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Cook County Recorder

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UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional] David L. Reich, Esq. 312-372-1947	
B. SEND ACKNOWLEDGMENT TO: (Name and Address) David L. Reich Lawrence, Kamin, Saunders & Uhlenhop, L.L.C. 208 S. LaSalle Street, Suite 1750 Chicago, IL 60604-1188	

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME Vicor Development, Inc.						
OR	1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
1c. MAILING ADDRESS 400 North State Street, Suite 400			CITY Chicago	STATE IL	POSTAL CODE 60610	COUNTRY USA
1d. TAX ID # SSN OR EIN 36-4325033	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION Corporation	1f. JURISDICTION OF ORGANIZATION Illinois		1g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE	

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME						
OR	2b. INDIVIDUAL'S LAST NAME Cypher		FIRST NAME Victor	MIDDLE NAME J.	SUFFIX Jr.	
2c. MAILING ADDRESS 400 North State Street, Suite 460			CITY Chicago	STATE IL	POSTAL CODE 60610	COUNTRY USA
2d. TAX ID # SSN OR EIN 341-56-8597	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION		2g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE	

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME Arko Investments, Inc.						
OR	3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
3c. MAILING ADDRESS 155 N. Harbor Drive #1202			CITY Chicago	STATE IL	POSTAL CODE 60601	COUNTRY USA

4. This FINANCING STATEMENT covers the following collateral:

Amended and Restated Collateral Assignment of Contracts and Security Agreement attached hereto.

5. ALTERNATIVE DESIGNATION (if applicable):		LESSEE/LESSOR	CONSIGNEE/CONSIGNOR	BAILEE/BAILOR	SELLER/BUYER	AG. LIEN	NON-UCC FILING
6. This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable)		7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (OPTIONAL FEE)			All Debtors Debtor 1 Debtor 2		
8. OPTIONAL FILER REFERENCE DATA							

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AMENDED AND RESTATED

COLLATERAL ASSIGNMENT OF CONTRACTS AND SECURITY AGREEMENT

THIS AMENDED AND RESTATED COLLATERAL ASSIGNMENT OF CONTRACTS AND SECURITY AGREEMENT (the Restated Collateral Assignment) made as of the 7th day of December, 2001 is by and between **VICOR DEVELOPMENT, INC.**, an Illinois corporation and Victor J. Cypher, Jr. (collectively "Assignor"), in favor of **ARKO INVESTMENTS, INC.**, an Illinois Corporation ("Assignee").

WITNESSETH:

- A. Assignor has purchased the real estate described on Exhibits A and B attached hereto and made a part hereof (the "Premises").

- B.** Assignee has agreed to provide certain financing in connection with the aforesaid purchases, subject to the terms and conditions of a certain Loan Agreement dated June 8, 2001 and as amended and modified on September 4, 2001 entered into by the parties hereto (collectively the "Loan Agreement").

- C. The Loan Agreement provides for the making of a Collateral Assignment.

- D.** The parties hereto entered into a certain Collateral Assignment of Contracts and Security Agreement, dated as of June 8, 2001 (the "Collateral Assignment"). The Collateral Assignment provides for, among other things, the assignment to Assignee of all of Assignor's right, title and interest in, to and under the Clarendon Contract, the Secured Promissory Note, and the Mortgage (all as hereinafter defined).

- E. The parties hereto entered into a certain modification of the Collateral Assignment dated as of September 4, 2001 (the "Modification").

- F. The parties hereto desire to amend and restate the Collateral Assignment and Modification in order to secure additional sums advanced by Assignee to Assignor on the date hereof and to secure payment for such advancements, the assignment by Assignor of additional collateral.

NOW, THEREFORE, Assignor, for and in consideration of the above recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby bargain, sell, transfer, assign, convey, set over and deliver unto Assignee all of its right, title and interest in, to and under (i) that certain Purchase Agreement between Assignor, as Purchaser, and U.S. Trust Company of Texas, N.A., as Mortgage Trustee and Indenture Trustee, as Seller, dated June 5, 2001 (the "Clarendon Contract"), (ii) the Secured Promissory Note dated August 1, 2001 in the amount of \$850,000 between Alexa Partnership, L.L.C., as Borrower, and Victor J. Cypher, Jr., as Lender, (the "Secured Promissory Note"), (iii) the Mortgage with Assignment of Rents, Security Agreement and Fixture Filing between Alexa Partnership, L.L.C., as Mortgagor, and Victor J. Cypher, Jr. (Mortgagee), also dated August 1,

2001 (the "Mortgage"), (iv) that certain Agreement between Owner and Architect dated November 1, 2000 by and between Victor J. Cypher, Jr. and William Worn Architects, P.C. (the "Architectural Contract"), (v) that certain Civil Engineering Contract, by and between Terra Engineering Ltd. and Vicor Development, Inc. dated as of May 14, 2001 (the "Engineering Contract"), and (vi) that certain Design, Development & Merchandising Agreement, by and between Bella Maison, Ltd. and Vicor Development, Inc. and dated _____ (the "Design Agreement"), which Purchase Agreement, Secured Promissory Note, Mortgage, Architectural Contract, Engineering Contract and Design Agreement are attached hereto as Exhibits C, D, E, F, G and H and made a part hereof by express reference (hereinafter collectively called the "Collateral"). This Assignment is a grant of a security interest, as defined in the Illinois Commercial Code, in the Collateral by Assignor to Assignee.

1. This Assignment is made for the purpose of securing and shall secure:

(a). The payment of the indebtedness (including any extensions or renewals thereof) evidenced by that certain Amended and Restated Secured Demand Note in the amount of Three Hundred Fifteen Thousand Five Hundred Ten and 69/100 Dollars (\$315,510.69), (the "Note") entered into by Assignor of even date herewith; and

(b). The payment of all other sums with interest thereon becoming due and payable to Assignee under the provisions of the Loan Agreement and any other instrument constituting security for or evidencing the Note; and

(c). The performance and discharge of each and every term, covenant and condition of Assignor contained in the Loan Agreement, the Note, and any other instrument constituting security for or evidencing the Note.

2. Assignor further covenants and agrees that:

(a). The sole ownership of the Collateral is vested in Assignor or its stockholder, Victor J. Cypher, Jr., and that Assignor has not performed, and shall not perform, any acts or execute any other instruments which might prevent Assignee from fully exercising its rights under any of the terms, covenants and conditions of this Assignment.

(b). To the best of Assignor's knowledge, the Collateral is valid and enforceable in accordance with its terms and has not been altered, modified, amended, terminated, canceled, renewed or surrendered nor have any of the material terms and conditions thereof been waived in any manner whatsoever except as approved in writing by Assignee, which approval shall not be unreasonably withheld.

(c). The Collateral shall not be materially altered, modified, amended, surrendered or terminated, nor any material term or condition thereof be waived by Assignor without the prior written approval of the Assignee, which approval shall not be unreasonably withheld.

(d). To the best of Assignor's knowledge, there are no defaults now existing under the Collateral and there exists no state of facts which, with the giving of notice or lapse of time or both, would constitute a default under any of the Collateral.

(e). Assignor shall give prompt notice to Assignee of any notice received by it or of which it becomes aware claiming that a default has occurred under any of the Collateral on the part of any party to the agreements constituting the Collateral, together with a complete copy of any such notice.

(f). This Assignment is a grant of a security interest under the Illinois Commercial Code and Assignee shall have all rights afforded to it by said Code in the event of a default of Assignor hereunder or under any other instrument securing payment of the Note. Ten (10) business days shall be deemed "reasonable" time for any action or notice where reasonable time is required by said Code.

(g). Assignor hereby irrevocably appoints Assignee its true and lawful attorney with full power of substitution and with full power for Assignee in its own name and capacity or in the name and capacity of Assignor, or each of them, from and after the exercise of its rights hereunder, following a default which continues beyond any applicable notice, grace or cure period, to demand, collect, receive and give complete acquittances for any and all performances, payments, authorizations and licenses arising under the Collateral, and at Assignee's discretion to file any claim or take any other action or proceeding and make any settlement of any claims, either in its own name or in the name of Assignor or otherwise, which Assignee may deem necessary or desirable in order to enforce the performance of parties bound under any of the Collateral. Contracting parties under any of the Collateral are hereby expressly authorized and directed to render all performances due Assignor pursuant to any of the Collateral to Assignee or such nominee as Assignee may designate in writing delivered to and received by such contracting parties who are hereby expressly relieved of any and all duty, liability or obligation to Assignor in respect of all performances so done.

(h). From and after exercise of its rights hereunder, after a default under the Loan Agreement which continues beyond any applicable notice, grace or cure period, Assignee is hereby vested with full power to use all measures, legal and equitable, deemed by it reasonably necessary or proper to enforce this Assignment and to obtain the performances assigned hereunder, including the right of Assignee or its designee to take possession of all or any part of the Collateral which is in such documentary form as is capable of being possessed. Assignor hereby grants full power and authority to Assignee to exercise all rights, privileges and powers herein granted at any and all times after default of Assignor hereunder upon notice to Assignor and failure of the Assignor to cure such default within any applicable grace period, if any, set forth in the Loan Agreement, with full power to take advantage of, use and apply all of the Collateral in any manner Assignee deems fit. Assignee shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of Assignor under any of the Collateral until such time as Assignee shall have realized upon the Collateral or any part thereof, and Assignee does not assume any of the liabilities in connection with or arising or growing out of any covenants and agreements of Assignor in any of the Collateral until such time as Assignee shall have realized upon the

Collateral or any part thereof pledged as the security hereunder. It is further understood and agreed that this Assignment or the exercise by Assignee of any of its rights or remedies hereunder shall not operate to place responsibility for the control, care, management or repair of the construction on the Premises, or parts thereof, upon Assignee, nor shall it operate to make Assignee liable for the performance of any of the terms and conditions of any of the Collateral until such time as Assignee shall have realized upon the collateral or any part thereof pledged as the security hereunder.

(i). Waiver of or acquiescence by Assignee in any default by Assignor, or failure of Assignee to insist upon strict performance by Assignor of any covenants, conditions or agreements in this Assignment, shall not constitute a waiver of any subsequent or other default or failure, whether similar or dissimilar.

(j). The rights and remedies of Assignee under this Assignment are cumulative and are not in lieu of, but are in addition to any other rights or remedies which Assignee shall have under the Loan Agreement, the Note, or at law or in equity.

(k). If any term of this Agreement, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Assignment, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(l). Any notice, demand or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given (a) if and when personally delivered, (b) upon receipt if sent by facsimile, or a nationally recognized overnight courier, or by United States registered or certified mail, postage prepaid, or upon refusal to accept delivery if sent by a method set forth in (b), and addressed to a party at its address set forth below or to such other address the party to receive such notice may have designated to all other parties by notice in accordance herewith:

If to Assignee:

Arko Investments, Inc.
155 N. Harbor Drive, Unit 1202
Chicago, IL 60601
Attention: Allan Koretz
Fax No.: 312-540-1584

with a copy to:

Bob Koretz
405 Catbird Lane
Deerfield, IL 60015
Attention: Bob Koretz

If to Assignor:

ViCor Development, Inc.
400 North State Street, Suite 460
Chicago, Illinois 60610
Attention: Victor J. Cypher, Jr.

J. Levin & Associates, Ltd.
211 Waukegan Road, Suite 300
Northfield, Illinois 60093
Attention: Jay Levin
Fax No.: (847) 441-9583

Except as otherwise specifically required herein, no notice of the exercise of any right or option granted to Lender herein is required to be given.

