;

(ix) any contract or agreement with respect to any sale or other transfer of any part of the Mortgaged Property;

(x) the failure of any Guarantor to observe, perform or comply with any obligation, condition or covenant under any Financing Agreement.

(f) Wherever used in this Mortgage, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word “Grantor” shall include “any subsequent owner or owners of the Mortgaged Property or any part thereof”, the word “Grantee” shall include “any subsequent holder or holders of this Mortgage”, the word “mortgage debt”, shall mean “any and all indebtedness of the Grantor to the Grantee as evidenced by the and/or secured by this Mortgage” and the word “person” shall include “an individual, corporation, partnership or unincorporated association”, and plural or singular shall include each other, and pronouns in any gender shall be construed as masculine, feminine or neuter as the context requires.

(g) If any term or provision of this Mortgage or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Mortgage, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Mortgage shall be valid and enforceable to the fullest extent permitted by law.

(h) The captions or section headings used in this Mortgage are for convenience only and of no substance or significance, and shall not be used to interpret, modify or affect in any way the covenants and agreements herein contained.

(i) This Mortgage and the Note and all Financing Agreements shall be governed by and construed in accordance with the laws of the State of Connecticut. All grants, covenants, agreements and other provisions herein contained shall run with the land, and shall be binding upon and inure to the benefit of the respective successors and assigns of the Grantor and the Grantee.

(j) No modification or amendment of this Mortgage shall be effective unless same shall be in writing and signed by the parties hereto.

(l) Grantor shall maintain its operating accounts and security deposit accounts for the Mortgaged Property with the Grantee.

30. Special Provisions. The Grantor further agrees and covenants as follows:

(a) Grantor shall provide, at Grantee's request, a written statement certifying that there exists no condition of any default by the Grantor in the performance of any obligation to the Grantee under any of the Financing Agreements.

(b) Reserved.

(c) Grantor shall not make any loans or advances to or become guarantor or surety for any other corporation, person or entity except the endorsement in the ordinary course of business of negotiable instruments for deposit or collection.

(d) To assure the payment of property taxes (and at Grantee's option insurance premiums), which are assessed or payable with reference to the Mortgaged Property, the Grantor shall, **at the option of Grantee**, deposit with the Grantee together with each payment under the Note, a sum determined by the Grantee to be sufficient to provide, in the aggregate, a fund adequate to pay any such amounts at least thirty (30) days before the same become delinquent; and whenever the Grantee determines sums accumulated under the provisions of this Section to be insufficient to meet the obligation for which such deposits were made, the Grantor shall pay, on the demand of the Grantee, any amount required to cover the deficiency therein. Every such deposit may, at the option of the Grantee, be applied directly against the obligation with reference to which it was made, or, to the fullest extent permissible according to law, any other obligation of the Grantor secured thereby. Such deposits shall not bear interest and may, to the fullest extent permitted by law, be commingled with other assets of the Grantee. Grantor grants a security interest in all said sums.

(e) If more than one Grantor, the word "Grantor" shall mean each of the undersigned, and the obligations of each of the undersigned shall be joint and several.

(f) Grantor shall maintain its operating accounts and security deposit accounts for the Mortgaged Property with the Grantee.

(g) Grantor shall comply with the terms and conditions of an Environmental Indemnity Agreement of even date herewith the terms of which are incorporated herein. This Mortgage shall secure all sums as may be due Grantee thereunder.

31. REPRESENTATIONS AND WARRANTIES

The Grantor represents and warrants to the Grantee as follows:

Section 31.1. Existence and Good Standing.

(a) The Grantor is a limited liability company validly existing and in good standing under the laws of the State of Connecticut. It has the power to own its property and conduct its business substantially as presently conducted by the Grantor;

(b) The Grantor has the power and authority to enter into and to perform its obligations under this Mortgage and the other Financing Agreements, and to carry out the transactions contemplated hereby and thereby;

(c) The Grantor is qualified to do business in every jurisdiction in which its property or business as presently owned, conducted, or contemplated makes such qualification necessary.

Section 31.2. Power, Consent; Absences of Conflict with Other Agreements, Etc. The execution, delivery and performance of this Mortgage, the Note and the other Financing Agreements, by the Grantor, and the transactions contemplated hereby:

(a) are within the powers of and have been duly authorized by the managers and, to the extent required, by the members, of the Grantor;

(b) do not require any approval or consent of, or filing with, any governmental agency or authority bearing on the validity of such instruments and transactions which is required by law or the regulations of any agency or authority and which has not been obtained or made, and are not in contravention of law or the terms of the charter documents, operating agreement, or any amendment thereof of the Grantor;

(c) will not conflict with or result in any breach or contravention of or the creation of any lien under, any indenture, agreement, promissory note, lease, contract, instrument or undertaking to which the Grantor is a party or by which it or any of its properties is bound; and

(d) are and will be the valid and legally binding obligations of the Grantor and enforceable in accordance with their respective terms.

Section 31.3. Use of Proceeds. No proceeds of the Note shall be used for the purpose of purchasing or carrying any "margin security" or "margin stock" as such terms are used in Regulation G and U of the Board of Governors of the Federal Reserve System, 12 C.F.R 207 and 221.

Section 31.4. No Defaults. No Default or Event of Default has occurred and is continuing on or as of the date of this Mortgage or will result from the Grantor's borrowing of the Note.

Section 31.5. Changes; None Adverse; Disclosure. No changes have occurred in the assets, liabilities, business, prospects, or financial condition of the Grantor or any guarantor, since the financial statements last provided to Grantee, which individually or in the aggregate have been materially adverse and have not been disclosed to the Grantee.

Section 31.6. Litigation. There is no pending or threatened action, suit, proceeding or investigation before any court, governmental or regulatory body, agency, commission or official board of arbitration or arbitrator against or affecting the Grantor, the outcome of which could materially adversely affect the financial position, business, operations or prospects of the Grantor or which could significantly impair the ability of the Grantor to perform its obligations under this Mortgage and the other Financing Agreements.

Section 31.7. Disclosure. No representation or warranty made by the Grantor in any Financing Agreement or in any other document furnished to the Grantee by or on behalf of the Grantor in connection with the transactions contemplated hereby or thereby contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained therein not misleading in tight of the circumstances in which they are made.

ADDITIONAL COVENANTS.

The Grantor hereby covenants to the Grantee that, so long as any amount payable or other obligation of the Grantor under the Note or the other Financing Agreement remains outstanding:

Section 31.8. Legal Existence, Etc. The Grantor will maintain its legal existence and good standing under the laws of its jurisdiction of organization, maintain its qualification to do business in each state in which the failure to do so would have a material adverse effect on the

condition, financial or otherwise, of the Grantor, and maintain all of its rights, corporate and partnership privileges reasonably necessary to the conduct of its business.

Section 31.9. Limitation on Consolidation, Merger and Sale of Assets. The Grantor will not consolidate with or merge with or into or enter into or undertake any plan or agreement of consolidation or merger with any person or entity. The Grantor will not at any time sell, assign, transfer, lease (as lessor) or otherwise transfer all or any substantial part of its properties or assets (either by or through a single transaction or by or through a series of separate but related transactions).

Section 31.10. Limitation on Mortgages, Liens and Encumbrances. The Grantor will not at any time create, assume, incur or permit to exist, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind in respect of any of the Premises or its property, assets, income or revenues of any character, whether heretofore or hereafter acquired by it.

Section 31.11. Limitation of Indebtedness. Without prior written approval of Grantee and, the Grantor will not create, assume, or incur, become or be liable in any manner for any indebtedness, contract or obligation for borrowed money, or issue or sell any obligations of the Grantor, excluding, however, from the operation of this covenant, (i) all other liabilities of the Grantor to the Grantee; and (ii) subordinate debt for which the creditor has executed a subordination agreement in form and substance satisfactory to Grantee.

Section 31.12. Further Assurances. The Grantor will cooperate with the Grantee and execute such further instruments and documents as the Grantee shall request to carry out to the Grantee's satisfaction the transactions contemplated by this Mortgage and the other Financing Agreements.

Section 31.13. Controlled Substances. Grantor will not use the Mortgaged Property or lease any space in the Mortgaged Property to a third-party organization/entity for use, which use is in violation of any federal or state laws, including but not limited to laws pertaining to Controlled Substances or Controlled Substances Use that violate or could violate any Controlled Substances Laws. For purposes of this Paragraph, (i) "Controlled Substances Laws" means the Federal Controlled Substances Act (21 U.S.C. §801 et seq.) or any other similar or related federal, state or local law, ordinance, code, rule, regulation or order; (ii) "Controlled Substances" means marijuana, cannabis or other controlled substances as defined in the Federal Controlled Substances Act or that otherwise are illegal or regulated under any Controlled Substances Laws; and (iii) "Controlled Substances Use" means any cultivation, growth, creation, production, manufacture, sale, distribution, storage, handling, possession or other use of a Controlled Substance.

32. Financing Statement. This Mortgage is intended to be effective as a financing statement pursuant to the Connecticut Uniform Commercial Code with respect to the following collateral: All improvements, Fixtures, furnishings and equipment or personal

property of any and every kind, whether presently owned or hereafter acquired, used or useful in connection with the operation of the Premises including, but in no way limited to all heating, lighting, laundry, incineration and power equipment, engines, pipes, pumps, tanks, motors, dynamos, boilers, fuel, conduits, switchboards, plumbing, lifting, refrigerating, ventilating, and communications apparatus, sprinkler system and other fire prevention and fire extinguishing apparatus, air cooling and air conditioning apparatus, elevators, escalators, shades, blinds, awnings, screens, storm doors and windows, stoves, refrigerators, refrigerating plant, attached cabinets, partitions, ducts and compressors, gas and electric fixtures, ranges, stoves, disposals, rugs, furniture, and furnishings

Together with all accessions and accessories to the foregoing, renewals, substitutions and replacements therefor and any interest now existing or hereafter arising with respect thereto; all proceeds and products of the foregoing; and all proceeds or rights to payment of any hazard insurance or condemnation awards with respect thereto.

The Grantee is the secured party and the Grantor is the debtor with respect to this financing statement and the mailing addresses of the secured party and the debtor for the purpose of this financing statement are set forth herein. The security interest has been granted to Grantee by Grantor pursuant to a Security Agreement of even date.

33. Open End Mortgage. This is an "open end" mortgage and the holder hereof shall have all the rights, powers and protections to which the holder of any open-end mortgage is entitled pursuant to Connecticut General Statutes §49-2(c) as amended.

NOW, THEREFORE, if the Note aforesaid and any additional indebtedness secured hereby, and any extensions or renewals thereof shall be well and truly paid according to their tenor, and if all agreements and provisions contained in the Financing Agreements are fully kept and performed, then this Deed shall become null and void; otherwise, to remain in full force and effect.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be executed and delivered this ____ day of 20 .

Signed, Sealed And Delivered
In The Presence Of:

GRANTOR

_____

By:

_____

ACKNOWLEDGMENT

This form is illustrative only.
It should be reviewed carefully
for applicability prior to its use.

SCHEDULE D

USE OF INSURANCE PROCEEDS

Notwithstanding the foregoing, so long as (i) there is no Event of Default (as hereinafter defined) nor any event which with the passage of time or the giving of notice or both would become an Event of Default; and (ii) the insurance proceeds received by Grantee are deemed sufficient in Grantee's reasonable discretion to restore the Mortgaged Property (or, if such proceeds are not sufficient, then if Grantor shall deposit with Grantee such additional funds as Grantee, in its sole reasonable discretion deems adequate to complete such restoration)(collectively, the "Proceeds"); and (iii) such repair or restoration is commenced within ninety (90) days after the date of such damage or loss and such repair and restoration in the Grantee's reasonable estimation will be completed within twelve (12) months of the commencement date thereof and further provided that in any event there remains adequate time to accomplish the restoration prior to the maturity of the Note; and (iv) there exist sufficient tenants of the Mortgaged Property to provide for adequate operating income to cover the operating expenses of the Mortgaged Property plus debt service to Grantee (or the Grantor has adequate insurance to cover same), then Grantee shall permit advances of the Proceeds it collects (less any and all reasonable costs and expenses, including reasonable attorney fees incurred in connection with administering such funds) to be applied to the restoration of the Mortgaged Property in accordance with all building codes and zoning regulations (the "Restoration"), all upon such terms and conditions customarily imposed by Grantee for making periodic advances of construction funds, and upon requisitions for payment for work performed and materials supplied, which requisitions shall include certification by an independent engineer or architect, who shall supervise the repair and restoration and who shall be reasonably satisfactory to the Grantee.