(m). The terms "Assignor" and "Assignee" shall be construed to include the heirs, personal representatives, successors and assigns thereof. The gender and number used in this Assignment are used as a reference term only and shall apply with the same effect whether the parties are of the masculine or feminine gender, corporate or other form, and the singular shall likewise include the plural.

(n). This Collateral Assignment may not be amended, modified or changed nor shall any waiver of any provisions hereof be effective, except only by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought.

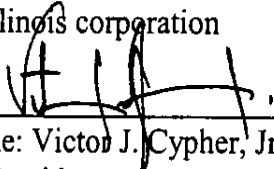
SIGNATURE PAGE FOLLOWS

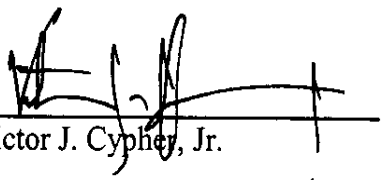
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IN WITNESS WHEREOF, Assignor has caused this Assignment to be signed and sealed as of the date first above written.

VICOR DEVELOPMENT, INC,
an Illinois corporation

By: 
Name: Victor J. Cypher, Jr.
Its: President


Victor J. Cypher, Jr.

\\FILE SERVER\\All Access\\DLR\\Arko Inc\\AMENDED VICOR Collateral 1.DOC

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EXHIBIT A

CLARENDON LEGAL DESCRIPTION

PARCEL 1:

LOTS 1, 2, 3, 4, 5, THE WEST 10 FEET OF LOT 7, AND LOT 8 IN JOSEPH A.W. REE'S SUBDIVISION OF THE SOUTH 10 RODS OF THE NORTH 40 RODS OF THE EAST ½ OF THE NORTHEAST ¼ OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOT 1 AND THE EAST 30 FEET OF LOT 2 IN HORACE AND GOODRICH'S SUBDIVISION OF THE SOUTH 10 RODS OF THE NORTH 30 RODS OF THE EAST ½ OF THE NORTHEAST ¼ OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

LOT 6 IN JOHN N. YOUNG'S SUBDIVISION OF THE SOUTH 5 ACRES OF THE NORTH 25 ACRES OF THE EAST ½ OF THE NORTHEAST ¼ OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as:

4700 N. Clarendon, Chicago, Illinois
4720 N. Clarendon, Chicago, Illinois
827-831 W. Leland Ave., Chicago, Illinois

PIN NUMBERS:

14-17-206-052-0000
14-17-213-007-0000

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EXHIBIT B

SHERIDAN LEGAL DESCRIPTION

LOTS 2, 3, 4, 5, 6, 7 AND THE NORTH 15 FEET OF LOT 8 IN GEORGE LILL'S SHERIDAN ROAD ADDITION TO CHICAGO, A SUBDIVISION IN THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED MAY 2, 1896 AS DOCUMENT NO. 2382327.

Commonly known as:

4848 N. Sheridan Road, Chicago, Illinois

PIN NUMBERS:

14-08-416-018-0000

14-08-416-019-0000

14-08-416-020-0000

14-08-416-021-0000

14-08-416-022-0000

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EXHIBIT C

PURCHASE AGREEMENT

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Property of Cook County Clerk's Office

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PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT ("*Agreement*"), dated as of the Agreement Date (as hereinafter defined), is made by and between U.S. TRUST COMPANY OF TEXAS, N.A., as Mortgage Trustee and Indenture Trustee ("*Seller*") and VICOR DEVELOPMENT, INC., an Illinois corporation, or its designee or assignee ("*Purchaser*").

WHEREAS, on or about June 28, 1998 the City of Chicago, Illinois (the "*Issuer*") and U.S. Trust Company of Texas, N.A. as indenture trustee entered into that certain Indenture of Trust and Security Agreement dated as of July 1, 1998 (the "*Indenture*"), pursuant to which, among other things, the Issuer issued those certain City of Chicago, Illinois Health Facilities Revenue Bonds (Heritage Care of Chicago, Inc.) 1998 Series A Tax-Exempt and 1998 Series B Taxable Bonds (the "*Bonds*").

WHEREAS, contemporaneously with the issuance of the Bonds, the Issuer and Heritage Care of Chicago, Inc. ("*Heritage*") entered into that certain Loan and Security Agreement dated as of July 1, 1998 (the "*Loan Agreement*"), pursuant to which, among other things, the Issuer loaned the proceeds of the Bonds to Heritage.

WHEREAS, in order to evidence its indebtedness under the Loan Agreement, Heritage executed and delivered to the Issuer certain promissory notes payable to the order of the Issuer in monthly installments as set forth therein (collectively, the "*Notes*").

WHEREAS, under the Indenture, the Issuer assigned (without recourse) to U.S. Trust Company of Texas, N.A. as indenture trustee, among other things, all of its right, title and interest in and to the Loan Agreement (including the loan payments required thereunder) and the Notes.

WHEREAS, for the purpose, among other things, of securing the payment and performance of Heritage's indebtedness to the Issuer, Heritage executed and delivered to U.S. Trust Company of Texas, N.A. as mortgage trustee that certain Deed of Trust, Assignment of Leases and Rents and Security Agreement dated as of July 1, 1998 (the "*Mortgage*").

WHEREAS, certain defaults occurred under the Indenture and the Mortgage and on June 27, 2000 U.S. Trust Company of Texas, N.A. as indenture trustee and mortgage trustee filed, in the Circuit Court of Cook County, Illinois, Chancery Division (the "*Foreclosure Court*") as case number 00 CH 09503, a complaint for foreclosure (the "*Foreclosure Proceeding*") of the Mortgage and the property described in the Mortgage, all as more fully described in the complaint for foreclosure.

WHEREAS, on October 23, 2000 by order of the Foreclosure Court, Roland K. Weber was appointed as receiver (the "*Receiver*") for certain of the real and personal property subject to the Foreclosure Proceeding, all as more fully described in the order of appointment.

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WHEREAS, subject to the terms and conditions set forth herein, Purchaser wishes to purchase the Property (as hereinafter defined) which is not now actually owned of record by Seller but is subject to the Foreclosure Proceeding.

NOW THEREFORE, for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller agree as follows:

1. *Sale of Property.* Purchaser acknowledges that (i) the following described and defined Property is subject to the Foreclosure Proceeding, (ii) Seller does not on the date hereof hold record title to the Property, (iii) Seller has not at any time operated the Property as a business, (iv) due to the foregoing, Seller's knowledge of the Property is limited and (v) transfer of the Property to Purchaser is subject to approval of this Agreement and the transactions contemplated hereby by the Foreclosure Court. Seller agrees to sell to Purchaser through the pending Foreclosure Proceeding and Purchaser agrees to buy from Seller, the following property:

The fee simple interest in certain real estate located in the City of Chicago, State of Illinois commonly known as 4700 N. Clarendon Avenue, 4720 N. Clarendon Avenue, and 827-31 W. Leland Avenue, all legally described on Exhibit A attached hereto (collectively, the "*Land*"), together with all rights, privileges, servitudes and appurtenances thereunto belonging or appertaining, including all right, title and interest in which Seller has a mortgage interest, if any, in and to the streets, alleys and rights-of-way adjacent to the Land, together with any existing buildings (the "*Improvements*") together with all fixtures and personal property located thereon and used in connection therewith (the "*Personalty*") including, mechanical and electrical equipment and trade fixtures (the Land, Improvements and Personalty are hereinafter collectively referred to as the "*Property*").

Except as expressly set forth herein, the sale, transfer and assignment of the Property shall be made "*As Is*" "*Where Is*" and "*With All Faults*" and specifically and expressly WITHOUT ANY WARRANTIES, REPRESENTATIONS OR GUARANTEES EITHER EXPRESS OR IMPLIED, OF ANY KIND, NATURE OR TYPE WHATSOEVER FROM OR ON BEHALF OF SELLER. Buyer will make such examinations, reviews and investigations as it deems appropriate in making its decision to purchase the Property. Buyer acknowledges that after the Closing (as hereinafter defined), the sale of the Property by Seller to Buyer is irrevocable, and that Buyer shall have no recourse whatsoever to Seller. Except as otherwise specifically set forth herein Seller makes no oral or written representations, warranties, promises or guarantees including, without limitation, with respect to:

- (a) title or ownership to or of the Property or any portion or part thereof including any materials, fixtures or furnishings located therein or thereon;
- (b) compliance with any environmental protection, pollution or land use laws, including but not limited to, those pertaining to the use, handling, generating, treating,

storing or disposing of any hazardous waste, hazardous substance, petroleum product, storage tank or other container or retainer therefor, asbestos or any other substance controlled or otherwise governed by applicable laws;

(c) the zoning applicable to the Property;

(d) any restrictions on the use of the Property; and

(e) any pending, existing or projected approvals, commitments or guarantees concerning or relating to, or rights of or from or claims against or relating to, any governmental or quasi-environmental entity regarding, assurances of assistance, compliance with programs or benefits, real estate taxes or increases therein or changes thereof, tax reductions or benefits, ability to meet, comport with or comply with assistance programs or programs creating tax benefits for owners or tax reductions or credits for, in favor of or benefiting the owner of the Property or any part thereof.

Throughout this Agreement, (i) the terms "Closing" and "Closing Date" shall have the meaning ascribed to such terms in paragraph 7 hereof and (ii) the term "Notice of Intent to Close" shall mean a written notice given by Purchaser to Seller or by Seller to Purchaser of that parties waiver or fulfillment of its contingencies and indicating its intent to proceed to Closing, by facsimile or personal delivery given in accordance with paragraph 17 hereof, which notice may not be given prior to the forty-sixth (46th) calendar day after the Agreement Date and which notice shall be effective upon receipt.

2. *Purchase Price.* Purchaser shall pay to Seller, as consideration for the purchase of the Property, the sum of Five Million Five Hundred Thousand and No/ 100 Dollars (\$5,500,000.00), allocated as follows:

Personalty: \$ 962,500.00

Land and Improvements: \$4,537,500.00

Said Purchase Price shall be payable as follows:

\$50,000.00 Earnest Money, in the form of either cash, cashier's check or wire transfer of immediately available funds, which shall be paid by Purchaser to the Title Company (as hereinafter defined) no later than five (5) business days after the date on which Purchaser has received a fully executed original counterpart of this Agreement from Seller (the "Agreement Date"); and

\$50,000.00 Earnest Money, in the form of either cash, cashier's check or wire transfer of immediately available funds, which shall be paid by the Purchaser to the Title Company on or before the earlier of (a) the date Purchaser delivers to Seller its Notice of Intent to Close or (b) thirty

(30) days after the date Seller delivers to Purchaser its Notice of Intent to Close.

\$5,400,000.00

At Closing, excluding the Earnest Money, in the form of either cash, cashier's check or wire transfer of immediately available funds, adjusted to reflect prorations and other adjustments provided for herein.

The aforesaid Earnest Money shall be deposited in a strict joint order escrow with Chicago Title Insurance Company (the "Title Company") in accordance with the provisions of this paragraph and, at Purchaser's option, Purchaser shall direct the Title Company to invest said Earnest Money in an interest bearing account. All interest earned on said deposit shall be credited to Purchaser upon the Closing of this transaction. In the event of a default by Purchaser, the deposit and all interest earned on the aforesaid deposit shall be paid to Seller in accordance with paragraph 13 hereof. In the event of a default by Seller causing a termination of this Agreement under the provisions of paragraph 12 hereof, the deposit and all interest shall be payable to Purchaser. The cost of said escrow shall be borne equally by Purchaser and Seller.