Any Proceeds in excess of the cost of such Restoration shall, at the option of the Grantee, exercisable in its sole discretion, be (i) payable to reduce the amount of the then outstanding indebtedness or (ii) shall be paid over to the Grantor.

Upon the occurrence of any Event of Default as hereafter defined, or if the Grantor shall fail to promptly commence or diligently to continue the Restoration, Grantee may apply all or any portion of such Proceeds in its possession to the payment of the indebtedness, or to the cure of any default under this Mortgage, the Note or any of the other Financing Agreements.

Return to:

This form is illustrative only.
It should be reviewed carefully
for applicability prior to its use.

SCHEDULE E

ASSIGNMENT OF LEASES AND RENTALS

THIS ASSIGNMENT made this day of , 20 , by , a Connecticut limited liability company with a place of business at , Connecticut (the "Assignor") in favor of , a Connecticut bank with an office at ("Lender").

W I T N E S S E T H:

FOR VALUE RECEIVED, the Assignor hereby grants, transfers and assigns to the Lender its interest as landlord in any and all leases now in existence or hereafter executed (including any extensions or renewals thereof) leasing all or any portion of the Assignor's premises (the "Leases"), commonly known as **, Connecticut**, and being more fully described in **Schedule A** attached hereto (collectively, the "Premises");

Together with all the right, power and authority of the Assignor to alter, modify or change the terms of the Leases; and

Together with all the right, power and authority of Assignor under any guaranties of the Leases; and

Together with all rents, income and profits arising from the Leases and any extensions and renewals thereof, and together with all rents, income and profits due or to become due from the Premises, and from any and all Leases for the use and occupation of the Premises or any part thereof which may be made in the future during the term of this assignment, whether or not recorded; together with and including the Assignor's entire interest in any other lease, rental or occupancy agreement now existing or which may be made hereafter affecting the Premises.

This Assignment is a present, absolute and unconditional assignment, effective immediately upon execution and delivery hereof and shall continue in effect until the Indebtedness is finally and irrevocably paid in full.

A. This Assignment is made for the purpose of securing the following (collectively, the "Indebtedness"):

1. Payment of the indebtedness evidenced by a Commercial Term Promissory Note of even date herewith in the aggregate principal sum of $ .00 (the "Note") made by Assignor and secured by an Open-End Mortgage Deed and Financing Statement on the Premises of even date herewith (the "Mortgage").

2. Payment of all other sums with interest thereon becoming due and payable to the Lender under the provisions hereof or under the provisions of the Note, the Mortgage, or other documents executed in connection with the Note and Mortgage (collectively the "Loan Documents").

3. The performance and discharge of each and every obligation, covenant and agreement of Assignor contained herein and in the Loan Documents and in any and all Leases upon the Premises.

B. The Assignor hereby represents, covenants and agrees:

1. That prior to the closing of the Note and Mortgage, it has provided Lender with true and complete copies of any and all Leases executed prior to the date hereof for approval by the Lender.

2. That the terms and provisions of any and all Leases subsequent to the date hereof shall be submitted to the Lender for approval prior to execution. Said Leases shall require all Lessees to execute, in form acceptable to Lender, such subordination and attornment agreements and estoppel letters as Lender shall request.

3. To observe and perform within applicable grace periods, all of the obligations imposed upon the landlord in the Leases and not to do or permit to be done anything to impair the security thereof; that Assignor has and shall have good right to assign the Leases; that Assignor has and will fully perform all of Assignor's obligations under the Leases and will require and enforce full performance of each and every obligation of every tenant under any present or future Lease; that Assignor will promptly notify the Lender of any default by any tenant in any Lease.

4. That the Assignor has not and will not collect any of the rent, income and profits arising or accruing from the Premises more than thirty (30) days in advance of the time when the same has or will become due under the terms of the Leases; that Assignor will not execute any other Assignment of Leases or Assignment of Rents of the Premises; that Assignor will not alter, modify or change the terms of any Lease or assign, pledge, mortgage, breach, violate, surrender, cancel or

terminate the same; and that Assignor will not consent to or condone any breach, violation, cancellation, surrender, termination, abandonment, subletting or assignment of Assignor's Lease by any tenant, without the prior written consent of the Lender.

5. That all subsequent Leases, rentals and occupancy agreements on any part of the Premises shall be and are hereby made subject to all of the terms of this Assignment, and to assign and transfer to the Lender any and all further Leases upon all or any part of the Premises and to execute and deliver, at the request of the Lender, all such further assurances and Assignments in the Premises as the Lender may from time to time require.

C. It is mutually agreed that:

1. So long as there shall exist no event of default as defined in the Mortgage (an "Event of Default"), Assignor is hereby granted the right to collect, upon but not more than thirty (30) days prior to the date when due, all rents, issues and profits from the Premises and to retain, use and enjoy the same, but to be used for the application thereof to the payments due under the Note and the Mortgage and for the payment of taxes, assessments, insurance premiums, and maintenance and utility charges affecting the Premises before using the same for any other purpose.

2. Upon or at any time after the occurrence of an Event of Default, the Lender or its agents, without in any way waiving such Event of Default, may at its option take possession of the Premises, and have, hold, manage, lease and operate the same on such terms and for such period of time as the Lender may deem proper; and may, with or without taking possession of the Premises, collect and receive all rents, issues and profits of the Premises, with full power to make from time to time all alterations, renovations, repairs or replacements to the Premises as may seem proper to the Lender, and to do all things required of or permitted to the landlord under the Leases, and to apply such rents, issues and profits to the payment of (a) the cost of such alterations, renovations, repairs and replacements and expenses incident to the collection of the rents and/or the taking and retaining possession of the Premises and the management and operation thereof, and keeping the same properly insured and (b) all taxes, charges, claims, assessments, water rents and other liens which may be prior in lien or right to the Mortgage, and premiums for said insurance, with interest on all such items, and (c) the Indebtedness secured hereby together with all costs and reasonable attorneys' fees, in such order of priority as to any of such items, as the Lender in its sole discretion may determine, any statute, law, custom or use to the contrary notwithstanding. Assignor hereby agrees that the Lender may take any of the actions herein described without the appointment by the court of a receiver and specifically authorizes the Lender to take such actions irrespective of whether there is any deficiency between the Indebtedness secured by this Assignment and

the value of the Premises. In the event Lender notifies any tenant of a default under the Mortgage and/or this Assignment and demands that tenant pay its rent to Lender, the Assignor hereby authorizes the tenant to honor any such Lender demand.

3. The Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under the Leases, or under or by reason of this Assignment; and Assignor shall and does hereby agree to indemnify the Lender for and to hold the Lender harmless of and from any and all liability, loss or damage which it may or might incur under the Leases or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases. Should the Lender incur any such liability, loss or damage under the Leases or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby, and Assignor shall reimburse the Lender therefor immediately upon demand.

4. Upon the payment in full of all Indebtedness secured hereby, this Assignment shall become and be void and of no effect; and until such payment, this Assignment shall itself constitute conclusive evidence of the validity, effectiveness, and continuing force hereof, and any person may and is hereby authorized to rely thereon. A demand on any tenant by the Lender for the payment of rent on any Event of Default claimed by the Lender shall be sufficient warrant to said tenant to make all future payments of rent to the Lender without the necessity for consent by said Assignor, and the Assignor hereby directs and requires all said tenants to comply with any such demand by the Lender. Assignor agrees that tenants shall have the right to rely upon any statement and request by the Lender, that tenants shall pay such rents to the Lender without any obligation or right to inquire as to whether such Event of Default actually exists and notwithstanding any notice from or claim of Assignor to the contrary, and that Assignor shall have no right or claim against tenants for any such rents so paid by tenants to the Lender.

5. The Lender may take or release other security, may release any party primarily or secondarily liable for any Indebtedness secured hereby, may grant extensions, renewals or indulgences without respect to such Indebtedness, and may apply any other security therefor held by it to the satisfaction of such Indebtedness without prejudice to any of its rights hereunder.

6. In the event of foreclosure of the Mortgage by sale or otherwise, the Lender is hereby authorized to sell the Landlord's interest in the Leases with the Premises or to assign the same without consideration to the purchaser at said sale or to any other claimant to the title to the Premises by virtue of a foreclosure of said Mortgage; and there shall be no liability to account to Assignor for any rents or profits accruing after the vesting of title following such foreclosure.

7. The term “Leases” as used herein means any lease whether oral or in writing presently existing or subsequently entered into by Assignor covering all or any part of the Premises.

8. Nothing herein contained and no act done or omitted by the Lender pursuant to the powers and rights granted it herein shall be deemed to be a waiver by the Lender of its rights and remedies under the Note, the Mortgage or any other Loan Document, but this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by the Lender under the terms thereof. The right of the Lender to collect said Indebtedness, and to enforce any other security therefor owned by it may be exercised by the Lender either prior to, simultaneously with or subsequent to any action taken by it hereunder.

9. Release and discharge of the Mortgage shall constitute simultaneous release and discharge hereof. This Assignment shall be construed under the laws of the State of Connecticut. If any term or provision of this Assignment or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Assignment, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Assignment shall be valid and enforceable to the fullest extent permitted by law.

10. All the covenants and agreements hereinabove contained on the part of either party shall apply to and bind their respective heirs, successors and assigns. As used herein, plural or singular shall include each other. If more than one Assignor has executed this Assignment, all obligations contained herein shall be the joint and several obligations of each of them.

11. THE ASSIGNOR ACKNOWLEDGES THAT THIS ASSIGNMENT RESULTS FROM A COMMERCIAL TRANSACTION AND HEREBY WAIVES ANY RIGHT TO NOTICE OR HEARING UNDER THE CONSTITUTION OF THE UNITED STATES OR ANY STATE OR FEDERAL LAW, INCLUDING CONNECTICUT GENERAL STATUTES SECTION 52-278a ET SEQ., AS NOW OR HEREAFTER AMENDED, OR ANY SUCCESSOR ACT OR ACTS THERETO, AND WAIVE ANY REQUIREMENTS FOR THE POSTING OF ANY BOND IN CONNECTION WITH ANY PREJUDGMENT REMEDY

SOUGHT BY LENDER. THE ASSIGNOR AUTHORIZES THE ATTORNEY FOR LENDER TO ISSUE A WRIT FOR PREJUDGMENT REMEDY WITHOUT COURT ORDER. THE ASSIGNOR ACKNOWLEDGES THAT THIS WAIVER IS MADE KNOWINGLY AND VOLUNTARILY AFTER CONSULTATION WITH THEIR ATTORNEY.

12. THE ASSIGNOR WAIVES TRIAL BY JURY IN ANY COURT IN ANY SUIT, ACTION OR PROCEEDING ON ANY MATTER ARISING IN CONNECTION WITH THIS ASSIGNMENT OR IN ANY WAY RELATED TO THE FINANCING TRANSACTIONS OF WHICH THIS ASSIGNMENT IS A PART AND/OR THE DEFENSE OR ENFORCEMENT OF ANY OF LENDER'S RIGHTS OR REMEDIES. THE ASSIGNOR ACKNOWLEDGES THIS WAIVER IS MADE KNOWINGLY AND VOLUNTARILY AFTER CONSULTATION WITH THEIR ATTORNEY.

IN WITNESS WHEREOF, this Assignment has been duly signed, sealed, acknowledged and delivered by Assignor as of the day and year first above written.

Signed, Sealed And Delivered
In The Presence Of:

_____

By: _____

_____

ACKNOWLEDMENT

This form is illustrative only.
It should be reviewed carefully
for applicability prior to its use.

SCHEDULE F

GUARANTY

TO: **Name and Address of Lender**

WHEREAS, You, , have agreed to make a commercial loan in an amount of $000,000.00 (the "Loan") to with a principal place of business at Avenue, , Connecticut (the "Debtor"), the proceeds of which are to be used to acquire, Connecticut (the "Property"); and

WHEREAS, Debtor has executed and delivered to you a Commercial Term Promissory Note in the principal amount of $000,000.00 (the "Note"), an Open-End Mortgage Deed And Financing Statement of the Property (the "Mortgage"), a Collateral Assignment of Leases and Rentals (the "Assignment"), a Security Agreement (the "Security Agreement"), and certain other documents, all dated of even date herewith in order to evidence and secure the Loan from you to Debtor (hereinafter including without limitation the Note, Mortgage, Assignment and Security Agreement as may be modified or amended from time to time collectively, the "Loan Documents"); and

WHEREAS, each of the undersigned (individually a "Guarantor" and collectively the "Guarantors") acknowledge that the Loan is part of a common enterprise and design, that you would not be making the Loan but for this guaranty by the Guarantors, and that each of the Guarantors will receive direct or indirect financial benefit from the Loan and from such other loans, advances and financial accommodations made by you to the Debtor.

WHEREAS, it is a condition to the making of the Loan that the undersigned jointly and severally and unconditionally guarantee the Debtor's prompt payment and performance of the Loan under the Loan Documents and that you would not be making the Loan but for this guaranty from the Guarantors.

NOW, THEREFORE, in order to induce you to make the Loan, and in consideration therefor, the undersigned hereby unconditionally and jointly and severally guarantee the prompt payment and performance from or by the Debtor of any and all Obligations from Debtor to you. As used herein, "Obligations" shall mean collectively: (a) the Loan, any amounts due you under any Loan Documents, and any modification, renewals or extensions thereof and any and all loans and advances made by you prior to, on or after the date hereof to or for the account of Debtor and any and all interest, commissions, liabilities, indebtedness, charges and expenses now or hereafter

chargeable against Debtor by you or owing by Debtor to you including without limitation, attorney fees, whether any of the foregoing are direct or indirect, joint or several, absolute or contingent, due or to become due, now existing or hereafter arising, no matter how or when arising and whether under any present or future agreement or instrument between Debtor and you; and (b) the performance and fulfillment by Debtor of all of the terms, conditions, promises, covenants, and provisions contained in any of the Loan Documents and in any note or notes secured thereby and in any present or future agreement or instrument between Debtor and you.

This Guaranty is and shall be a continuing and absolute guaranty of full payment and performance of the Obligations. If for any reason any Obligations owing by the Debtor to you shall not be paid or performed promptly when due, the Guarantors will forthwith pay or perform such Obligations to you without any suit, action, or demand against the Debtor or any other person and without regard to any counterclaim, setoff, deduction or defense of any kind which the Debtor or Guarantors may have or assert, and without abatement, suspension, deferment or reduction on account of any occurrence whatsoever. No delay or omission on your part in exercising any right hereunder shall operate as a waiver of such right or any other right, and any delay or omission on your part in exercising any right hereunder or any waiver on one occasion shall not be a bar to or waiver of any right on any other occasion.

Guarantors waive any right to require you to (a) proceed against Debtor or any other person obligated on the Obligations; or (b) proceed against or exhaust any collateral. You may proceed against any Guarantor to enforce the Obligations without proceeding against Debtor, any other obligor, or any collateral. You may unqualifiedly exercise (or not exercise) in your sole discretion any or all of your remedies against Debtor or any other person under the Loan Documents without impairing your rights and remedies in enforcing this Guaranty. Guarantor’s liability for the Obligations shall remain independent and unconditional.

Each Guarantor hereby waives all suretyship defenses, notice of the incurring of indebtedness by Debtor to you, acceptance of this Guaranty by you, presentment and demand for payment, protest, notice of protest and notice of dishonor or nonpayment of any Obligations, any right to have security applied before enforcing this Guaranty, and all other notices and demands otherwise required by law which the Guarantors may lawfully waive. In the event this Guaranty is enforced by suit or otherwise, the Guarantors will reimburse you for all expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees. THE GUARANTORS ALSO WAIVE ANY RIGHT TO NOTICE OR HEARING UNDER SECTIONS 52-278a et seq. OF THE CONNECTICUT GENERAL STATUTES, AS NOW OR HEREAFTER AMENDED, OR ANY SUCCESSOR ACT THERETO, AND ALSO WAIVE THE RIGHT TO THE POSTING OF ANY BOND IN CONNECTION THEREWITH AND AUTHORIZES THE ATTORNEY FOR ANY HOLDER OF THIS GUARANTY TO ISSUE A WRIT FOR A PREJUDGMENT REMEDY WITHOUT COURT ORDER. GUARANTORS ACKNOWLEDGE THAT THEY MAKE THIS WAIVER KNOWINGLY AND VOLUNTARILY AFTER CONSULTATION WITH COUNSEL.

THE GUARANTORS HEREBY WAIVE TRIAL BY JURY IN ANY COURT IN ANY SUIT, ACTION OR PROCEEDING ON ANY MATTER ARISING IN CONNECTION WITH THIS GUARANTY OR IN ANY WAY RELATED TO THE FINANCING TRANSACTIONS OF WHICH THIS GUARANTY IS A PART AND/OR THE DEFENSE OR ENFORCEMENT OF ANY OF YOUR RIGHTS OR REMEDIES. GUARANTORS ACKNOWLEDGE THAT THEY MAKE THIS WAIVER KNOWINGLY AND VOLUNTARILY AFTER CONSULTATION WITH COUNSEL.

The terms, conditions, promises and covenants of the Guarantors hereunder shall not be released, discharged, terminated or impaired in any manner whatsoever, irrespective of the lack of any notice or consent of the Guarantors, or by any one or all of the following: (a) new agreements or Obligations with or to you; (b) amendments, indulgences, extensions, modifications, renewals or waivers of default as to any Obligations with or to you; (c) adjustments, compromises, releases or renewals of any Obligations, of any other guarantor of the Obligations, or of any other person; (d) exchanges, releases or sales of any security or collateral of Debtor, of any other guarantor of the Obligations, or of any other person or your failure to take any action to preserve or maintain any collateral securing the Obligations; (e) voluntary or involuntary bankruptcy (including a reorganization in bankruptcy) of Debtor; (f) compositions, extensions, moratoria or other forms of debtor relief granted to Debtor pursuant to law presently in force or hereafter enacted; (g) payment of any or all Obligations by Debtor in the event such payment is invalidated or avoided by a trustee or receiver of Debtor; (h) the reorganization, merger or consolidation of Debtor into or with another entity, corporate or otherwise, or the sale or disposition of all or substantially all of the business or assets of Debtor to any other person or business entity; (i) the dissolution of Debtor; or (j) any defense that Guarantors might otherwise assert based on any error, omission, action, or inaction by you in administering the Loan, or the manner in which you administer or fail to administer the Loan; or (k) any other circumstances which might otherwise constitute a legal or equitable discharge of a surety or guarantor including failure of consideration, breach of warranty, statue of frauds, statute of limitations, accord and satisfaction, and usury.

Without notice to, or consent by Guarantors, and in your sole and absolute discretion and without prejudice to you or in any way limiting or reducing Guarantor's liability under this Guaranty, you may (1) grant extensions of time, renewals, or other indulgences to Debtor or any other party liable under any Loan Document; (2) agree with Debtor to change the terms of the Obligations, including any increase or decrease in interest rates, amortization, or maturity; (3) agree with Debtor to change, amend, or modify any Loan Document, (4) make other or additional loans to Debtor in such amount(s) and at such time(s) as you and Debtor agree; (5) credit payments in such manner and order of priority as you may determine in your discretion, subject to the terms of the Loan Documents; and (6) otherwise deal with Debtor and any other party related to the Obligations as you determine in your sole and absolute discretion. Guarantor waives notice of any change in the guaranteed debt or any related circumstance, including a change in the business structure of Debtor.

Guarantors waive any right to terminate or revoke this Guaranty. To the extent that such waiver is unenforceable or ineffective, any termination of this Guaranty shall take effect only for any Obligations that Debtor first incurs after you receive actual written notice of termination (the "Termination Date"). This Guaranty shall remain in full force and effect for all Obligations incurred before the Termination Date. Regardless of when any renewal, extension, or modification of pre-Termination-Date Obligations occurs (with or without adjustment of interest rate or other terms), such Obligations shall be deemed to have been incurred before the Termination Date. This Guaranty shall continue to apply to those Obligations, even if a Termination Date occurs.

For the purposes of this Guaranty, all sums owing to you by the undersigned shall be deemed at your election, and without notice to have become immediately due and payable:

(a) as Obligations mature including by any accelerated maturity; (b) when a petition under any Chapter of the Bankruptcy Code, as amended, or for the appointment of a receiver of any part of the property of Debtor is filed by or against the Debtor; or (c) when the Debtor makes a general assignment for the benefit of creditors, suspends business or commits any act amounting to a business failure.

Guarantors further covenant and agree that during such time as this Guaranty is in effect, neither of them will make any substantial adverse change in his financial status, nor cause or suffer any substantial diminution of his net worth as the same exists on the date hereof, nor enter into any transaction which might materially and adversely affect his ability to perform under this Guaranty. In the event of any breach of said covenants and agreements, or upon the occurrence of an Event of Default as defined in the Mortgage, all Obligations, regardless of their terms, shall at your election, and without notice be deemed for the purposes of this Guaranty to have become immediately due and payable, and at your election, the Guarantors shall promptly pay you the entire amount of all Obligations, and you shall be entitled to take any action deemed necessary or advisable to enforce this Guaranty, including, without limitation, the enjoining of any breach or threatened breach of this paragraph.

Financial Reporting:

Conform to Commitment Letter Guarantors shall also promptly provide you with such additional financial information as you shall request from time to time.

Miscellaneous:

Guarantors hereby give you a lien and right of setoff for all of Debtor's Obligations upon and against the deposits, credits and property of Guarantors now or hereafter in your possession, custody, control or in transit to you. You may in the event of default hereunder, at any time apply the same or any part thereof to any of Debtor's Obligations or Guarantors' liability hereunder without notice to Guarantors and without first resorting to any other collateral that is security for the Debtor's Obligations.

This Guaranty shall be valid and binding upon Guarantors regardless of any invalidity, irregularity, defect or unenforceability of or in any of the Obligations. The Guarantors further agree that this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment of all or any part of the Obligations is rescinded or otherwise must be restored by you to the Debtor or to the creditors of the Debtor or any representative of the Debtor or representative of its creditors upon the insolvency, bankruptcy or reorganization of the Debtor, or to any Guarantors of the Obligations or to the creditors of any Guarantors of the Obligations or any representative of any Guarantors of the Obligations upon the insolvency, bankruptcy or reorganization of any Guarantor of the Obligations, the Debtor, or otherwise, all as though such payments had not been made.

This Guaranty shall inure to the benefit of you, your successors and assigns. The terms, conditions, promises and covenants of the Guarantors hereunder are independent and several and shall be binding upon the heirs, personal representatives, successors and assigns of each Guarantor. The obligation of the Guarantors under this Guaranty shall be joint and several with each other and with all other guarantors of the Obligations. Each Guarantor has unconditionally delivered this Guaranty to you. Any other person's failure to sign (or remain obligated under) this Guaranty does not diminish or discharge any Guarantor's liability. Each Guarantor's liability is not conditioned on the liability or performance of any other person. Such liability exists, regardless of any other person's liability, whether a Guarantor is jointly and severally liable for the entire debt, or for only part. Your release of any Guarantor does not diminish or impair any other Guarantor's liability. The death or release or dissolution of any Guarantor shall not relieve any other Guarantor from liability hereunder.