3. *Conditions Precedent to Closing.* (a) Purchaser shall have a period (the "General Contingency Period") equal to the greater of (a) seventy-five (75) calendar days after the Agreement Date or (b) thirty (30) calendar days after whichever occurs first of (x) Seller delivers to Purchaser or (y) Purchaser delivers to Seller its Notice of Intent to Close, to satisfy itself, in Purchaser's sole and absolute discretion, that the Property is suitable for Purchaser and its intended use, including but not limited to the environmental condition of the Property, zoning and such other matters as Purchaser shall deem appropriate in its sole and absolute discretion. Notwithstanding the foregoing, Purchaser shall have a period of one hundred twenty (120) days after the Agreement Date to satisfy itself, in Purchaser's sole and absolute discretion that the Property can be used as a dialysis center, medical office center and long-term care facility under the current zoning ordinance in effect ("Zoning Contingency Period"). The General Contingency Period and the Zoning Contingency Period are hereinafter collectively referred to as the "Contingency Period." This Agreement, and Closing hereunder, shall be and hereby is, conditioned upon the Property being satisfactory to Purchaser as aforesaid.

(b) Until the expiration of the Contingency Period, Purchaser and Purchaser's officers, employees, agents, attorneys, accountants, architects and engineers shall have access to the Property and any books and records relating to the Property in Seller's possession or control without charge and at all reasonable times, upon reasonable notice, for the purpose of making such inspections, tests and verifications as they shall deem reasonably necessary. Seller shall provide to Purchaser, within five (5) business days of the Agreement Date, copies of all leases, contracts, building plans and specifications showing the current interior layout of the building, including partitions and built-in cabinetry, the most recent title reports, any surveys, environmental reports and engineering reports in Seller's possession or control. Seller shall provide to Purchaser, within five (5) business days of Purchaser's request therefor, any documents in its possession or control reasonably requested by Purchaser to enable Purchaser to conduct a satisfactory investigation of the Property with respect to the Conditions Precedent. Purchaser shall pay all costs and expenses of such investigation and testing and hereby indemnifies and holds Seller and the Property harmless from all costs and liabilities (including court costs and reasonable

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attorney's fees) relating to Purchaser's activities. Purchaser shall promptly return the Property to substantially the same condition as existed prior to such entry. Purchaser shall order any Phase I environment reports it deems necessary.

(c) In the event that Purchaser has determined, in its sole and absolute discretion, that the Property is unsatisfactory for any reason, Purchaser, upon written notice to Seller, given on or before the expiration of the General Contingency Period, may elect to terminate this Agreement and thereupon the Earnest Money shall be returned to Purchaser and this Agreement shall be null and void without any further liability by or to either party hereto. In the event that Purchaser has determined, in its sole and absolute discretion, that the Property cannot be used as a dialysis center, medical office center and long-term care facility under the current zoning ordinance in effect, upon written notice to Seller, given on or before the expiration of the Zoning Contingency Period, may elect to terminate this Agreement and thereupon the Earnest Money shall be returned to Purchaser and this Agreement shall be null and void without any further liability by or to either party hereto.

(d) At any time after forty-five (45) calendar days after the Agreement Date either Purchaser or Seller may deliver to the other a Notice of Intent to Close. In the event Purchaser elects to terminate this Agreement after the date Purchaser delivers its Notice of Intent to Close but prior to the expiration of the Contingency Period, and provided that Seller has, on the effective date of termination, either fulfilled or waived all of its contingencies and is ready and able to proceed to Close, \$50,000 of the Earnest Money, plus earned interest thereon, shall be paid to Seller, and \$50,000 of the Earnest Money, plus earned interest thereon, shall be paid to Purchaser. In the event Purchaser elects to terminate this Agreement after the expiration of the Contingency Period, and provided that Seller has, on the effective date of termination, either fulfilled or waived all of its contingencies and is ready and able to proceed to Close, all of the Earnest Money, plus the interest earned thereon, shall be paid to Seller. Notwithstanding the foregoing, if Purchaser terminates this Agreement for any of the following reasons, regardless of timing, it shall be entitled to the return of all Earnest Money, plus earned interest thereon: (i) failure of Seller to cure all Defects (as defined herein) prior to the end of the General Contingency Period (and such Defects are not waived) in accordance with paragraph 4 hereof; (ii) inability to use the Property as a dialysis center, medical office center and long-term care facility under the current zoning ordinance in effect for the Land; (iii) failure of Seller to cure any default under this Agreement. In the event that Purchaser has failed to timely notify Seller of its election to terminate this Agreement prior to the expiration of the General Contingency Period or the Zoning Contingency Period, as the case may be, this Agreement shall remain in full force and effect. In the event Purchaser elects to terminate this Agreement pursuant to the provisions hereof, Purchaser shall, within ten (10) business days of sending its termination notice to Seller, provide Seller with copies of all studies and reports obtained by Purchaser with regard to the Property during or after the Contingency Period.

(e) Seller's obligation to Close hereunder is conditioned upon the entry of a final non-appealable order (in form and substance satisfactory to Seller and Purchaser) of the Foreclosure Court approving this Agreement and the transactions contemplated hereby (the order hereinafter referred to as the "Approval Order", and the contingency based on the receipt of the Approval Order hereinafter referred to as the "Approval Contingency") after providing notice to holders of

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the Bonds. In addition, Seller shall publish in a local newspaper of general circulation, a notice of the date on which the hearing for the Approval Order will be held, which notice shall include, among other things, a notification that any Alternative Offer (as defined in paragraph 23) must be received not later than five (5) days prior to the date of the Approval Order hearing. Seller will file a motion for approval of the Approval Order no later than thirty (30) days after the Agreement Date, and shall set the hearing date for the motion on a date not later than twenty-eight (28) days after the date on which said motion is filed.

(f) Purchaser's obligation to Close hereunder is conditioned upon Purchaser receiving the survey described in paragraph 4 below and receiving a current commitment letter or binder issued by the Title Company, wherein the Title Company shall commit to issue to Purchaser an owner's title insurance policy, 1992 ALTA Policy Form (with deletion of creditor's rights) in the amount of the Purchase Price with all Standard and General Exceptions deleted and endorsed over so as to afford full "extended form coverage," subject only to the Permitted Exceptions (as hereinafter defined) together with survey, ALTA Restriction Endorsement No. 1 (if applicable), access, contiguity (if applicable), encroachment (if applicable), zoning 3.1 (with parking), and tax parcel identification endorsements, and such other endorsements as Purchaser may reasonably require (the "Title Policy"), together with copies of all documents of record and a real estate tax search for general real estate taxes and any special assessments. Seller shall order the commitment within ten (10) business days after the Agreement Date. As a condition of the Closing, the commitment shall be later dated to cover the Closing and the recording of the Deed (as hereinafter defined), and the Title Company shall deliver the Title Policy, or a marked up title commitment, to Purchaser, concurrently with the Closing. Seller shall pay for all Title Policy insurance charges and premiums and one-half the cost of the escrows provided in this Agreement. Purchaser shall pay the cost of any loan title policy and one-half the cost of the escrows provided in this Agreement. Within fourteen (14) business days after receipt of the commitment, Purchaser and Seller shall agree in writing on those exceptions subject to which Purchaser shall take title to the Property (the "Permitted Exceptions"), and a schedule of those Permitted Exceptions shall be included in this Agreement as Exhibit B. In the event the Purchaser and Seller are unable to agree as to the Permitted Exceptions within the period set forth herein, this Agreement shall terminate unless extended by Purchaser and Seller in writing, and Seller shall receive a full refund of the Earnest Money deposited by it plus any interest earned thereon.

4. *Survey.* Purchaser's obligation to Close hereunder is conditioned upon receipt of a current as-built ALTA/ACSM survey (the "Survey") of the Property prepared by a registered land surveyor or engineer, licensed in the State of Illinois, prepared in accordance with the Minimum Standard Detail Requirements of a Class A Land Title Survey jointly established by the American Land Title Association and the American Congress on Surveying and Mapping, certified to the Title Company, Purchaser, and any one lender to Purchaser of which Seller shall be notified. Purchaser shall order such Survey within ten (10) business days after the Agreement Date and Seller shall bear the expense of the Survey. The Survey shall depict and include, without limiting the foregoing: the present location of all improvements or structures on the Land, including all encroachments of any part thereof onto adjoining land and all encroachments of any part of adjoining improvements onto the Land; parking spaces (by location and number), building lines and all easements whether recorded or visible (and, if recorded, by specific reference to recorded document numbers); access to public roads or ways; all underground and above ground

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utilities servicing the Property; and identification of each Permitted Exception capable of being geographically located, by locating the same on the Survey with reference to recording information. The Survey must be sufficient to cause the Title Company to delete the standard printed survey exception and to issue the Title Policy free from any survey objections or exceptions whatsoever, other than the Permitted Exceptions. Within fourteen (14) business days of receipt of the Survey, Purchaser and Seller shall agree in writing on those Survey exceptions subject to which Purchaser shall take title to the Property, which exceptions shall be included in Exhibit B. In the event the Purchaser and the Seller are unable to agree to the Survey exceptions within the period set forth herein, this Agreement shall terminate unless extended by the Purchaser and Seller in writing and Seller shall receive a full refund of its Earnest Money plus interest earned thereon.

The items described in the foregoing paragraphs 3(e) and 4 are collectively referred to as "Title Evidence." If the Title Evidence discloses, with respect to the Survey, conditions which might, in Purchaser's sole judgment, adversely affect the Property or, with respect to the Title Commitment, deficiencies in endorsements or matters other than the Permitted Exceptions or, with respect to the UCC Searches, liens or claims not permitted hereunder (hereinafter collectively "Defects"), said Defects shall, as a condition of the Closing, be cured and removed by Seller to Purchaser's satisfaction from the Title Evidence disclosing the Defect(s). Purchaser shall advise Seller of all such Defects within thirty (30) calendar days of the receipt of the commitment from the Title Company or the Survey as appropriate. Purchaser may elect to waive any such Defect. If on the day the Approval Order is entered Seller has not cured the Defect (and such Defect is not waived), Purchaser shall have the right to terminate its obligations hereunder.

5. *Representations, Warranties and Covenants by Seller.* Subject to obtaining the Approval Order, Seller represents, warrants and/or covenants to Purchaser (all of which shall be true as of the Closing Date) as follows:

(a) Seller has the power and authority to enter into and perform this Agreement and Seller's Closing Documents (as hereinafter defined); such documents have been or will be duly executed and delivered; such execution, delivery and performance by Seller of such documents does not conflict with or result in a violation of any judgment, order, or decree of any court or arbiter to which Seller is a party, such documents are or will be valid and binding obligations of Seller, and are enforceable in accordance with their terms.

(b) Seller has no actual knowledge or information of any fact that would indicate that the Property has ever been used for the production, storage, deposit or disposal of hazardous substances or that any such substances, [including asbestos,] have ever been placed or located upon the Property, except for any substance or substances which are used by hospitals or medical facilities generally. Seller has no actual knowledge of any improper usage, storage or disposal of hazardous substances.

(c) Seller has received no notice of any action, litigation, condemnation or proceeding of any kind pending or, to the best knowledge of Seller, threatened against Seller or any portion of the Property except the Foreclosure Proceeding. At Closing the

Foreclosure Proceeding will either be dismissed or otherwise resolved such that it does not appear against title, including but not limited to through the Approval Order.