Whenever the context so requires herein, the masculine gender includes the feminine and neuter, the singular number includes the plural and the words "you" and "your" as used herein shall mean and include, and this Guaranty shall apply in favor of and be severally enforceable by _____ (Name of Lender) and each of its subsidiaries, successors and assigns.

Guarantors hereby waive any and all rights of subrogation, indemnification, contribution, and/or any and all other rights to payment and/or reimbursement by the Debtor and any and all other claims against Debtor that arise in any way out of the payment by Guarantors under this Guaranty.

Guarantors hereby: (a) subordinate the obligations now or hereafter owed by Debtor to Guarantors ("Subordinated Debt") to any and all obligations of Debtor to you now or hereafter existing while this Guaranty is in effect, provided however that Guarantor may receive regularly scheduled principal and interest payments on the Subordinated Debt so long as (i) all sums due and payable by Debtor to you have been paid in full on or prior to such date, and (ii) no event or condition which constitutes or which with notice or the lapse or time would constitute an Event of Default with respect to the Obligations, shall be continuing on or as of the payment date; and (iii) Guarantors place a legend indicating such subordination on every note, ledger page or other document evidencing any part of the Subordinated Debt. Except as permitted by this paragraph, Guarantors will not request or accept payment of or any security for any part of the Subordinated

Debt, and any proceeds of the Subordinated Debt paid to Guarantors, through error or otherwise, shall immediately be forwarded to you by Guarantors, properly endorsed to your order, to apply to the Obligations.

Guarantors have had a full and adequate opportunity to review the Loan Documents, the transaction that such documents contemplate, Debtor's financial condition, Debtor's ability to pay and perform the Obligations, and all related facts. Guarantors shall at all times keep themselves fully informed on all such matters. You have no duty, at any time, to disclose to any Guarantor any information about any such matters. If you, in your discretion, provide any such information, this does not obligate you to provide any further information in the future.

If any term or provision of this Guaranty or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Guaranty, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Guaranty shall be valid and enforceable to the fullest extent permitted by law.

This Guaranty is entered into in the State of Connecticut and shall be governed by and construed in accordance with the laws of the State of Connecticut. Guarantors agree that the Superior Court of the State of Connecticut and/or the Federal District Court for the District of Connecticut shall have jurisdiction over any dispute arising out of this Guaranty, or any Loan Document. Guarantors consent to any such forum you may choose.

Any notice required to be given to any Guarantor shall be given as provided in the Mortgage.

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be executed as of this day of , 20 .

_____

ACKNOWLEDGEMENTS

This form is illustrative only.
It should be reviewed carefully
for applicability prior to its use.

SCHEDULE G

ENVIRONMENTAL INDEMNITY AGREEMENT

This Agreement is being delivered to _____, a Connecticut bank (the "Bank") in connection with the closing of a loan in the principal sum of $ (the "Loan") from the Bank to (the "Borrower"). The Loan has been secured by a Mortgage Deed and Financing Statement (the "Mortgage") of even date herewith on certain property located in the Town of , Connecticut, as more particularly described in **Schedule A** attached hereto and made a part hereof (the "Premises").

The environmental condition of the Premises is a material inducement to the Bank making the Loan and the undersigned, knowing that Bank will extend the Loan only in complete reliance upon the truth and accuracy of the statements contained herein, hereby represent and agree as follows:

A. Definitions:

1. As used in this Agreement the term "Hazardous Materials" shall mean:

(i) any substance which could be a detriment or pose a danger to the environment or to the health or safety of any person including those defined as "hazardous substances", "pollutants", "contaminants", "hazardous materials", "hazardous wastes", "hazardous or toxic substances", "regulated substance" or related materials as now or hereafter defined in the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq. as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law No. 99-499 ("SARA"); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., as amended by SARA; the Clean Water Act, 33 U.S.C. Section 1251 et. seq.; Title 22a of the Connecticut General Statutes; or any other federal, state or local law, ordinance or regulation; all as any of the foregoing may be amended, modified or supplemented; (ii) those substances listed or otherwise identified in the regulations adopted and publications issued, pursuant to any of the above referenced statutes as may be amended, modified or supplemented; (iii) any friable asbestos, airborne asbestos, or any substance or material containing asbestos; (iv) any explosives and ordinance materials, biomedical and pathological wastes, chemicals, radioactive materials, oil and petroleum products, sludges and highly inflammable substances; and (v) lead paint.

2. As used in this Agreement the term “Environmental Requirements” shall mean: all laws, statutes, ordinances, requirements, orders or directives of any governmental authority relating to (i) the presence, management, disposal, release or threatened release, escape, seepage or leakage of any Hazardous Materials at, on, from or under all or a portion of the Premises; or (ii) the migration of Hazardous Materials onto the Premises from any property or area adjacent to the Premises; or (iii) the transportation of Hazardous Materials onto or from the Premises; or (iv) the incorporation of any Hazardous Materials in the Premises.

B. Representations:

Undersigned represent as follows:

1. To the best of the undersigned's knowledge and belief, no Hazardous Materials are improperly stored or improperly used on the Premises and have not been so improperly stored or used on the Premises.

2. To the best of the undersigned's knowledge and belief, there has never been any discharge, spillage, uncontrolled loss, seepage or filtration of any Hazardous Materials of any kind on the Premises, through the Premises, or emanating from the Premises onto or into any other land. There has been no determination by the State of Connecticut Commissioner of The Department of Energy and Environmental Protection (the “DEEP”) or any court of law that the Borrower or any previous owner of said Premises has caused any discharge, spillage, loss, seepage or filtration of any Hazardous Materials, within the meaning of Connecticut General Statutes Section 22a-452a, on the Premises.

3. To the best of the undersigned's knowledge and belief, no money has been expended nor has any contract been entered into by the DEEP for which a lien could arise under Connecticut General Statutes Section 22a-452a, and attach to the Premises, nor have the Premises ever been investigated by the DEEP or any other federal, state or municipal agency concerning possible illegal storage, dumping or disposal of Hazardous Materials of any kind.

4. To the best of the undersigned's knowledge and belief, the Borrower has been issued all required federal, state and local licenses, certificates or permits relating to the Premises and the Premises is in compliance in all material respects with all applicable federal, state and local laws, rules and regulations relating to Hazardous Materials or other environmental health or safety matters.

5. To the best of the undersigned's knowledge, and belief the Premises were never part of or abutting a municipal dump or landfill, nor were the Premises ever owned by or leased to a chemical, oil, petroleum, manufacturing or industrial, gasoline dispensing or automobile repair or autobody concern.

6. Borrower has duly complied and shall continue to comply with all Environmental Requirements (unless the issue of Borrower's present compliance is diligently contested in good faith and the full cost of causing such compliance as is alleged to be required, as estimated by Bank's environmental specialist, is deposited with Bank) and will timely perform or cause to be performed any investigation, testing, monitoring, repair, cleanup, detoxification, preparation of any closure or other required plans, or other removal, response or remedial action pursuant to any such Environmental Requirements.

C. Notice Of Conditions:

7. Borrower shall provide Bank with prompt written notice, but in no event later than ten (10) days after obtaining any actual knowledge or actual notice thereof, of any of the following conditions: (i) the presence, or any release or threat of release, of any Hazardous Materials on, under or from the Premises, whether or not caused by Borrower; (ii) any action, order, claim, or requirement of any governmental authority instituted or threatened with respect to the Premises and arising out of any Hazardous Material; or (iii) any condition or occurrence on the Premises that would reasonably be expected to or does constitute a violation of the Environmental Requirements with respect to the Premises.

D. Borrower's Agreement To Take Remedial Actions:

8. Upon the Borrower becoming aware of the violation of any Environmental Requirement related to the Premises, or the presence, or any release or any threat of release, of any Hazardous Materials, on, under, or from the Premises whether or not caused by Borrower, Borrower shall, immediately: (i) take all actions to cure or eliminate any such violation of any such Environmental Requirement related to the Premises and, where applicable, to arrange for the assessment, monitoring, cleanup, containment, removal, remediation, or restoration of the Premises, (ii) take such other action as may otherwise be advisable and reasonably requested by Bank consistent with Environmental Requirements; and give all notices required by law.

9. Bank shall have the right to require Borrower, at its own cost and expense, to obtain a professional environmental assessment of the Premises in accordance with Bank's then standard environmental assessment requirements upon the occurrence of any one or more of the following events: (i) an Event of Default as defined in the Mortgage (an "Event of Default"); or (ii) upon receipt of any notice of any of the conditions specified in Section C of this Agreement.

E. Bank's Right To Inspect And Take Remedial Actions:

10. Bank may exercise its rights and remedies under this Section E only upon and following the existence of one or more of the following events or conditions: (i) there is an Event of Default or the Loan becomes due and payable in full either at its stated maturity or upon acceleration; (ii) an Indemnified Party as hereafter defined, or an affiliate thereof, has taken possession of all or some portion of the Premises based upon an Event of Default; (iii) an Indemnified Party, or an affiliate thereof, has acquired title to all or some portion of the Premises

by virtue of foreclosure or deed in lieu of foreclosure; or (iv) a claim has been asserted against an Indemnified Party for which indemnification is provided in this Agreement, but Borrower has not undertaken to pursue and is not pursuing commercially reasonable efforts to remediate, defend and otherwise indemnify any such Indemnified Party and to provide such Indemnified Party with reasonable assurances of Borrower's ability, financially and otherwise, to satisfy Borrower's obligations. In any of such events, Bank shall have the right, but not the obligation, through such representatives or independent contractors as it may designate, to enter upon the Premises and to expend funds to:

(i) Assessments. Cause one or more environmental assessments of the Premises to be undertaken, if Bank in its reasonable discretion determines that such assessment is appropriate. Such environmental assessments may include, without limitation, (i) detailed visual inspections of the Premises, including without limitation all storage areas, storage tanks, drains, drywells and leaching areas; (ii) the taking of soils and surface and sub-surface water samples; (iii) the performance of soils and ground water analysis; and (iv) the performance of such other investigations or analysis as are necessary or appropriate and consistent with sound professional environmental engineering practice in order for Bank to obtain a complete assessment of the compliance of the Premises and the use thereof with all Environmental Requirements and to make a determination as to whether or not there is any risk of contamination (x) to the Premises resulting from Hazardous Materials originating on, under, or from any surrounding property or (y) to any surrounding property resulting from Hazardous Materials originating on, under, or from the Premises;

(ii) Cure. Cure any breach of the representations, warranties, covenants and conditions made by or imposed upon Borrower under this Agreement, including, without limitation, any violation by Borrower, or by the Premises, or by any other occupant, prior occupant or prior owner thereof, of any of the Environmental Requirements applicable to the Premises.

(iii) Prevention and Precaution. Take all actions as are necessary to (i) prevent the migration of Hazardous Materials on, under, or from the Premises to any other property; (ii) clean-up, contain, remediate or remove any Hazardous Materials on, under, or from any other property, which Hazardous Materials originated on, under, or from the Premises; or (iii) prevent the migration of any Hazardous Materials on, under, or from any other property to the Premises.

(iv) Environmental Enforcement Actions. Comply with, settle, or otherwise satisfy any Environmental Enforcement Action as hereafter defined, including, but not limited to, the payment of any funds or penalties imposed by any governmental authority and the payment of all amounts required to remove any lien or threat of lien on or affecting the Premises.

(v) General. Comply with, settle, or otherwise satisfy any Environmental Requirement and correct or abate any environmental condition on, or which threatens the Premises and which could reasonably be expected to or does cause damage or injury to the Premises or to any person.

11. Recovery of Costs. Any amounts paid or advanced by Bank and all costs and expenditures incurred in connection with any action taken pursuant to the terms of this Agreement, including, but not limited to, environmental consultants' and experts' fees and expenses, any and all governmental filing fees, reasonable attorneys' fees and expenses, court costs and all costs of assessments, monitoring, clean-up, containment, remediation, removal and restoration, with interest thereon at the highest default rate set forth in the note evidencing the Loan, shall be a demand obligation of Borrower to Bank and, to the extent not prohibited by law (and so long as the Mortgage remains undischarged of record), shall be added to the obligations secured by the Mortgage when paid by Bank and shall be secured by the lien of such Mortgage and all other documents now or hereafter securing any of the Mortgage debt as fully and as effectively and with the same priority as every other obligation secured thereby.

12. Bank Not Responsible. The exercise by Bank of any one or more of the rights and remedies set forth in this Section E shall not operate or be deemed (a) to place upon Bank any responsibility for the operation, control, care, service, management, maintenance or repair of the Premises or (b) make Bank the "owner" or "operator" of the Premises or a "responsible party" within the meaning of any of the Environmental Requirements.

13. Bank's Subrogation. Bank, by making any such payment or incurring any costs pursuant to this Agreement, shall be subrogated to all rights of Borrower or any other occupant of the Premises to seek reimbursement from any other person, including, without limitation, any predecessor owner or occupant of the Premises who may be "responsible party" under any of the Environmental Requirements, in connection with the presence of Hazardous Materials on or under, or which emanated from the Premises.

14. Bank May Stop. Without limiting the generality of the other provisions of this Agreement, any partial exercise by Bank of any one or more of the rights and remedies set forth in this Section E, including, without limitation, any partial undertaking on the part of Bank to cure any failure by Borrower, or of the Premises, or any other occupant, prior occupant or prior owner thereof, to comply with any of the Environmental Requirements, shall not obligate Bank to complete such actions taken or require Bank to expend further sums to cure such non-compliance.

F. Indemnification:

15. The undersigned unconditionally agrees to indemnify, defend and hold harmless Bank, its directors, officers, employees, agents, successors and assigns (each an "Indemnified Party") from and against any and all losses, claims, damages, penalties, judgments, suits, proceedings, liabilities, obligations, costs and expenses (including reasonable attorneys' fees, litigation and defense costs and court costs), fines, injuries, penalties, reasonably incurred response costs (including the cost of any required or necessary investigation, testing, monitoring, repair, cleanup, detoxification, preparation of any closure or other required plans, or other removal, response or remedial action at or relating to the Premises) (collectively, the "Claims and Costs"), with respect to, as a direct or indirect result of, or arising out of any of the

following: (i) the violation of any Environmental Requirements, (ii) any action, order, requirement, lien, regulatory requirement, lawsuit (brought or threatened), settlement, agreement, or requirement of any governmental authority, relating to the presence, management, disposal, release (or threatened release)escape, seepage, leakage or cleanup of any Hazardous Materials at, on, from or under all or a portion of the Premises (an "Environmental Enforcement Action"); (iii) the migration of Hazardous Materials from or onto the Premises to or from any property or area adjacent to the Premises; (iv) the past disposal or storage of Hazardous Materials or the transportation of Hazardous Materials or the transportation of Hazardous Materials in the Premises; (v) the incorporation of any Hazardous Materials in the Premises; or (vi) the enforcement of this Agreement or the assertion by the undersigned of any defense to its obligations hereunder, whether any of such matters arise before or after foreclosure or other taking of title to all or any portion of the Premises by Bank or any affiliate of Bank.

G. General Provisions:

16. The undersigned agrees that this Agreement may be enforced by the Indemnified Parties without first resorting to or exhausting any other security or collateral or without first having recourse to the note or any reimbursement agreement evidencing the Loan, or any of the Premises through foreclosure proceedings or otherwise, provided, however, that nothing herein contained shall prevent Indemnified Parties from suing on the said Note or foreclosing its Mortgage of the Premises or from exercising any other rights thereunder.

17. Nothing contained in the other documents executed and delivered in connection with the Loan, shall affect the obligation of the undersigned to indemnify the Indemnified Parties in accordance with the terms hereof, which obligations shall be irrevocable, absolute and unconditional.

18. THE UNDERSIGNED ACKNOWLEDGE THAT THIS AGREEMENT RESULTS FROM A COMMERCIAL TRANSACTION AND THE UNDERSIGNED HEREBY WAIVES ANY RIGHT TO NOTICE OR HEARING UNDER THE CONSTITUTION OF THE UNITED STATES OR ANY STATE OR FEDERAL LAW, INCLUDING CONNECTICUT GENERAL STATUTES SECTION 52-278a ET SEQ., AS NOW OR HEREAFTER AMENDED, OR ANY SUCCESSOR ACT OR ACTS THERETO, AND WAIVE ANY REQUIREMENTS FOR THE POSTING OF ANY BOND IN CONNECTION WITH ANY PREJUDGMENT REMEDY SOUGHT. THE UNDERSIGNED AUTHORIZES THE ATTORNEY FOR ANY HOLDER OF THIS AGREEMENT TO ISSUE A WRIT FOR PREJUDGMENT REMEDY WITHOUT COURT ORDER. THE UNDERSIGNED ACKNOWLEDGE THAT THIS WAIVER IS MADE KNOWINGLY AND VOLUNTARILY AFTER CONSULTATION WITH THEIR ATTORNEY.

19. THE UNDERSIGNED WAIVE TRIAL BY JURY IN ANY COURT IN ANY SUIT, ACTION OR PROCEEDING ON ANY MATTER ARISING IN CONNECTION WITH THIS AGREEMENT OR IN ANY WAY RELATED TO THE FINANCING TRANSACTIONS OF WHICH THIS AGREEMENT IS A PART AND/OR THE DEFENSE OR ENFORCEMENT

OF ANY OF BANK'S RIGHTS OR REMEDIES. THE UNDERSIGNED ACKNOWLEDGE THIS WAIVER IS MADE KNOWINGLY AND VOLUNTARILY AFTER CONSULTATION WITH THEIR ATTORNEY.

20. This Agreement shall be governed and construed in accordance with the laws of the State of Connecticut and shall be binding upon the undersigned and its respective heirs, successors and assigns and inure to the benefit of the Bank and its successors and assigns. This Agreement may not be changed orally.

21. Each and every of the terms, covenants and conditions of this Agreement shall survive the repayment of Borrower's obligations under the Loan and Borrower shall not be released by any act or thing which might, but for this provision, be deemed a legal or equitable discharge of a surety, or by reason of any waiver, extension, modification, forbearance or delay or other act or omission of Lender relating to its failure to proceed promptly or otherwise, unless such act or omission shall constitute gross negligence, or by reason of any actions taken or omitted or circumstances which may or might vary the risk or affect the rights or remedies of Borrower by reason of any further dealings between Borrower and Lender, whether relating to the Loans or otherwise, and Borrower hereby expressly waives and surrenders any defenses to his liability hereunder based upon any of the foregoing acts, omissions, things or agreements or waivers of Lender unless such act or omission shall constitute gross negligence; it being the purpose and intent of the parties hereto that the obligations of Borrower hereunder shall survive the repayment of Borrower's obligations under the Loan Documents and are absolute and unconditional under any and all circumstances.

22. If more than one party has signed this document, then the liability of each of the undersigned shall be joint and several.

23. The provisions of this Agreement shall govern and control over any inconsistent provision in any other document evidencing or securing the Loan, provided that under no circumstances shall the provisions hereof be construed as in any way limiting the obligations of the undersigned under any loan document.

24. Notice under this Agreement shall be given in the same manner as prescribed in the Mortgage.

25. As used herein, plural or singular include each other and pronouns of any gender are to be construed as masculine, feminine or neutral, as context requires, and all obligations herein contained are and shall be joint and several.

26. If any term or provision of this Agreement or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Dated: , 2019.

BORROWER AND GUARANTORS

ACKNOWLEDGEMENTS

This form is illustrative only.
It should be reviewed carefully
for applicability prior to its use.

SCHEDULE H

WAIVER OF PRIOR NOTICE AND HEARING FOR PREJUDGMENT REMEDY AND WAIVER OF JURY TRIAL

WHEREAS, , a Connecticut with a principal place of business at , Connecticut (the "Borrower"), desires to borrow from (the "Lender") the principal sum of up to $ (the "Loan") as evidenced by a Commercial Term Promissory Note of even date herewith (the "Note"); and

WHEREAS, (the "Guarantor") has executed a Guaranty of even date herewith (the "Guaranty") whereby he has unconditionally guaranteed certain Obligations (as defined in the Guaranty) of Borrower to Lender.

NOW, THEREFORE, as an inducement to Lender to make the Loan and for other good and valuable consideration, the undersigned (whether one or more) agrees as follows:

A. PREJUDGMENT REMEDIES.

1. The Loan, the Note, the Guaranty, and all documents or instruments executed and/or delivered in connection therewith (collectively the "Documents") evidence a "commercial transaction" as that term is defined in Connecticut General Statutes Section 52-278(a). The proceeds of the Loan are not being used for personal, family or household purposes.

2. Each of the undersigned acknowledges that he has the right under Chapter 903a of the Connecticut General Statutes (the "Act"), subject to certain limitations, to prior notice and hearing on the right of Lender to obtain a Prejudgment Remedy, such as defined in the Act, upon commencing any litigation against any one of the undersigned.

3. Notwithstanding the foregoing, in connection with the Lender obtaining any Prejudgment Remedy, the undersigned hereby waives any and all rights to any prior notice or prior opportunity for a hearing that the undersigned may have under Sections 52-278a to 52-278(g), inclusive, of the Connecticut General Statutes, as the same may be amended, or under any similar law whether state, federal or constitutional, that may be hereafter enacted. The undersigned hereby further waives any requirement for the posting of a bond and any right to request a court to require the Lender to post a bond in connection with any Prejudgment Remedy sought. The undersigned intends that in the event of any legal action between the undersigned

and the Lender or any holder of the Note (the "Holder"), the Lender or any Holder may invoke any Prejudgment Remedy without giving the undersigned any prior notice or prior opportunity for a hearing. The undersigned specifically authorizes the attorney for the Lender or Holder to issue a writ for prejudgment remedy without prior court order.

4. The undersigned also waives any and all objection which may otherwise be asserted, now or in the future, in connection with Lender's exercise or use of any right of setoff, repossession or self help as may presently exist under statute (including the Uniform Commercial Code) and/or common law.

B. JURY TRIAL.

5. The undersigned expressly waives any right to a trial by jury in any lawsuit, proceeding, counterclaim, or any other litigation procedure based upon, or arising out of the Note, the Guaranty or any other Document, or in any way related to the financing transaction of which this Document is a part. In extension of the foregoing, the undersigned specifically consents to trial before a court respecting any such matter. No party will seek to consolidate any such action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

C. CONSIDERATION

6. The undersigned agree that they will not in their personal, representative or derivative capacity challenge, or raise any defenses to, any obligation due and owing under the Loan or Guaranty on the basis that there is no or insufficient consideration therefor or that the same constitutes a fraudulent transfer or conveyance, or that same is a violation of any fiduciary or other duty. The undersigned acknowledge that they have had adequate opportunity personally and through counsel to review the each of the documents governing or securing the Loan.

D. GENERAL PROVISIONS.

7. THE UNDERSIGNED HAS FULLY DISCUSSED THE PROVISIONS OF THIS AGREEMENT WITH COUNSEL AND THE WAIVERS CONTAINED HEREIN HAVE BEEN GIVEN KNOWINGLY AND VOLUNTARILY. THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS. NO PARTY HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS AGREEMENT WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.