(d) Seller has no actual knowledge of any violation of any applicable zoning laws.

(e) To the best of Seller's knowledge, there are no leases or other occupancy agreements in effect with respect to the Property, which cannot and will not be terminated effective on or before the Closing Date, or which will not have been foreclosed upon pursuant to the Foreclosure Proceeding.

(f) During the term of this Agreement, Seller will not enter into any lease, service contract or other agreement which exceed the projected Closing Date without the prior written consent of Purchaser, which consent shall not be unreasonably withheld or delayed.

The representations and warranties set forth in this paragraph 5 shall be continuing through the Closing and shall expire at Closing.

6. *Representations and Warranties by Purchaser.* Purchaser represents and warrants to Seller that Purchaser is duly incorporated and is in good standing under the laws of the State of Illinois; that upon an assignment of this Agreement to a limited liability company formed by the principal of ViCor Development, Inc., said limited liability company will be duly organized and in good standing under the laws of the State of Illinois; that Purchaser has the requisite power and authority to enter into this Agreement and Purchaser's Closing Documents to be signed by it; such documents have been or will be duly authorized by all necessary action on the part of Purchaser and have been or will be duly executed and delivered; that the execution, delivery and performance by Purchaser of such documents do not conflict with or result in violation of Purchaser's Articles of Incorporation or Bylaws (or, in the case of a limited liability company, its Articles of Organization or Operating Agreement), or any judgments, order or decree of any court or arbiter to which Purchaser is a party; such documents are or will be valid and binding obligations of Purchaser, enforceable in accordance with their terms.

7. *Closing.* If this Agreement is not terminated by Purchaser pursuant to paragraph 3, and the Approval Order is entered by the Foreclosure Court, or, in the alternative, if the Approval Contingency is waived or deemed to have been waived, the closing of the purchase and sale contemplated by this Agreement (the "Closing") shall occur on the later of (a) thirty (30) days after the last day of the Contingency Period or (b) thirty-five (35) days after the entry of the Approval Order (so long as the Approval Order has become final and non-appealable), or, if applicable, thirty five (35) days after the date on which the Approval Contingency has been waived or deemed to have been waived (such later date being referred to as the "Closing Date"). Purchaser and Seller agree to cooperate with each other in establishing the Closing Date. The Closing shall take place at the Chicago Loop office of the Title Company or at such other place as may be agreed to by the parties hereto. In the event that the Approval Order is appealed, the Closing Date shall be postponed to a date which is thirty five (35) days after the date on which the Approval Order has become final and non-appealable.

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8. *Seller's Closing Documents.* On the Closing Date, Seller shall execute and/or deliver to Purchaser the following (collectively, "*Seller's Closing Documents*"):

(a) A Special Warranty Deed, Receiver's Deed or Sheriff's Deed conveying the Property to Purchaser, subject only to the Permitted Exceptions (the "*Deed*").

(b) A Bill of Sale, Receiver's Bill of Sale, or Sheriff's Bill of Sale for all Personalty included in the Purchase Price such transfer of Personalty shall be **WITHOUT WARRANTY OF QUALITY, MERCHANTABILITY, FITNESS FOR USE OR OTHERWISE.**

(c) If appropriate, a non-foreign affidavit properly executed by Seller, containing such information as is required by IRC Section 1445(b)(2) and its regulations.

(d) If appropriate, an IRPTA Disclosure Statement or, in the alternative and to the extent applicable, an affidavit that the provisions of IRPTA are not applicable.

(e) A closing statement properly executed by Seller.

(f) All original service contracts, if any, assumed by Purchaser.

(g) All keys and master keys in the possession of the Receiver or Seller to all locks located on the Property.

(h) Transfer tax declarations.

(i) Approval Order, and any necessary Order or documentation appropriate to resolve the Foreclosure Proceeding.

(j) Such other documents as Seller and Purchaser shall have agreed to after the date hereof or required by law or the Title Company.

9. *Purchaser's Closing Documents.* On the Closing Date, Purchaser will execute and/or deliver to Seller the following (collectively, "*Purchaser's Closing Documents*"):

(a) The balance of the Purchase Price net of prorations and other adjustments, by wire transfer, or by cashier's check to be received in the Title Company's trust account on or prior to the Closing Date.

(b) Such other documents as Seller and Purchaser shall have agreed to after the date hereof.

(c) A closing statement properly executed by Purchaser.

(d) Transfer tax declarations.

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10. *Adjustments and Prorations.* At Closing, Seller and Purchaser shall make all adjustments and apportion all expenses with respect to the Property, including, without limitation, the following:

(a) General real estate taxes and installments of special assessments due and payable on or before the Closing Date will be paid by Seller. General real estate taxes and installments of special assessments due and payable after the Closing Date shall be prorated by Seller and Purchaser as of the Closing Date based upon a calendar fiscal year. If the actual amount of such general real estate taxes and installments of special assessments cannot be determined on the Closing Date, Seller will credit Purchaser an amount equal to 105% of the 2000 real estate taxes, as adjusted to reflect the results of any appeal or challenge. The tax proration shall be final. Seller has appealed and/or challenged the real estate taxes and/or assessments for the 1999 tax year and shall be entitled to any rebate thereof.

(b) Seller and Purchaser will each pay one-half (1/2) of any reasonable and customary closing fee or charge imposed by any closing agent designated by the Title Company, including any fee assessed for a New York style closing.

(c) Seller shall pay all state and county transfer taxes regarding the Deed to be delivered by Seller under this Agreement. Purchaser shall pay all local transfer taxes.

(d) Seller will pay the cost of recording any documents necessary to place record title in the Purchaser. Purchaser will pay the cost of recording all other documents.

(e) All other operating costs of the Property, if any, will be allocated between Seller and Purchaser as of the Closing Date, so that Seller pays that part of such other operating costs attributable to the period before the Closing Date, and Purchaser pays that part of such operating costs attributable to the period from and after the Closing Date.

(f) Each of the parties will pay its own attorneys fees, except that the non-prevailing party enforcing this Agreement or any closing document will pay the reasonable attorneys fees and court costs incurred by the prevailing party to enforce its rights regarding such default.

11. *Possession.* Possession of the Property shall be delivered to Purchaser at Closing.

12. *Default by Seller.* In the event Seller fails to Close this transaction in accordance with the terms hereof, then Purchaser may either seek specific performance or terminate its obligations hereunder, in which event all sums paid by Purchaser to the Title Company shall be refunded to Purchaser without deduction, together with any interest earned thereon.

13. *Default by Purchaser.* In the event Purchaser fails to Close this transaction in accordance with the terms hereof, then Seller's sole and exclusive remedy shall be to retain the Earnest Money, together with any interest earned thereon, as liquidated damages and not as a penalty; thereafter, Purchaser shall have no liability to Seller hereunder.

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14. [Reserved].

15. *Condemnation and Casualty.* (a) If, prior to the Closing Date, eminent domain proceedings are commenced or threatened against all or any part of the Land or Improvements, Seller shall immediately give notice to Purchaser of such fact and at Purchaser's option (to be exercised within thirty (30) calendar days after Seller's notice) this Agreement shall terminate, in which event neither party will have further obligations under this Agreement and the Earnest Money, together with any accrued interest, shall be refunded to Purchaser. If Purchaser shall fail to give such notice, then there shall be no reduction in the Purchase Price, and Seller shall assign to Purchaser on the Closing Date all of Seller's right, title and interest in and to any award made or to be made in the condemnation proceedings. In the event that the final day of said thirty (30) day period shall occur after the scheduled Closing Date, the scheduled Closing Date shall be postponed a like number of days. Prior to the Closing Date, Seller shall not designate counsel, appear in, or otherwise act with respect to the condemnation proceedings without Purchaser's prior written consent, which shall not be unreasonably withheld, delayed or conditioned.

(b) (i) If, prior to Closing, all or any part of the Property incurs any material damage due to fire or other casualty, Seller will promptly notify Purchaser and Purchaser may, within thirty (30) calendar days after notice to Purchaser, elect in writing to terminate this Agreement without further liability hereunder on the part of either party except that the Title Company shall return the Earnest Money and any interest earned thereon to Purchaser. If Purchaser does not elect to terminate this Agreement, this Agreement shall remain in full force and effect and, at Closing, Seller shall assign to Purchaser all of Seller's right, title and interest in and to any insurance proceeds paid or payable for such damage, *provided* that Seller provides a credit at Closing to Purchaser in an amount equal to the amount of Seller's deductible. In addition, in the event that Purchaser does not elect to terminate this Agreement pursuant hereto, Purchaser will be entitled to settle the loss with the insurance carriers and to receive the insurance applicable to the loss. Seller will execute and deliver all necessary proofs of loss and assignments of claims and other documents as reasonably requested by Purchaser. For purposes of this paragraph, "material" damage shall mean damage requiring in excess of \$200,000.00 to repair.

(ii) If, prior to Closing, all or any part of the Property incurs damage due to fire or other casualty but such damage is not "material," this Agreement shall remain in full force and effect and at Closing Seller shall assign to Purchaser all of Seller's right, title and interest in and to any insurance proceeds paid or payable for such damage, *provided* that Seller provides a credit at Closing to Purchaser in an amount equal to the amount of Seller's deductible. In addition, Purchaser will be entitled to settle the loss with the insurance carriers and to receive the insurance applicable to the loss. Seller will execute and deliver all necessary proofs of loss and assignments of claims and other documents as reasonably requested by Purchaser.

16. *Broker's Commission.* Seller and Purchaser represent and warrant to each other that they have dealt with no brokers, finders or the like in connection with this transaction except for Shattuck Hammond Partners, a division of PricewaterhouseCoopers Securities, L.L.C. ("Broker"), and agree to indemnify each other and to hold each other harmless against all such claims, damages, costs or expenses. Seller agrees to pay Broker any commission it may be entitled to in connection with this transaction and shall indemnify and hold Purchaser harmless

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from any claims, damages, costs or expenses incurred in relation to the commission due to Broker. The provisions of this paragraph 16 shall survive termination of this Agreement.

17. *Notices.* Any notice required or permitted to be given by any party upon the other is given in accordance with this Agreement if delivered personally, mailed by United States certified mail, return receipt requested, postage prepaid, or if deposited prepaid with a nationally recognized, reputable overnight courier, properly addressed as follows:

If to Purchaser:	ViCor Development, Inc. 400 North State Street, Suite 460 Chicago, IL 60610 Attn: Victor J. Cypher, Jr. Fax (312) 755-5299
With a copy to:	J. Levin & Associates, Ltd. 211 Waukegan Road, Suite 300 Northfield, IL 60093 Attn: Jay Levin Fax (847) 441-9586
If to Seller:	Bill Barber U.S. Trust Company of Texas, N.A. 2001 Ross Avenue, Suite 2100 Dallas, Texas Fax (214) 754-1303
With a copy to:	Chapman and Cutler 111 W. Monroe Street Chicago, IL 60603 Attn: Franklin Top, III Fax (312) 701-2361

or by fax at the numbers set forth above with personal confirmation of receipt. Any party may change its address for the service of notice by giving written notice of such change to the other party, in any manner above specified, ten (10) days prior to the effective date of such change.

18. *Captions.* The paragraph headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement and are not to be considered in interpreting this Agreement.