8. The waivers contained herein are made by the undersigned on behalf of the undersigned and his, personal representatives, successors and assigns and shall apply to any and all actions by or against such parties.

9. The provisions of this instrument are severable. In the event any provision of this Agreement is invalid or unenforceable under applicable law, such provision is and will be

ineffective to that extent, but the remaining provisions shall be unaffected.

10. The term “undersigned” means each and every person or entity signing this document. The use of the singular tense shall include the plural and the use of the masculine shall include the feminine and neuter.

Dated:

By:

ATTORNEY CERTIFICATION:

I have represented the Borrower and Guarantor in connection with the closing of the Loan. I have explained to each Borrower and Guarantor the rights that each of them has waived pursuant to this Waiver Agreement.

_____

, Esq.

SIGNATORS

ACKNOWLEGEMENTS

This form is illustrative only.
It should be reviewed carefully
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SCHEDULE I

POST- CLOSING COMPLIANCE AGREEMENT

The undersigned, as Borrower and/or Guarantors of that certain loan from ("Lender") to in the original principal amount of AND 00/100 DOLLARS ($000,000.00) dated of even date herewith (the "Loan"), hereby represent, covenant and agree as follows:

1. The Loan was made by Lender in accordance with the terms and conditions of a Commitment Letter dated as may be amended (the "Commitment") and upon documents prepared for that purpose by the Lender and the law firm of .

2. The undersigned acknowledge that in making the Loan, Lender has required the proper documentation and collateralization of the Loan in accordance with the terms of the Commitment and in compliance with Lender required standards and practices for a loan of this type.

3. The undersigned acknowledge the potential for errors and omissions in the preparation and closing of a loan of this type, and agree that good faith and fair dealing oblige them to assist in remedying such errors and omissions where necessary in order to insure that the documentation and collateralization of the Loan conform to the intent of the parties and the requirements of the Commitment and Lender's practices.

NOW THEREFORE, in order to induce Lender to make the Loan, and in consideration therefor, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned do hereby covenant and agree as follows:

The undersigned shall exercise the utmost good faith and due diligence in complying with the reasonable requests of Lender, or any Holder of the note which evidences the Loan, which Lender or Holder may hereafter deem necessary appropriate to correct any typographical errors and/or accomplish the proper documentation and/or collateralization of the Loan, including, without limitation, the execution or re-execution of any documents as may be reasonably required.

The failure of the Borrower or Guarantor to comply with the terms of this Agreement within in seven (7) days of Lender's written request shall constitute an Event of Default under the Loan.

SIGNATURES AND ACKNOWLEDGMENTS

SCHEDULE J

LEASING FROM THE LENDER'S PERSPECTIVE -

WHY YOU CARE

Andrew R. Lubin, Esq.

Neither a landlord nor a tenant can afford to ignore the possibility that it may be necessary or desirable for the landlord to sell the project or to finance or refinance its interest in the property. Funds may be borrowed for any number of reasons including, development or improvement of the property, tenant improvements, or simply taking out equity. Typically, a real estate lender will require at a minimum that the landlord grant both a mortgage of the real estate and assign to the lender the project's leases and rentals. In such situations the lease is transformed into a credit instrument which a lender will need to review with care. To represent either a landlord or tenant in a lease negotiation without appreciating and/or anticipating a lender's requirements is both short sighted and can be dangerous for the continued viability of the property. It is essential from the landlord's perspective that nothing in the lease violate the terms of any existing mortgage or prevent its ability to finance the project at some later date.

In its analysis of the leases the real estate lender will have several global concerns:

(a) The leases to a great extent determine a property's value and are generally the only source of debt repayment. The lender must have assurance that there will be an uninterrupted flow of rental income that is sufficient to pay the debt service and other costs associated with the management and maintenance of the property;

(b) The lender must view itself as a successor landlord. If the lender is required to succeed to the landlord's interest, the leases must be able to successfully administered by the lender with a minimum of complication; and

(c) If the lender is required to succeed to the landlord's interest will it be obligated to comply with any burdensome or impossible obligations under the leases. A lender will also seek to be protected from liability from the actions of the prior landlord.

While there is no universal position taken by all lenders in connection with their lease underwriting review there are certainly some common concerns shared by the lending community. In its development of lease forms and in its negotiations of lease terms, the more accurately a landlord can anticipate a lender's needs and concerns, the more successfully a landlord will be in obtaining financing. However, trying to anticipate the manifold requirements of a future lender in connection with either a refinance or a sale can be a daunting task. The tenant as well must be cognizant of a lender's concerns. Where a tenant appreciates a lender's concerns, it will similarly appreciate why a landlord may be unwilling or unable to agree to certain concessions. A tenant can therefor negotiate provisions in a manner that will be

acceptable to a lender but at the same time does not jeopardize tenant's position. A lease that is negotiated with an understanding and anticipation of the lender's requirements or concerns can substantially reduce future problems that may be associated with a landlord's inability to finance or sell the project.

The scrutiny to which a lender subjects a lease will be mandated, by necessity, by the degree upon which lender is relying upon the rental stream. Accordingly, in non-recourse transactions, the rental stream will be especially critical. However, as the possible landlord's successor, virtually every section of a lease has some potential significance to a lender and should be carefully reviewed.

In its review of a lease a lender will view its interest as generally more aligned with those of the landlord and therefore a lender will and prefer to see a strong "landlord lease." However, a lender and its counsel must retain their perspective in reviewing a lease and they must appreciate both the leasing and lending marketing realities. The following discussion attempted to identify the major areas of a lease that are of concern to a lender.

A. Term:

(i) Has the lease commenced and what is the stated term? Are there any termination rights? If there are termination rights, then lender can only rely on shortest term.

(ii) If commencement is to be contingent on an event insist on commencement date agreement.

(iii) If a multi-tenanted project, are the lease terms staggered?

B. Options To Purchase:

(i) Are generally not favored because they will potentially interfere with a lender's exercise of its remedies.

(ii) The option must be subordinate to the mortgage and the exercise of the option should trigger the acceleration of the indebtedness.

C. Use:

(i) A lender will generally favor a unrestricted use by the tenant of the premises. This will keep the tenant bound if the intended use becomes unlawful.

(ii) An exception to the above will exist if a landlord has granted another tenant an exclusive use or where there are recorded restrictions.

(iii) Exclusive use provisions are not generally favored because they are often vague and can lead to litigation.

D. Rent:

(i) What is the real, effective rent to the landlord? Is there a tenant covenant to pay rent without offset, deduction notice or demand? Under what circumstances, if any, will rent abate?

(ii) Are there any rent concessions to the tenant such as free rent, services, take-over leases?

(iii) Is the rental stream a net rental? Does the lease provide for rent increases?

E. Assignment and Subletting:

(i) The lender's concern is generally proportionate to its interest in any particular tenant.

(ii) A review will be based upon the following issues:

(a) Is the landlord's consent required?

(b) Does the original tenant remain liable?

(c) Is the identity of the assigning tenant critical to the project i.e. tenant that will affect ability to attract other tenants?

(d) Is the new tenant credit worthy?

(e) Will assignment cause a default under any other lease?

(iii) Note the effect of Warner v. Konover, 210 Conn. 150 (1989).

F. Security Deposits:

(i) Is any required? If so, the lender should require that they be deposited with lender.

(ii) They should be transferable to successor landlord with liability therefor terminating upon transfer.

(iii) A lender will not want any liability for rents not actually in its possession.

G. Alterations:

(i) The scope of space tenant's permitted alterations should be narrow. The tenant should not be allowed to make structural repairs.

(ii) Circumscribe conditions under which work may be performed i.e. consent to plans; permits; insurance; lien waivers; identity.

(iii) Are there any future landlord construction obligations.

H. Casualty Loss:

(i) These provisions require care in their drafting.

(ii) Any landlord obligation to repair must be coordinated with receipt of insurance proceeds and their use pursuant to the mortgage. A landlord can't promise to the tenant that which it can't deliver. Any landlord obligation to repair should be consistent among all leases.

(iii) Any rent abatement must be covered by rent insurance.

(iv) Landlord should be able to cancel lease if damage to premises or building as a whole.

(v) Tenant should only be able to cancel if substantial destruction to premises that can't be repaired in a certain time.

I. Condemnation:

(i) Leases to terminate if entire property is taken.

(ii) If partial taking then termination only if premises can't be used as intended.

(iii) Landlord duty to restore should be consistent with mortgage and consistent among all leases.

(iv) Rent abatement on an equitable basis only to extent premises affected.

J. Guaranties:

The guaranty should be authorized by all appropriate entity action, if necessary, and should:

(i) inure to all present and future lenders;

(ii) guaranty all obligations not just rental payments;

(iii) provide that it is not invalidated by bankruptcy;

(iv) continue regardless of modifications, extensions or renewals; and

(v) be absolute and unconditional.

K. Liability for Acts of Prior Landlord/Limitations on Liability:

(i) A lender must seek to avoid liability for the acts of the prior landlord.

(ii) A lender will also view favorably provisions making the lease non-recourse against the landlord.

L. Landlord Default Provision:

(i) Tenant should be required to give lender simultaneous notice of landlord default and an opportunity to cure; a separate agreement may be required.

(ii) Lender should have longer period to cure than the landlord.

M. Estoppel Certificate:

(i) Are generally used for tenant to certify certain factual information about the lease.

(ii) Generally, confirm information as to:

(a) lease plus amendments are in full force and effect;

(b) when term commenced;

(d) renewal, option or expansion rights;

(e) defaults, defenses, offsets or counterclaims.

(iii) A lease should contain express provisions for estoppel certificates and a time frame within which to complete them.

(v) They can be used to have the tenant acknowledge and agree to certain rights of the lender i.e,. right to cure; no advance rental payment, no modification of lease without lender consent, etc..

N. Subordination, Non-Disturbance and Attornment:

(i) A lender will usually insist on a subordination agreement from tenants at the property.

(ii) If a lease says it is or will be subordinate to all mortgages subject to a non-disturbance agreement by lender then an executed agreement among all parties is probably required.

(iii) “Attornment” agreement where tenant will recognize lender or future purchaser as new landlord in the event of foreclosure.

(iv) Tenant may insist on “non-disturbance” agreement which provides that despite the lease subordination the tenant will not be disturbed from possession absent default.

(v) Subordination Non-Disturbance And Attornment agreement also useful way to enable lender to include additional terms or matters not included in the lease.

This form is illustrative only.
It should be reviewed carefully
for applicability prior to its use.

SCHEDULE K

SUBORDINATION, ATTORNMENT, ESTOPPEL AND NON-DISTURBANCE AGREEMENT

THIS AGREEMENT made as of this __ day of , 20 , by and among ("Lender"), ("Tenant"), and ("Landlord").

W I T N E S S E T H

WHEREAS, Landlord is the owner of the premises described in Schedule "A" attached hereto and made a part hereof (hereinafter called the "Premises"); and

WHEREAS, the Lender has or will make a loan to Landlord secured inter alia by a mortgage (hereinafter called the "Mortgage" which term shall also include any renewals or modifications thereof) of the Premises and an Assignment of Leases and Rentals thereof ("Assignment"); and

WHEREAS, by lease dated _____ between the Landlord (or Landlord's predecessor in interest) and the Tenant (hereinafter called the "Lease" which term shall also include any renewals or modifications thereof) all or part of the Premises (the "Leased Premises") were leased to the Tenant for the term and on the conditions and covenants set forth in the Lease; and

WHEREAS, the parties desire to establish certain rights among them.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein and for other good and valuable consideration the parties hereto agree as follows:

1. A true and correct copy of the Lease (together with all amendments) is attached hereto as Schedule A. Except as identified on Schedule A the Lease has not been modified, assigned or amended in any respect whether in writing or orally. The Lease is valid and in full force and effect on the date hereof. The Lease is the only agreement between the Tenant and the Landlord affecting or relating to the Premises.