19. *Entire Agreement; Modification.* This written Agreement constitutes the complete agreement between the parties and supersedes any prior oral or written agreements between the parties regarding the Property. There are no verbal agreements that change this Agreement and no waiver of any of its terms will be effective unless in writing executed by both parties.

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20. *Binding Effect.* This Agreement binds and benefits the parties and their permitted successors and assigns.

21. *Controlling Law.* This Agreement has been made under the laws of the State of Illinois, and such laws will control its interpretation.

22. *Severability.* The unenforceability or invalidity of any provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid.

23. *Additional Seller Agreements.* In the event Seller receives and accepts an offer (an "Alternative Offer") for the Property after the Agreement Date but prior to the entry of the Approval Order, Purchaser shall be entitled to a single, one time only break-up fee in an amount equal to one-half (1/2) of the amount by which the Alternative Offer is greater than the Purchase Price hereunder. The break up fee shall be payable within ten (10) days after acceptance of the Alternative Offer. In the event that the Approval Order has been entered, Seller shall thereafter no longer have the right to entertain or accept an Alternative Offer. Seller shall not accept an Alternative Offer for the Property unless it equals or exceeds \$6,050,000. Purchaser shall have the right, to be exercised within thirty (30) days after receipt of notice from Seller of such Alternative Offer, to match the purchase price of any Alternative Offer, but any failure to match an Alternative Offer shall not be deemed a default under this or termination of this Agreement. In the event Seller accepts an Alternative Offer and Purchaser fails to match the Alternative Offer, the Earnest Money shall be returned to the Purchaser and this Agreement (except for Purchaser's rights under this paragraph 23) shall terminate. While this Agreement is in effect, Seller shall not actively market the Property from and after the Agreement Date until the date this Agreement terminates. Notwithstanding the foregoing, no break-up fee shall be payable in the event that Purchaser has materially breached its obligations under this Agreement, nor shall it be payable if Purchaser elects to terminate this Agreement.

24. *Assignment.* Prior to or at Closing, Purchaser shall have the right to assign its rights and obligations under this Agreement to a bona fide limited liability company (except for any obligations arising from damage or destruction caused in Purchaser's investigation) to be formed by Purchaser for the purpose of purchasing the Property and taking title thereto and upon such assignment the limited liability company shall be considered to be the "Purchaser" hereunder and thereafter ViCor Development, Inc., shall have no further liability hereunder.

25. *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be considered a complete original.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement the day and year accompanying said signature.

06/07/2001 14:18

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Seller:

U.S. TRUST COMPANY OF TEXAS, N.A.,
Solely in its capacity as Mortgage Trustee
and Indenture Trustee as aforesaid

By: _____

Printed Name: _____

Its: _____

Dated: May _____, 2001

Purchaser:

VICOR DEVELOPMENT, INC.,
an Illinois corporation

By: _____

Printed Name: _____

Its: President

Victor J. Cypher, Jr.

Dated: May 23, 2001

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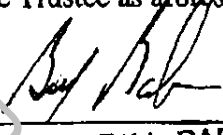
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement the day and year accompanying said signature.

Seller:

Purchaser:

U.S. TRUST COMPANY OF TEXAS, N.A.,
Solely in its capacity as Mortgage Trustee
and Indenture Trustee as aforesaid

VICOR DEVELOPMENT, INC.,
an Illinois corporation

By: 
Printed Name: BILL BARBER
Its: VICE PRESIDENT

By: _____
Printed Name: Victor J. Cypher, Jr.
Its: President

Dated: May ____, 2001

Dated: May ____, 2001

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EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

Lots 1, 2, 3, 4, 5, the West 10 feet of lot 7, and lot 8 in Joseph A.W. Ree's subdivision of the South 10 rods of the North 40 rods of the East 1/2 of the Northeast 1/4 of Section 17, Township 40 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

PARCEL 2:

Lot 1 and the East 30 feet of lot 2 in Horace and Goodrich's subdivision of the South 10 rods of the North 30 rods of the East 1/2 of the Northeast 1/4 of Section 17, Township 40 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

PARCEL 3:

Lot 6 in John N. Young's subdivision of the South 5 acres of the North 25 acres of the East 1/2 of the Northeast 1/4 of Section 17, Township 40 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

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EXHIBIT B

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PERMITTED EXCEPTIONS

1. Taxes not yet due and payable.

Property of Cook County Clerk's Office

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EXHIBIT D

SECURED PROMISSORY NOTE

20132704

Property of Cook County Clerk's Office

SECURED PROMISSORY NOTE

\$850,000 (U.S.)

August 01, 2001

FOR VALUE RECEIVED, ALEXA PARTNERSHIP, L.L.C., an Illinois limited liability company ("**Borrower**") promises to pay, in lawful money of the United States of America, to the order of VICTOR J. CYPHER, JR., an individual ("**Lender**") at 400 North State Street, Suite 460, Chicago, Illinois 60610, or at such other place as Lender may designate in writing from time to time, the principal sum of Eight Hundred Fifty Thousand Dollars (U.S.) (\$850,000.00), together with interest at the Interest Rate (as hereinafter defined) payable at the rates and in the manner provided below.

1. Interest Rate. Prior to maturity or default, the principal balance remaining from time to time unpaid hereunder shall bear interest at a rate (the "**Interest Rate**") equal to the Prime Rate (as defined hereinafter) **plus** one percent (1%) calculated daily on the basis of a 360-day year for each day any part of the principal balance shall remain outstanding. As used herein, the "**Prime Rate**" means the rate of interest announced by Bank of America as its prime rate (or equivalent rate of interest). If Bank of America ceases to announce a "Prime Rate," then the Prime Rate herein shall be determined by reference to the "prime rate" announced by any other national bank selected by Lender. "Prime Rate" shall not imply that such rate is a preferred rate or one which is offered by Lender to its most credit-worthy customers.

2. Debt Service. No monthly installments of principal or interest are payable hereunder. A final payment of all principal, interest and other amounts unpaid hereunder shall be due and payable in full on December 1, 2002 (the "**Maturity Date**"), if not sooner paid.

3. Prepayment. This Note may be prepaid in whole or in part without penalty.

4. Application of Payments. Any payments received from Borrower shall be credited against the sums due hereunder in the following order of priority: (i) interest; and (ii) principal.

5. Security. This Note is secured by a lien pursuant to a Mortgage, Security Agreement, Financing Statement and Fixture Filing to be filed on the Property.

6. Default.

(a) Events of Default. The occurrence of any one or more of the following shall be an "Event of Default" under this Note:

(i) The failure to make any payment of principal, interest, or other sums due under this Note or the Mortgage, or any other document or instrument executed in connection with this Note, within five (5) days after notice from Lender that same is past due; or

(b) Remedies. If there is an Event of Default, then in addition to any other rights or remedies available to Lender, Lender may declare the entire principal balance under this Note together with all accrued and unpaid interest immediately due and payable.

(c) Default Rate. If payments of interest, fees or principal under this Note shall remain overdue and unpaid after the expiration of any applicable payment period, Lender shall be entitled to damages for the detriment caused thereby, and interest shall thereafter accrue on the principal amount at the rate of *three percent (3%) per month compounded annually (the "Default Rate")* until such amounts are paid. On the occurrence of an Event of Default, Lender shall be entitled to damages for the detriment caused thereby and Borrower, without notice or demand by Lender, shall thereafter pay interest at the Default Rate until the Event of Default is cured. Borrower recognizes that its default in making payments when due as provided herein, or otherwise causing an Event of Default to occur hereunder, will require Lender to incur additional expense in servicing the Loan and loss to Lender of the use of the money due and that damages caused thereby would be extremely difficult and impractical to ascertain. Borrower agrees that the accrual of interest at the Default Rate is a reasonable estimate of the damage to Lender in the event of late payment and that the accrual of interest at the Default Rate following any other default is a reasonable estimate of the damage to Lender in the event of such other default. Nothing in this paragraph shall be construed as an obligation on the part of Lender to accept, at any time, less than the full amount then due hereunder, or as a waiver or limitation of Lender's right to compel prompt performance.

7. Due on Sale or Encumbrance. In the event that Borrower, without the prior written consent of Lender (which consent may not be unreasonably withheld, delayed or conditioned) shall sell, convey, assign, transfer, alienate or otherwise dispose of or be divested of its title to, or, shall mortgage, convey security title to, or otherwise encumber or cause to be encumbered, the Property or any part thereof or any interest therein in any manner or way, whether voluntary or involuntary, then the entire balance of the Note, shall become immediately due and payable at the option of Lender. Consent to one such transfer by Lender shall not be deemed a waiver of the right to require such consent to further or future transfers.

8. Collection Expenses. If any party to this Agreement commences litigation for the interpretation, enforcement, termination, cancellation or rescission of this Agreement, or for damages for the breach of this Agreement, the prevailing party in such actions shall be entitled to its reasonable attorney's fees and court and other costs incurred, to be paid by the losing party as fixed by the court or in a separate action brought for that purpose.

9. Usury Savings Clause. Notwithstanding any provision herein, the total liability for payments in the nature of interest shall not exceed the applicable limits imposed by any applicable state or federal interest rate laws. If any payments in the nature of interest, additional interest, or other charges made hereunder are held to be in excess of the applicable limits imposed by any applicable state or federal laws, it is agreed that any such amount held to be in

excess shall be considered payment of principal and the indebtedness evidenced thereby shall be reduced by such amount, or if such excessive interest exceeds the unpaid principal balance of this Note, such excess shall be refunded to Borrower. All sums paid pursuant to this Note, to the extent permitted by applicable law, shall be amortized, prorated, allocated and spread throughout the full term of this Note until payment in full so that the actual rate of interest is uniform throughout the actual term of this Note or does not exceed the maximum lawful rate throughout the entire term of this Note as appropriate.

10. Borrower's Waivers.

(a) Borrower hereby waives diligence, demand, presentment for payment, protest and notice of protest, and specifically consents to and waives notice of any renewals or extensions of this Note, whether made to or in favor of Borrower or any person or persons. Borrower expressly waives all right to the benefit of any statute of limitations and any moratorium, reinstatement, marshaling, forbearance, extension, redemption, or appraisement now or hereafter provided by the Constitution or the laws of the United States or of any state thereof, as a defense to any demand against Borrower, to the fullest extent permitted by law.

(b) Borrower hereby waives any right to trial by jury with respect to any action or proceeding brought by Borrower, Lender or any other person relating to (i) the indebtedness evidenced by this Note, or (ii) the Loan Agreement, or (iii) any of the Loan Documents. Borrower hereby agrees that this Note constitutes a written consent to waiver of trial by jury.

11. Lender's Rights; No Waiver by Lender. The rights, powers and remedies of Lender under this Note shall be in addition to all rights, powers and remedies given to Lender under the Loan Agreement, the Loan Documents, and any other agreement or document securing or evidencing the indebtedness evidenced hereby or by virtue of any statute or rule of law, including, without limitation, the Nevada Uniform Commercial Code. All such rights, powers and remedies shall be cumulative and may be exercised successively or concurrently in Lender's sole discretion without impairing Lender's security interest, rights or available remedies. Any forbearance, failure or delay by Lender in exercising any right, power or remedy shall not preclude further exercise thereof, and every right, power or remedy of Lender shall continue in full force and effect until such right, power or remedy is specifically waived in a writing executed by Lender. Borrower waives any right to require the Mortgagee (as defined in the Mortgage) to proceed against any person or to pursue any remedy in Lender's power.