2. The Lease and the leasehold estate created thereby are, and shall continue to be in both law and equity, subject and subordinate in all respects to the Mortgage, the lien created thereby and any advancements made pursuant thereto, as though the Mortgage was executed and recorded prior to execution of the Lease.

3. In the event Lender notifies Tenant of a default under the Mortgage and/or the Assignment and demands that Tenant pay its rent to Lender, Tenant agrees it will honor such demand.

4. The Tenant is not entitled to, and has not been given any free rent, partial rent, rebates, credits or offsets or deductions in rent, or any other type of rental concession, including, without limitation, lease support payments or lease buy-outs except as set forth in the Lease.

5. Tenant certifies, represents and warrants that the Lease is a valid present obligation between Landlord and Tenant, is in full force and effect in accordance with its terms with the rental thereunder not having been paid more than one (1) rental period in advance; that as of the date hereof Tenant is in possession of the Leased Premises, neither Tenant nor Landlord have breached any covenant or condition contained in the Lease and neither Landlord nor Tenant is in default with respect to the Lease. There are no agreements or understandings between Landlord and Tenant other than the Lease, and, without limiting the generality of the foregoing, there are no agreements between Landlord and Tenant requiring or permitting an abatement or reduction of rent except as specifically set forth in the Lease.

6. Provided that the Lease is in full force and effect and Tenant is not in default thereunder beyond any applicable grace period, the Lender agrees that it will not join Tenant as an adverse or defendant party in any action or proceeding brought to enforce or foreclose the Mortgage.

7. In the event of the foreclosure of the Mortgage, or a conveyance in lieu thereof:

(a) The Lender will not interfere with or disturb Tenant's possession of the Leased Premises, so long as Tenant is not in default under the Lease and pays the rent stipulated in the Lease and performs all other terms and conditions of the Lease;

(b) The Tenant will attorn to and be bound under the Lease to the Lender, any purchaser of the Premises in foreclosure or any grantee under a conveyance in lieu of or subsequent to foreclosure (hereinafter collectively a “Transferee”), and the successors and assigns of any such party; said attornment to be effective and self-operative without the execution of any further instrument. Notwithstanding the foregoing, Tenant agrees to execute and deliver upon the request of the Lender or other Transferee of the Premises, any instrument which may be necessary or appropriate to evidence such attornment; and

(c) The Tenant agrees that the Lender or other Transferee of the Premises shall not be:

(i) liable to Tenant for any act or omission of the Landlord; or

(ii) subject to any off-sets or defenses which the Tenant might have against Landlord; or

(iii) bound by or obligated to provide Tenant with a credit for any rent or additional rent which Tenant might have paid in advance for more than the current rental period; or

(iv) bound by any amendment or modification of the Lease made without Lender's written consent; or

(v) bound by the option to purchase provisions, if any, contained in said Lease; or

(vi) liable for the return of all or part of any security deposit not actually received by Lender from Landlord with respect to the Lease. In the event of the receipt of any security deposit with respect to the Lease, Lender's liability shall be limited to the amount actually received; or

(vii) liable to Tenant under the Lease or otherwise subsequent to such time as Lender ceases to be the owner of the Premises; or

(viii) liable to perform or undertake any Landlord obligation concerning construction at the Premises other than reconstruction after casualty or condemnation or maintenance and repairs.

8. Tenant agrees to give Lender written notice of any Landlord default simultaneously with the giving of such notice to Landlord. Tenant hereby covenants and agrees that in the event of a default by Landlord under the Lease, and said default is not cured by Landlord within the time period permitted in the Lease, Tenant, before exercising any rights it may have under the Lease or otherwise by virtue of Landlord's default, shall first notify the Lender of said Landlord's failure to cure and shall give to the Lender, commencing as of the date of such notice, the same rights (but not the obligations) as are given to Landlord under the Lease to cure. If no time period is stated under the Lease, Lender shall have sixty (60) days to cure any such default, or if such default cannot be cured within said time such additional time as may be necessary provided Lender has commenced a cure and is pursuing said cure with reasonable diligence.

In the event the Lender chooses to cure such default in accordance with the provisions of the Lease and/or the laws of the State of Connecticut, such default of Landlord shall be deemed cured and the Lease shall remain in full force and effect as if said default by Landlord had never occurred.

The Lender shall have this right for each and every default occurring under the Lease by Landlord and whether or not the Assignment shall or shall not have become operative by reason of a default by Landlord under the Mortgage or the Assignment.

9. The Tenant agrees that it will not assign or sublet the Leased Premises or alter, modify, amend, change, surrender, or cancel the Lease, or prepay any rent by more than a single rental period set forth therein, without the prior written consent of the Lender, and will not seek to be made an adverse or defendant party in any action or proceeding brought to enforce or foreclose the Mortgage.

10. The Tenant hereby waives any priority it may have over the Lender with respect to any share of any condemnation award for a taking of all or part of the demised premises, except any award for Tenant's moving expenses or loss of trade fixtures, and agrees that all of such awards, except as above provided, shall be first payable to the Lender.

11. Any notices to be sent hereunder shall be effective upon mailing by certified mail, return receipt requested, to the following address:

BANK

Attn: Commercial Mortgage Loan Department

_____ (Tenant)
_____
_____

_____ (Landlord)
_____
_____

or such other address as a party may designate by written notice.

12. This Agreement shall bind and inure to the benefit of the parties hereto, their successors and assigns including, without limitation, any purchaser of the Premises at a sale foreclosing the Mortgage or in lieu of said foreclosure; provided however, that in the event of an assignment or transfer of the Lender's interest, all obligations and liabilities of Lender shall terminate except (a) such as may arise from Lender's possession of pre-paid rent or a security deposit or (b) such as may have arisen from a breach by Lender of any terms or conditions of the Lease during such period as Lender was the owner of and in possession of the Premises and all such obligations and liabilities shall be the responsibility of said assignee or transferee.

13. No modification or variation to this Agreement shall be binding unless set forth in

a writing, duly signed by the parties.

14. This Agreement shall be construed under the laws of the State of Connecticut.

15. In no event shall Lender have any personal liability as successor to Landlord and Tenant shall look only to the estate and property of Lender in the Land and the Improvements for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money in the event of any default by Lender as Landlord under the Lease, and no other property or assets of Lender shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to the Lease.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, as of the day and year first above written.

Signed, Sealed and Delivered
In the Presence Of:

_____ By: _____

_____ Its: _____

_____ By: _____

_____ Its: _____

NAME:

_____ By: _____

_____ Its: _____

ACKNOWLEDGMENTS

Schedule L

TENANT ESTOPPEL CERTIFICATE

This form is illustrative only. It should be reviewed carefully for applicability prior to its use.

TO: [NAME AND ADDRESS OF BANK]

THIS IS TO CERTIFY THAT:

1. The undersigned is the lessee ("Tenant") of ____ square feet (the "Premises") under that certain lease dated _____, 20__ ("Lease") by and between _____ as lessor ("Landlord") and _____ as lessee ("Tenant"). A true and correct copy of the Lease (together with all amendments) is attached hereto as Schedule A. We are providing you with this certificate and permit you to rely upon it as conclusive evidence of the matters stated herein. We acknowledge that you will be relying upon the confirmation contained herein in connection with a loan to be given to Landlord.

2. Except as identified on Schedule A the Lease has not been modified, assigned or amended in any respect whether in writing or orally. The Lease is valid and in full force and effect on the date hereof. The Lease is the only agreement between the Tenant and the Landlord affecting or relating to the Premises.

3. The Tenant is not entitled to, and has not been given any free rent, partial rent, rebates, credits or offsets or deductions in rent, or any other type of rental concession, including, without limitation, lease support payments or lease buy-outs except as set forth in the Lease.

4. The Tenant has accepted and now occupies the Premises, and is and has been open for business since _____. The Lease term began _____. The termination date of the present term of the Lease, excluding unexercised renewals is _____.

5. The Tenant has paid rent for the Premises for the period up to and including _____, 19__. The fixed minimum rent payable by the Tenant presently is $_____ per month. No such rent has been paid more than one (1) month in advance of its due date, except as indicated below (if none, state "none"). The Tenant has deposited a security deposit with Landlord in the amount of $_____. None of the Security Deposit has been applied by Landlord to the payment of rent or other amounts due under the Lease.

6. No notice of default under the Lease has been given to Landlord. To the best of Tenant's knowledge no event has occurred and no condition exists which, with the giving of notice or lapse of time or both, will constitute a default under the Lease. Tenant has no claim of any nature against Landlord under the Lease. The Tenant has no existing defenses or offsets against the enforcement of the Lease by the Landlord.

7. All conditions under the Lease to be performed by the Landlord have been fully performed and satisfied. All required contributions by the Landlord to the Tenant on account of the Tenant's tenant improvements have been received by the Tenant. All improvements, build outs, alterations or additions to be constructed by the Landlord in the Premises (the "Improvements") have been completed and Tenant is satisfied with the condition of the Improvements.

8. The Tenant has no outstanding options or rights of first refusal to purchase or expand the Premises or any part thereof or all or any part of the real property of which the Premises are a part except as stated in the Lease.

9. No actions, whether voluntary or otherwise, are pending against the Tenant or any general partner of the Tenant under the bankruptcy laws of the United States or any state thereof.

10. The Tenant has not assigned, mortgaged or sublet the Premises. No one except the Tenant and its employees occupies the Premises.

11. The address for notices to be sent to the Tenant is as set forth in the Lease.

12. The Premises have not been used and the Tenant will not use the Premises for any activities which, directly or indirectly, involve the use, generation, treatment, storage, transportation or disposal of any petroleum product or any toxic or hazardous chemical, material, substance, pollutant or waste. Tenant will comply with all state and federal environmental laws.

13. [Use if no SNDA] The Tenant agrees to give you written notice at the above address by registered mail, return receipt requested, of any Landlord default simultaneously with the giving of such notice to Landlord. Tenant hereby covenants and agrees that in the event of a default by Landlord under the Lease, and said default is not cured by Landlord within the time period permitted in the Lease, Tenant, before exercising any rights it may have under the Lease or otherwise by virtue of Landlord's default, shall first notify the Lender of said Landlord's failure to cure and shall give to the Lender, commencing as of the date of such notice, the same rights (but not the obligations) as are given to Landlord under the Lease to cure. If no time period is stated under the Lease Lender shall have sixty (60) days to cure any such default, or if such default cannot be cured within said time such additional time as may be necessary provided Lender has commenced a cure and is pursuing said cure with reasonable diligence.

14. [Use if no SNDA] Tenant acknowledges that this Certificate constitutes notice that the Lease will be assigned to Lender, and Tenant has received no notice of a prior assignment, hypothecation or pledge of Lease or the rents, income, deposits or profits arising thereunder. Tenant understands that under the provisions of the assignment, the Lease cannot be terminated (either directly or by the exercise of any option which could lead to termination) or modified in any of its terms, or consent be given to the release of any party having liability thereon, without the prior written consent of Lender, that without such consent, no rent may be collected or accepted more than one month in advance and that the interest of the Landlord in the Lease has been assigned to Lender solely as security for the purposes specified in the assignment and Lender assumes no duty, liability or obligations whatever under the Lease or any extension or renewal thereof.

15. [Use if no SNDA] Tenant hereby acknowledges and agrees that if Lender shall succeed to the interest of Landlord under the Lease, Lender shall assume (only while owner of and in possession or control of the building or which the Premises are a part) and perform all of Landlord's obligations under the Lease, but shall not be liable for any act or omission of any prior landlord (including the present Landlord), liable for the return of any security deposit not in Lender's possession, subject to any offset or defense which Tenant may have against any such prior landlord or bound by any rent or additional rent Tenant may have paid for more than the current month to any such prior landlord or bound by an assignment, surrender, termination, cancellation, waiver, release, amendment or modification of the Lease made without its express written consent.

16. The person signing this letter on behalf of Tenant is a duly authorized agent.

Dated this ___ day of _____, 20 .

TENANT

By:

Its

Print Name:

FORM OPINION

[Letterhead of Law Firm]

[Date]

[Addressed to Lender]

[Addressed to Borrower]

Ladies and Gentlemen:

We have acted as counsel to _____, a _____ ("Borrower") in connection with that certain $_____ loan ("Loan") from _____, ("Lender") evidenced by the documents described below. [We have also acted as counsel to _____, [and _ ("Guarantor[s]") with respect to their guaranty of the Loan/completion of construction, etc. ("Guaranty").]

A. **Documents Reviewed.** For purposes of this opinion we have examined the following documents which unless otherwise noted are as executed by the Borrower in favor of the Lender in connection with the Loan, and dated as of the date of this letter:

1. Promissory Note [use exact title] ("Note") in the principal amount of $ _____, evidencing the Loan;

2. Mortgage Deed [and Security Agreement] [use exact title] ("Mortgage") with respect real property located at _____, Connecticut ("Premises") and personal property (collectively, "Property");

3. Assignment of Leases and Rents [use exact title] ("Assignment of Leases").

4. Financing Statements (UCC-1), undated.

5. [Security Agreement, (if separate from the Mortgage)].

6. [Building] [Construction] Loan Agreement [use exact title] ("Loan Agreement") made between Borrower and Lender in respect to the Loan;

7. Guaranty Agreement[s] [use exact title] [or, if applicable, another date executed by _____ (the "guarantors(s)") guaranteeing the payment of the Loan, (the "Guaranty") [or, guaranteeing completion of construction or otherwise if applicable].

8. Borrower Certificate ("Borrower Certificate") [or, if applicable, dated _____] executed by the Borrower, relating to the Loan, together with all documents and exhibits attached;

For purposes of this opinion, the Note, Mortgage Deed, [Loan Agreement] and Assignment of Leases are collectively referred to as the "Loan Documents." The Guaranty[ies] and Borrower Certificate are not Loan Documents.

B. **Underlying Documents, Qualifications and Facts.** In rendering our opinion we have also examined such certificates of public officials, [corporate] [partnership] [joint venture] documents and records and other certificates and instruments as we have deemed necessary for the purposes of the opinion herein expressed including the documents and exhibits attached to the Borrower Certificate, [and the additional documents attached which were also examined, and which may represent evidence of exceptions to this opinion].

We understand that with respect to real property title to the Premises, you will be relying on the title insurance policy issued to you by [name of title insurance company] bearing Policy No. _____. We do not express any opinion as to any matters of title to or the description of the Premises or of any other property (whether real, personal or mixed) or priority of liens.

We express no opinion with respect to the effect of any law other than the Law of the State of Connecticut and federal law of the United States. [Insofar as our opinion pertains to or is affected by matters of (foreign state) law, we have relied exclusively upon the opinion of (foreign state) counsel, _____, dated _____ a copy of which is attached.]

C. **Statement of Policy.** This opinion incorporates by reference and is to be interpreted in accordance with the Statement of Policy Regarding Borrowers' Counsels' Opinion Letters in Commercial Mortgage Loan Transactions adopted by the Executive Committee of the Real Property Section of the Connecticut Bar Association on April 23, 1992 as published in the April 1993 edition of The Connecticut Real Estate Law Journal ("Statement of Policy"). The capitalized terms not otherwise defined in this opinion are defined in the Statement of Policy.

D. **Opinion.** Based upon the foregoing and subject to the qualifications and exceptions set forth in this opinion letter and Statement of Policy, we are of the opinion that:

1. Existence. Borrower is

Alternate 1 -- Connecticut Corporation]
a corporation which Exists under the laws of Connecticut.

[Alternative 2 -- Foreign Corporation]
a corporation which Exists under the laws of _____ and is duly qualified to do business, and is in good standing as a foreign corporation, under the laws of Connecticut.

[Alternative 3 -- Partnership]
a partnership which Exists under the laws of _____.

[Alternative 4 -- Joint Venture
a joint venture which Exists as a partnership under the laws of Connecticut.

[Alternative 5 -- Connecticut Limited Partnership]
a limited partnership which Exists under the laws of Connecticut.

[Alternative 6 -- Foreign Limited Partnership]
a limited partnership which Exists under the laws of the State of _____ and has duly qualified to transact business in Connecticut under the laws of Connecticut.

[Add to subparagraph 1. an appropriate sentence for any Guarantor which is not a natural person.]

2. **Power and Authority.** Borrower has all requisite Power and Authority to borrow the proceeds of the Loan, to Perform its Obligations, and to Execute And Deliver the Loan Documents. [Add appropriate sentence for the Guarantor.]

3. **Loan Documents [and Financing Statements].** The Loan Documents [and the Financing Statements] have each been Duly Authorized and properly Executed And Delivered by Borrower, and each of the Loan Documents is a Valid And Binding obligation of Borrower and is Enforceable.

4. **Proceedings.** We have no Current Actual Knowledge of any Pending or Threatened Litigation against or affecting Borrower [the Guarantor] or the Premises [except as set forth in this opinion
or in a schedule thereto.]

5. **No Approval Or Consent.** We have no Current Actual Knowledge that any further approval or consent from any Governmental Authority or any other person or entity is

required in order for the Borrower to Perform Its Obligations, Execute And Deliver or effectuate the validity or enforceability of the Loan Documents [or Guaranty].

6. **No Conflict.** We have no Current Actual Knowledge that the Loan Documents will violate any Applicable Laws, or conflict with, result in breach of, or constitute a default under any Contract to which Borrower is a party. [Insert a comparable sentence for the Guarantor, if applicable].

7. **Guaranty[s].** The Guaranty has been properly Executed And Delivered by Guarantor and is a Valid And Binding obligation and agreement and is Enforceable.]

8. **[Usury.]** [If applicable] The amounts received by the Lender as interest under the Loan constitute lawful interest which is not usurious under Applicable Laws.]

E. **Practical Realization.** Although our opinion as to enforceability is qualified by the Statement of Policy, the General Laws outlined in Subparagraph C.3(a) of the Statement of Policy will not substantially interfere with the Practical Realization Of The Benefits expressed in the Loan Documents [or in the Guaranty] except for the economic consequences of any procedural delay which may result from such laws. No opinion is given as to the affect of the Specified Laws therein.

F. **Exclusive Use.** This opinion is a confidential communication to you and any successor holder of the Note, Loan Documents [and Guaranty,] and may not be furnished to, or relied upon by any other person, included in any material filed with any regulatory authority, or used for any other purpose.

G. **Privity, Beneficial Interest, and Assignment.** This opinion is rendered with the intention that it benefit the Lender. Borrower and the undersigned law firm have acknowledged that the opinion is requested directly by Lender and Borrower has caused this opinion to be rendered directly to Lender, that thus there is privity between Lender and the undersigned law firm. The undersigned acknowledge that the Lender is relying on the conclusions rendered in this opinion and might be harmed if they were incorrect.

Respectfully Submitted,

[Name of Law Firm]

By:
Its Partner (or initials of the partner signing the opinion if the signature is that of the firm.

cc: Client
Guarantors[s]

BORROWER'S CERTIFICATE, CONSENT AND ASSIGNMENT

Re: $_____ [construction] mortgage loan (the "Loan") from [lender] ("Lender") to [corporation] ("Borrower") secured by the land and improvements located at [street address], [city/town], Connecticut (the "Premises") [guaranteed by [guarantor[s]] ("Guarantor[s]")]

Borrower and Guarantor[s] hereby certify[ies], to the best knowledge of the individual[s] signing this instrument on behalf of Borrower and/or Guarantor[s], that:

A. The representations made by or on behalf of Borrower in the following documents dated, unless otherwise indicated, on or as of _____ (collectively, the "Documents") are accurate and complete:

1. Promissory Note [use exact title] in the principal amount of [up to] $_____, made by Borrower to Lender, evidencing the Loan;

2. Mortgage Deed [use exact title] executed by Borrower in favor of Lender with respect to the Premises and certain personal property described therein (collectively, the "Property");

3. Assignment of Leases and Rents [use exact title] made by Borrower in favor of Lender;

4. Undated Financing Statement[s] (UCC-1) executed by the Borrower as debtor in favor of Lender as secured party;

5. [Building/Construction] Loan Agreement [use exact title] made between Borrower and Lender with respect to the Loan;

6. Guaranty Agreement[s] [use exact title] in favor of Lender executed by Guarantor[s] guaranteeing the [repayment of the Loan/completion of construction]; and

7. Commitment Letter [use exact title] dated _____ from Lender to [Borrower/other addressee (and assigned to Borrower)], and accepted by Borrower on _____ [and accepted by the Guarantor[s] on _____] [as amended by amendment[s] dated ____].

B. Borrower [and Guarantor[s]] [is/are] subject to no federal, state or local governmental programs or other regulations which require governmental consent prior to entering into

commercial loan transactions, including, without limitation, the Loan, except as follows: _____.

C. There are no judicial or governmental judgments, orders, injunctions, decrees, or arbitration awards outstanding against Borrower [or the Guarantor[s]], and there are no judicial or governmental actions, suits, or proceedings or any arbitrations or mediations, pending or overtly threatened by written communications against Borrower, [the Guarantor[s],] or any of Borrower's properties, including without limitation, the Premises, except as follows: _____.

D. The Documents will not constitute a default under any instrument binding upon Borrower including, without limitation, promissory notes, mortgages, security agreements, loan instruments, leases, covenants, conditions, easements, rights-of-way, franchises, permits, licenses, contracts and agreements.

E. The proceeds of the Loan are to be used solely for commercial purposes, specifically to [acquire/finance/construct improvements upon] the Premises. No portion of the proceeds of the Loan will be used for consumer or household purposes.

F. No proceedings by or against Borrower, or [any of] the Guarantor[s] have been threatened or commenced in bankruptcy or for reorganization, liquidation or for readjustment of debts under the Bankruptcy Code or any other law, whether state or federal, nor has Borrower, or [any of] Guarantor[s] made an assignment for the benefit of the creditors, admitted in writing inability to pay debts generally as they become due, or filed or had filed against it or him any action seeking an order appointing a trustee or receiver of all or a substantial part of the property of Borrower, or [any of] the Guarantor[s].

G. No judicial or nonjudicial proceeding has been filed or is pending for the dissolution of Borrower pursuant to a resolution of the incorporators, shareholders or directors, or otherwise pursuant to the Connecticut General Statutes, as amended.

H. The only directors of Borrower are:

_.

I. Borrower's principal office is at:_____.

J. Attached as Exhibit A and made a part hereof is a true and accurate copy of the certificate of incorporation [and of all amendments thereto] of Borrower.

K. Attached as Exhibit B and made a part hereof is a true and accurate copy of the bylaws [and of all amendments thereto] of Borrower.

L. Attached as Exhibit C and made part hereof is a copy of the Borrowing Resolution of Borrower executed by [the sole/all of the] director[s] of Borrower, which has not been superseded, modified or revoked and continues in full force and effect.

The foregoing representations contained in this Certificate may be relied upon by Lender and by Borrower's [lawyer/law firm] in [his/her/its] opinions addressed to the Lender in connection with the Loan (the "Opinion Letter"). Borrower hereby (i) confirms that Borrower has consented to the issuance of the Opinion Letter and to the circulation of draft copies thereof, and (ii) agrees to the disclosures contained therein including those protected by attorney/client confidentiality requirements.

Borrower non-exclusively assigns to Lender all of its right and interest in and to the Opinion Letter and waives any right Borrower may have to object to the enforcement of the opinion by virtue of the attorney/client relationship, conflict, confidentiality, or privity, intending that the Lender be the beneficiary thereof.

Dated at _____, Connecticut this _____ day of _____.

By:
Print Name:
Its [Duly Authorized Officer]

Acknowledgments