12. Governing Law. This Note shall be construed, enforced and otherwise governed by the laws of the State of Illinois, irrespective of the application of any conflicts of laws rules.

13. Binding Effect. This Note shall bind the successors and assigns of Borrower and all endorsers hereto and shall inure to the benefit of Lender, and Lender's successors and assigns. This Note may not be modified except by written agreement signed by both Lender and Borrower.

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14. Time. Time is of the essence with respect to each and every term and provision of this Note.

15. Notices. Any notice, demand or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given upon delivery or refusal to accept delivery if sent via (i) personal delivery, (ii) United States registered or certified mail, postage prepaid, or (iii) via nationally recognized overnight courier service, and addressed to a party at its address set forth below or to such other address the party to receive such notice may have designated to all other parties by notice in accordance herewith:

If to Lender:

Victor J. Cypher, Jr.
c/o ViCor Development, Inc.
400 North State Street, Suite 460
Chicago, Illinois 60610

If to Borrower:

Alexa Partnership, L.L.C.
c/o ViCor Development, Inc.
400 North State Street, Suite 460
Chicago, Illinois 60610
Attention: Victor J. Cypher, Jr.

BORROWER:

ALEXA PARTNERSHIP, L.L.C., an Illinois limited liability company

By:


Victor J. Cypher, Jr., its Managing Member

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EXHIBIT E

MORTGAGE

Property of Cook County Clerk's Office

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20132704

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL
TO:

J. Levin & Associates, Ltd.
211 Waukegan Road, Suite 300
Northfield, IL 60093

(The Above Space for Recorder's Use Only)

MORTGAGE WITH
ASSIGNMENT OF RENTS, SECURITY AGREEMENT
AND FIXTURE FILING

This MORTGAGE WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the "Mortgage") is executed as of this 1st day of August, 2001 by ALEXA PARTNERSHIP, L.L.C., an Illinois limited liability company ("Mortgagor"), having offices at 400 North State Street, Chicago, IL 60610 for the benefit of VICTOR J. CYPHER, JR., an individual ("Mortgagee"), having offices at 400 North State Street, Chicago, IL 60610.

WITNESSETH:

Mortgagor HEREBY IRREVOCABLY AND ABSOLUTELY DOES BY THESE PRESENTS GRANT, MORTGAGE, CONVEY, TRANSFER, ASSIGN, BARGAIN AND SELL TO Mortgagee, its successor and assigns, with all statutory rights under the laws of the State of Illinois, all of Mortgagor's right, title and interest now owned or hereafter acquired in and to the following property, together with the Personal Property (as defined in Section 9.1), all of which is collectively defined as the "Property": (a) that certain real property (the "Land") located in the County of Cook, State of Illinois, and more particularly described in attached Exhibit "A;" (b) all Improvements (as hereinafter defined); (c) all appurtenances and easements of the Land and all rights and privileges thereof, including all minerals, oil, gas and other hydrocarbon substances thereon or therein, air rights, water rights and development rights, and any land lying in the streets, roads or avenues adjoining the Land or any part thereof; (d) all Fixtures (as hereinafter defined), whether now or hereafter installed, being hereby declared to be for all purposes of this Mortgage, a part of the Land; and (e) the rents, issues and profits of or from the foregoing.

TO HAVE AND TO HOLD the Property and all parts thereof with all rights, privileges and appurtenances thereunto belonging, and all rents, issues and profits therefrom, unto Mortgagee, its successors and assigns, forever, for the uses and purposes herein expressed. THIS MORTGAGE IS GIVEN FOR THE PURPOSE OF SECURING, in such order of priority as Mortgagee may determine: (a) payment of the Indebtedness (as hereinafter defined); and (b) payment (with interest as provided) and performance by Mortgagor of the Obligations (as hereinafter defined). At no time shall the principal amount of the Indebtedness, not including sums advanced in accordance herewith to protect the security of this Mortgage, exceed two hundred percent (200%) of the aggregate original principal amount of the Note.

ARTICLE 1: DEFINITIONS

Certain Defined Terms: As used in this Mortgage the following terms shall have the following meanings; other terms are defined where they appear in this Mortgage:

Event of Default: As defined in Paragraph 6.1 hereof.

Fixtures: All fixtures located upon or within the Improvements or now or hereafter installed in, or used in connection with any of the Improvements, including without limitation appliances, pipes, plumbing, heating, ventilating, air conditioning and air cooling equipment, whether or not permanently affixed to the Land or the Improvements.

Impositions: All real estate and personal property and other taxes and assessments, water and sewer rates and charges levied or assessed upon or with respect to the Property, and all other governmental charges and any interest or costs or penalties with respect thereto, ground rent and charges for any easement or agreement maintained for the benefit of the Property, general and special, ordinary and extraordinary, foreseen or unforeseen, of any kind and nature whatsoever that at any time prior to or after the execution of the Loan Documents may be assessed, levied, imposed, or become a lien upon the Property or the rent or income received therefrom, or any use or occupancy thereof; and any and all other charges, expenses, payments, claims, mechanics' or material suppliers' liens or assessments of any nature, if any, which are or may become a lien upon the Property or the rent or income received therefrom.

Impound Account: The account that Mortgagor may be required to maintain pursuant to Paragraph 3.5 hereof for the deposit of amounts required to pay Impositions and insurance premiums.

Improvements: All buildings and other improvements and appurtenances located on the Land, including surface improvements, such as landscaping and landscaping structures and all improvements, additions and replacements thereof, and other buildings and improvements, at any time hereafter constructed or placed upon the Land.

Indebtedness: The principal of and all other amounts, payments and premiums due under the Note and any extensions or renewals thereof (including extensions or renewals at a different rate of interest, whether or not evidenced by a new or additional promissory note or notes), and all other indebtedness of Mortgagor to Mortgagee and additional advances under, evidenced by and/or secured by the Loan Documents, plus interest on all such amounts.

Laws and Restrictions: All federal, state, regional, county, local and other laws, regulations, orders, codes, ordinances, rules, statutes and policies, restrictive covenants and other title encumbrances, permits and approvals, Leases and other rental agreements, relating to the development, occupancy, ownership, management use, and/or operation of the Property or otherwise affecting all or any part of the Property or Mortgagor.

Leases: Any and all leasehold interests, including subleases and tenancies following attainment, now or hereafter affecting or covering any part of the Property.

Loan: The loan from Mortgagee to Mortgagor evidenced by the Note.

Loan Agreement: The Loan Agreement between Mortgagee and Mortgagor dated the date hereof.

Loan Documents: The Note, this Mortgage, and all other documents, securing or relating to the Loan, the payment of the Indebtedness or the performance of the Obligations.

Material Adverse Change: Any material and adverse change in (a) the financial condition of the Mortgagor, or (b) the condition or operation of the Property.

Note: The Secured Promissory Note of even date herewith executed by Mortgagor in the original principal amount of Eight Hundred Fifty Thousand Dollars (\$850,000) payable to Mortgagee or its order, and all modifications, renewals or extensions thereof.

Obligations: Any and all of the covenants, promises and other obligations (including, without limitation, the Indebtedness) made or owing by Mortgagor or due to Mortgagee under and/or as set forth in the Loan Documents and all of the covenants, promises and other obligations made or owing by Mortgagor to each and every other Person relating to the Property.

Permitted Exceptions: Those exceptions to title listed on Schedule B to Mortgagee's policy of title insurance insuring the lien of this Mortgage, provided such exceptions have been expressly approved in writing by Mortgagee.

Person: Any natural person, corporation, limited liability company, partnership, firm, association, government, governmental agency or any other entity, whether acting in an individual, fiduciary or other capacity.

Property: As defined in the above granting paragraph of this Mortgage.

Receiver: Any trustee, receiver, custodian, fiscal agent, liquidator or similar officer.

Remediation and Indemnification Agreement: The Hazardous Substances Remediation and Indemnification Agreement of even date herewith executed by Mortgagor in favor of Mortgagee.

Rents: All rents, royalties, revenues, issues, profits, proceeds and other income from the Property.

Secondary Interest Rate: Default Interest, as defined in the Note.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES

Mortgagor hereby represents and warrants to Mortgagee that as of the date of this Mortgage and as of the date of any subsequent disbursement pursuant to the Loan Documents:

2.1 **Title, Authorization and Organization.** Mortgagor (a) is the lawful owner of the Property and holds good and marketable title to the Property free and clear of all defects, liens, encumbrances, easements, exceptions and assessments, except Permitted Exceptions; (b) has good, right and lawful authority to mortgage, convey, assign and grant a security interest in the Property as provided in and by this Mortgage; (c) has the requisite power and authority to own, develop, operate and sell the Property; and (d) is in compliance with all Laws and Restrictions applicable to Mortgagor and the Property.

2.2 **Validity of Loan Documents.** The execution, delivery and performance by Mortgagor of the Loan Documents and the borrowing evidenced by the Note are within the power of Mortgagor, and will not violate the articles of organization or operating agreement of Mortgagor or any Laws, Restrictions or any agreement or other instrument. Each of the Loan Documents, when executed and delivered to Mortgagee will constitute a legal, valid and binding obligation of Mortgagor enforceable in accordance with its terms.

2.3 **Financial Statements.** All financial statements and data that have been given to Mortgagee, if any, are true, accurate, complete and correct, except as expressly noted to the contrary therein.

2.4 **Bankruptcy.** No petition in bankruptcy, petition or answer seeking assignment for the benefit of creditors or appointment of a Receiver with respect to Mortgagor has occurred or is contemplated, and no reorganization, arrangement, liquidation or dissolution as similar relief under the Federal Bankruptcy laws or any state laws have been instituted by or against Mortgagor and, to the best of Mortgagor's knowledge, none is contemplated by Mortgagor or any third party.

ARTICLE 3: AFFIRMATIVE COVENANTS

Mortgagor hereby covenants and agrees as follows:

3.1 Obligations of Mortgagor. Mortgagor will (a) repay the Indebtedness, as provided herein, in the Note and under the other Loan Documents (b) timely perform, or cause to be timely performed, all of the Obligations; (c) maintain and preserve the lien and priority of this Mortgage for the benefit of Mortgagee; and (d) forever warrant and defend the liens granted herein against any and all claims and demands whatsoever.

3.2 Insurance.

3.2.1 Mortgagor shall obtain the insurance coverage described in the Loan Agreement and comply with all conditions set forth therein. Such insurance must be primary and non-contributory with any other insurance carried by Mortgagee.

3.2.2 Should any insurance required by Mortgagee be canceled, reduced or nonrenewed, or if Mortgagor fails to provide such required insurance, Mortgagee may, at its sole discretion, procure insurance and the cost thereof shall be additional Indebtedness of Mortgagor hereunder.

3.2.3 Mortgagor shall reimburse Mortgagee for any premiums or other costs associated with obtaining insurance which Mortgagee may pay in the event Mortgagor shall fail to comply with the terms hereof. At least thirty (30) days prior to the expiration of each such policy, Mortgagor shall furnish Mortgagee with evidence satisfactory to Mortgagee of the payment of premiums and the reissuance of a policy continuing such insurance in full force and effect. All such policies shall contain a provision that such policies may not be canceled or amended including any reduction of the scope or limits of coverage without at least thirty (30) days prior written notice to Mortgagee.

3.3 Maintenance, Waste, and Repair; Permits. Mortgagor will (a) maintain the Property in good order and condition, (b) promptly make all necessary structural and non-structural repairs to the Property, (c) not diminish or materially alter the Improvements, nor erect any new buildings, structures or building additions on the Property without the prior written consent of Mortgagee, and (d) not permit any waste of the Property or make any change in the use thereof, nor do or permit to be done thereon anything, that may in any way impair the security or priority of this Mortgage. Mortgagor shall also maintain in good standing all licenses, permits and other governmental authorizations necessary for the development, operation, use or sale of the Property. Mortgagor shall do any and all acts necessary to protect and preserve the security of Mortgagee hereunder, the specific enumerations herein not excluding the general.

3.4 Liens. Except for the Permitted Exceptions and the lien of the Mortgage, Mortgagor shall not, without Mortgagee's prior written consent, permit any liens or encumbrances to attach to the Property. Subject to the provisions of Section 7.2 of the Loan Agreement regarding mechanics' liens, Mortgagor shall promptly pay and discharge, at Mortgagor's sole cost and expense, all liens, encumbrances and charges now or hereafter affecting the Property or any part thereof or interest therein, except taxes and assessments not yet due or delinquent.

3.5 Impositions; Impounds. Mortgagor will pay when due all Impositions. Upon an Event of Default, Mortgagor will pay monthly to Mortgagee an amount equal to one-twelfth (1/12th) of the annual cost of Impositions together with an amount equal to the estimated next hazard and other required insurance premiums. These funds will be held by Mortgagee (and may be commingled with other funds of Mortgagee) without interest and will be released to Mortgagor for payment of Impositions and insurance premiums, or directly applied to such costs by Mortgagee, as Mortgagee may elect.

3.6 Compliance with Law. Mortgagor will promptly and faithfully comply with all present and future Laws and Restrictions.

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3.7 Books and Records. Mortgagor, without expense to Mortgagee, will maintain full and complete books of account and other records reflecting the results of the operations of the Property in accordance with generally accepted accounting principles consistently applied, and will furnish or cause to be furnished to Mortgagee such financial information concerning the condition of the Mortgagor and the Property in accordance with the Loan Documents and as Mortgagee shall reasonably request.

3.8 Litigation. Mortgagor will promptly give notice in writing to Mortgagee of any litigation which may reasonably be expected to result in Material Adverse Change.

3.9 Inspection of Property. Mortgagee shall have the right to inspect the Property at all reasonable times and access thereto shall be permitted for that purpose. Without limiting the generality of the foregoing, Mortgagee, its environmental consultant, and any other person or entity designated by Mortgagee, including but not limited to any receiver and any representative of a governmental entity, shall have the right, but not the obligation, after notice to Mortgagor, to enter upon the Property at all reasonable times to assess any and all aspects of the environmental condition of the Property and its use, including but not limited to, conducting any environmental assessment or audit (the scope of which shall be defined in Mortgagee's sole and absolute discretion) and taking samples of soil, ground water or other water, air, or building materials and conducting other invasive testing. Mortgagor shall cooperate with and provide access to Mortgagee and any such person or entity designated by Mortgagee.

Without limiting the generality of the foregoing, if Mortgagee deems it reasonably necessary, Mortgagee (by its officers, managers, employees and agents) at any time and from time to time, either prior to or after the occurrence of an Event of Default hereunder for any reason in its reasonable discretion, may contract for the services of persons (the "Site Reviewers") to perform environmental assessments (the "Site Assessment") on the Property for the purposes of determining whether there exists on or near the Property any environmental conditions which could reasonably be expected to result in liability, cost or expense to the owner, occupier or operator of the Property arising under any state, federal or local law, rule or regulation relating to hazardous materials. The Site Assessments may be performed at any time or times, upon reasonable notice, and under reasonable conditions established by Mortgagor which do not impede the performance of the Site Assessments. The Site Reviewers are hereby authorized to enter upon the Property for such purposes. The Site Reviewers are further authorized to perform both above and below the ground testing for the presence of hazardous materials on the Property and such other tests on the Property as may be appropriate to conduct the Site Assessments in the reasonable opinion of the Site Reviewers. Mortgagor will supply to the Site Reviewers such historical and operation information regarding the Property as may be reasonably requested by the Site Reviewers to facilitate the Site Assessments and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. On request, Mortgagee shall make the results of such Site Assessments fully available to Mortgagor, which (prior to the occurrence of an Event of Default hereunder), may at its election participate at its election under reasonable procedures in the direction of such Site Assessments and the descriptions of tasks of the Site Reviewers. The cost of performing such Site Assessments shall be paid by Mortgagor upon demand of Mortgagee and such obligations shall be indebtedness secured by this Mortgage.

3.10 Taxes. Mortgagor shall pay before any penalty or interest attaches all general taxes and shall pay special taxes, special assessments, water charges, sewer service charges and all other charges against the Property of any nature whatsoever when due. Mortgagor will deliver to Mortgagee, within seven (7) days after the demand made therefor, bills showing the payment to the extent then due of all of any of the foregoing and any Imposition that may have become a lien upon the Property or any part thereof.

3.11 Reimbursement. Any amount paid by Mortgagee for any tax, stamp tax, assessment, water rate, sewer rate, insurance premium, repair, rent charge, debt, claim, inspection or lien having priority over this Mortgage or to in any way protect the security for the Loan, shall (a) bear interest at the Secondary Interest Rate from the date of payment by Mortgagee, (b) constitute additional indebtedness secured by this Mortgage, prior to any right, title or interest in or claim upon the Property attaching or accruing subsequent to the lien of this Mortgage, (c) be secured by this Mortgage, and (d) be payable by Mortgagor to Mortgagee upon demand.

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3.12 Defense of Actions and Costs. Mortgagor shall appear and defend any action or proceeding purporting to affect the security or priority of this Mortgage and/or any additional or other security for the obligations secured hereby or the interest, rights and powers of Mortgagee. Mortgagor shall pay all costs, fees and expenses, including, without limitation, costs of evidence of title and reasonable attorneys' fees, paid or incurred in any action or proceeding in which Mortgagee may appear or be made a party, whether or not pursued to final judgment, and in any exercise of the power of sale contained herein, whether or not such sale is actually consummated.

3.13 Actions by Mortgagee to Preserve. In case of default herein, Mortgagee may, but need not, and whether electing to declare the whole of the indebtedness due and payable or not, and without waiver of any other remedy, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Property or contest any tax or assessment or cure any default of landlord in any lease of the Property. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Mortgagee in regard to any tax referred to herein or to protect the Property or the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the Secondary Interest Rate. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor. In connection therewith (without limiting its general powers), Mortgagee shall have and is hereby given the right, but not the obligation (a) to enter upon and take possession of the Property, (b) to make additions, alterations, repairs and improvements to the Property which it may consider necessary or proper to keep the Property in good condition and repair, (c) to appear, participate in and direct any action or proceeding affecting or which may affect the security hereof or the rights or powers of Mortgagee hereunder, (d) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in its judgment may affect or appear to affect the security of this Mortgage or be or appear to be prior or super or hereto, and (e) in exercising such powers, to pay necessary expenses and employ necessary or desirable consultants.

3.14 Stamp Tax. If, by the laws of the United State of America, or of any state having jurisdiction over the Mortgagor, any tax is due or becomes due in respect of the issuance of the Note hereby secured, the Mortgagor covenants and agrees to pay such tax in the manner required by such law. The Mortgagor further covenants to reimburse the Mortgagee for any sums which Mortgagee may expend by reason of the imposition of any tax on the issuance of the Note secured hereby.

ARTICLE 4: NEGATIVE COVENANTS

Mortgagor hereby covenants and agrees as follows:

4.1 Changes to Property. Mortgagor shall not, (a) make any alterations to the property without the prior written consent of the Mortgagee; (b) suffer or permit any change in the general nature of the occupancy of the Property, without Mortgagee's prior written consent; (c) initiate or acquiesce in any zoning reclassification or variance without Mortgagee's prior written consent; or (d) cause or permit any non-conforming use to be discontinued or abandoned if, under applicable zoning provisions, the use of all or any portion of the Property shall become a non-conforming use.

4.2 Due on Sale or Encumbrance.

4.2.1 Mortgagor covenants and agrees that Mortgagee, at its option, has the unqualified right to accelerate the maturity of the indebtedness evidenced by the Note and secured hereby causing the full principal balance and accrued interest under the Note, together with a prepayment premium in the amount, if any, required to be paid pursuant to the terms of the Note in the event of a prepayment at the time of such acceleration (and if at the time of such acceleration Mortgagor has no right to prepay the indebtedness, then the amount of such premium shall be equal to ten percent (10%) of the then outstanding principal balance), to be immediately due and payable without notice to Mortgagor, in the event that:

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4.2.2 Mortgagor shall, without the prior written consent of Mortgagee, sell, transfer, convey, or assign the legal or equitable title to all or any portion of the Property, whether by operation of law, voluntarily, or otherwise, or shall contract to do any of the foregoing; or

4.2.3 the beneficiary of Mortgagor shall, without the prior written consent of Mortgagee, sell, transfer, convey, assign or create a security interest in the beneficial interest, or any part thereof, in Mortgagor, whether by operation of law, voluntarily, or otherwise, or shall contract to do any of the foregoing; or

4.2.4 any general or limited partner of the beneficiary of Mortgagor shall, without the prior written consent of the Mortgagee, sell, transfer, convey, assign or create a security interest in the general or limited partnership interest owned by any such general or limited partner, or any part thereof, whether by operation of law, voluntarily, or otherwise, or shall contract to do any of the foregoing; or

4.2.5 any shareholder of any corporate general partner of the beneficiary of Mortgagor shall, without the prior written consent of the Mortgagee, sell, transfer, convey, assign or create a security interest in any of the shares owned by any such shareholder whether by operation of law, by devise, by descent, voluntarily or otherwise, or shall contract to do any of the foregoing; or

4.2.6 Mortgagor shall, without the prior written consent of Mortgagee, directly or indirectly, create, suffer or permit to be created or filed against the Property, or any portion thereof, or against the rents, issues or profits therefrom (including, without limitation, any lien arising with respect to the payment of taxes, assessments and other charges described in Paragraph 2 above), any mortgage lien, security interest, or other lien or encumbrance, except the lien of current general taxes duly levied and assessed but not yet due and payable and the lien of this Mortgage.

The foregoing provisions of this paragraph are for the purpose of:

- (a) protecting Mortgagee's security, both of repayment of the indebtedness secured hereby and the value of the Property;
- (b) giving the Mortgagee the full benefit of its bargain with the beneficiaries of Mortgagor;
- (c) allowing the Mortgagee to raise the interest rate and collect assumption fees; and
- (d) keeping the Property and the beneficial interest in Mortgagor free of subordinate financing liens or security interests.

4.3 Replacement of Fixtures and Personalty. Mortgagor will not permit any of the Fixtures to be removed at any time from the Property without the prior written consent of Mortgagee unless actually replaced by articles of equal suitability and value owned by Mortgagor free and clear of any lien or security interest which such replacement articles shall be subject to the lien of this Mortgage without any further action by the Mortgagee or Mortgagor.

ARTICLE 5: CASUALTIES AND CONDEMNATION

5.1 Insurance and Condemnation Proceeds.

5.1.1 Mortgagor shall promptly notify Mortgagee of any loss or damage to the Property. Mortgagee may make proof of loss if Mortgagor fails to do so within thirty (30) days of the casualty. Unless Mortgagor and Mortgagee agree in writing, insurance proceeds will be applied to restoration or repair of property damaged, provided that such restoration or repair is economically feasible and that the security and priority of the Mortgage is not impaired. If such restoration or repair is not economically feasible or if the security or priority of this Mortgage would be impaired the insurance proceeds will be applied to the sums secured by this Mortgage, with excess, if any, paid to Mortgagor. If the proceeds are to be applied to restoration and repair, Mortgagor shall repair or replace the damaged or destroyed Improvements in a manner satisfactory to Mortgagee.

5.1.2 If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchased in lieu of condemnation, Mortgagee may at its election require that all or any portion of the net proceeds of the award be applied to the Indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Mortgagee in connection with the condemnation. If any proceeding in condemnation is filed, Mortgagor shall promptly notify Mortgagee in writing, and Mortgagor shall promptly take steps as may be necessary to defend the action and obtain the award. Mortgagor may be the nominal party in such proceeding, but Mortgagee shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Mortgagor will deliver or cause to be delivered to Mortgagee such instruments as may be requested by it from time to time to permit such participation.

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ARTICLE 6: EVENTS OF DEFAULT AND REMEDIES OF MORTGAGEE

6.1 Events of Default.

6.1.1 If one or more of the following events shall have occurred and be continuing:

6.1.1.1 Any Event of Default as defined in the Note;

6.1.1.2 Mortgagor shall assign the rents or income of the Property or any part thereof (other than to Mortgagee) without first obtaining the written consent of Mortgagee;

6.1.1.3 Any default shall occur under any of the Loan Documents, at any time after their respective execution and delivery and for any reason, other than an act or omission of Mortgagee, shall cease to be in full force and effect or be declared null and void, or shall cease to constitute valid and subsisting liens and/or valid and perfected security interests in and to the Property, or Mortgagor shall contest or deny in writing that it has any further liability or obligation under any of the Loan Documents;

THEN and in any such event Mortgagee may, by written notice delivered to Mortgagor, which notice specifically states the occurrence of an Event of Default, declare Mortgagor to be in default. Upon the occurrence of such event and the giving of such notice, the same shall constitute an event of default (an "Event of Default").

6.1.2 It shall constitute an Event of Default hereunder without the requirement of any notice if one or more of the following events shall have occurred and be continuing: (a) The entry of an order for relief under Title 11 of the United States Code as to Mortgagor or any owner of the Property or any interest therein or the adjudication of Mortgagor or any owner of the Property as insolvent or bankrupt pursuant to the provisions of any state insolvency or bankruptcy act; (b) the commencement by Mortgagor or any owner of the Property or any interest therein of any case, proceeding or other action seeking any reorganization, arrangement, composition, adjustment, liquidation, dissolution or similar relief for itself under any present or future statute, law or regulation relating to bankruptcy, insolvency, reorganization or other relief for debtors; (c) consent to, acquiescence in or attempt to secure the appointment of any Receiver of all or any substantial part of its properties or of the Property by Mortgagor or any owner of the Property or any interest therein; (d) Mortgagor or any owner of the Property or any interest therein shall generally not pay its debts as they become due or shall admit in writing its inability to pay its debts or shall make a general assignment for the benefit of creditors; or (e) Mortgagor or any owner of the Property or any interest therein shall take any action to authorize any of the acts set forth above.

6.1.3 Upon the occurrence of any Event of Default, in addition to its rights under the Note and the Loan Agreement, Mortgagee may in its sole discretion, also do any of the following:

6.1.3.1 In person, by agent, or by a Receiver, and without regard to the adequacy of security, the solvency of Mortgagor or the condition of the Property, enter upon and take possession of the Property, or any part thereof, in its own name and do any acts which Mortgagee deems necessary to preserve the value, marketability or rentability of the Property;

sue for or otherwise collect the rents, issues and profits therefrom, including those past due and unpaid, and apply the same, less costs and expenses, of operation and collection, including without limitation, reasonable attorneys' fees, against the Indebtedness, all in such order as Mortgagee may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice;

6.1.3.2 Commence an action to foreclose the lien hereof in the manner provided herein or by law. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens' Certificates and similar data and assurances with respect to the title as Mortgagee may deem necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Property. All expenditures and expenses of the nature in this paragraph mentioned and such expenses and fees as may be incurred in the protection of the Property and the maintenance of the lien of this Mortgage, including the fees of any attorneys employed by Mortgagee in any litigation or proceeding affecting this Mortgage, said Note or the Property, including appellate, probate and bankruptcy proceedings or in preparations for the commencement or defense of any proceedings or threatened suit or proceeding shall be immediately due and payable by Mortgagor, with interest thereon at the Secondary Interest Rate and shall be secured by this Mortgage.

6.1.3.3 The proceeds of any foreclosure sale of the Property shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding paragraph hereof; second, all other items which may, under the terms hereof or of the Note or under any other instrument given to secure the Note, constitute indebtedness additional to that evidenced by the Note, with interest thereon as herein or therein provided and all principal and interest and other sums (including prepayment premiums) remaining unpaid on the Note; and third, any overplus to any party entitled thereto as their rights may appear.

6.2 Proof of Default. In the event of a sale of the Property, or any part thereof, and the execution of a deed therefor, the recital therein of default, and of recording notice of default and election of sale, and of the elapsing of the required time (if any) between the foregoing recording and the following notice, and of the giving of notice of sale, and of a demand by Mortgagee, or its successors or assigns, that such sale should be made, shall be conclusive proof of such default, recording, election, elapsing of time, and of the due giving of such notice, and that the sale was regularly and validly made on due and proper demand by Mortgagee, its successors or assigns. Any such deed or deeds with such recitals therein shall be effective and conclusive against Mortgagor, its successors and assigns, and all other Persons. The receipt for the purchase money recited or contained in any deed executed to the purchaser as aforesaid shall be sufficient to discharge such purchaser from all obligations to see to the proper application of the purchase money.

6.3 Protection of Security. If an Event of Default shall have occurred and be continuing, then Mortgagee, but without obligation so to do and without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligations or defaults hereunder, may: (a) perform any act in such manner and to such extent as its may deem necessary to protect the security hereof, Mortgagee being authorized to enter upon the Property for such purpose; (b) appear in and defend any action or proceeding purporting to affect, in any manner whatsoever, the obligations or the Indebtedness, the security hereof or the rights or powers of Mortgagee; (c) pay, purchase or compromise any encumbrance, charge or lien that in the judgment of Mortgagee is prior or superior hereto; and (d) in exercising any such powers, pay necessary expenses, employ counsel and pay reasonable attorneys' fees. Mortgagor agrees that all sums expended by Mortgagee pursuant to this paragraph, together with interest at the Secondary Interest Rate from the date of expenditure by Mortgagee, shall be added to the principal amount of the Indebtedness secured by the Loan Documents and this Mortgage and shall be payable by Mortgagor to Mortgagee upon demand.

6.4 Receiver. Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Property. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Property or whether the same shall be then occupied as a homestead or not, and the Mortgagee hereunder or any holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Property during the pendency of such foreclosure suit, and in case of a sale and a deficiency during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Property during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of:

6.4.1 the indebtedness secured hereby, or by any decree foreclosing this Mortgage or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; and

6.4.2 the deficiency in case of a sale and deficiency.

6.5 Remedies Cumulative. Each right, power and remedy herein conferred upon the Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of the Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

6.6 Curing of Defaults. If Mortgagor shall at any time fail to perform or comply with any of the terms, covenants and conditions required on Mortgagor's part to be performed and complied with under this Mortgage, any of the other Loan Documents or any other agreement that, under the terms of this Mortgage, Mortgagor is required to perform, then Mortgagee, and without waiving or releasing Mortgagor from any of the Obligations, may in its sole discretion:

6.6.1 make any payments thereunder payable by Mortgagor and take out, pay for and maintain any of the insurance policies provided for therein; and/or

6.6.2 after the expiration of any applicable grace period and subject to Mortgagor's rights to contest certain obligations specifically granted hereby, perform any such other acts thereunder on the part of Mortgagor to be performed and enter upon the Property for such purpose.

All sums so paid out of Mortgagee's own funds and all reasonable costs and expenses incurred and paid by Mortgagee in connection with the performance of any such act, together with interest on unpaid balances thereof at the Secondary Interest Rate from the respective dates of Mortgagee's making of each such payment, shall be added to the principal of the Indebtedness, shall be secured by the Loan Documents and by the lien of this Mortgage, prior to any right, title or interest in or claim upon the Property attaching or accruing subsequent to the lien of this Mortgage, and shall be payable by Mortgagor to Mortgagee on demand.

6.7 Mixed Collateral. Upon the occurrence of an Event of Default under this Mortgage, Mortgagee, pursuant to the appropriate provision of the UCC, shall have an option to proceed with respect to both the real property portion of the Property and the Personal Property in accordance with its rights, powers and remedies with respect to such real property, in which event the default provisions of the UCC shall not apply. Such option shall be revocable by Mortgagee as to all or any portion of the Collateral at any time prior to the sale of the remainder of the Property. In such event, Mortgagee shall designate Trustee to conduct the sale of any

portion of the Property in combination with the sale of the remainder of the Property. Should Mortgagee elect to sell the Property or any part thereof which is real property or which Mortgagee has elected to treat as real property or which may be sold together with the real property as provided above, Mortgagee or Trustee shall give such notice of default and election to sell as may then be required by law. The parties agree that if Mortgagee shall elect to proceed with respect to any portion of the Personal Property separately from such real property, five (5) days' notice of the sale of the Personal Property shall be reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by Mortgagee shall include, but not be limited to, reasonable attorneys' fees, costs and expenses, and other expenses incurred by Mortgagee.

6.8 Entitlement Contracts. At any time after an Event of Default, at Mortgagee's option and upon five (5) day's notice to Mortgagor (and without regard to the adequacy of the security for the Indebtedness or the availability of any other remedies), either in person or by agent with or without bringing any action or proceeding or by a receiver to be appointed by a court, Mortgagee may give and receive copies of all notices and other instruments or communication, cure or take other action with respect to a default under any agreement entered into by Mortgagor for obtaining any governmental permits, licenses, approvals or other entitlements ("Entitlements Contract"), such as to commence and consummate legal, administrative or other proceedings, authorize changes in the work to be performed by the contractor thereunder, approve subcontractors, have access to the work and all of such contractor's records relating to any Entitlements Contract, and such other action as shall be permitted to the Mortgagor by the Entitlements Contract or by law, and do any and all other things whatsoever which Mortgagor is or may be entitled to do thereunder and exercise all of Mortgagor's right and power to modify or terminate the Entitlements Contract or waive or release such contractor from the performance or observance of any obligation or condition thereof. The exercise of any of the foregoing rights or remedies shall not cure or waive any default (or any event or circumstance which with the giving of notice or the passage of time would constitute an Event of Default, or waive, modify or affect any notice of default under any Loan Document, or invalidate any act done pursuant to any such notice, and Mortgagee may continue to exercise such rights and remedies after such default has been cured. Mortgagee may exercise its rights under this Section as and when any such default may occur. The exercise of such rights and remedies shall not constitute a waiver of any of the other remedies of Mortgagee under this Mortgage, or any other Loan Document or any other document or agreement or otherwise existing at law or in equity.

ARTICLE 7: INTENTIONALLY DELETED

ARTICLE 8: ASSIGNMENT OF RENTS

8.1 Assignment of Rents. Mortgagor absolutely and unconditionally assigns and transfers the Rents to Mortgagee, whether now due, past due or to become due, and gives to and confers upon Mortgagee the right, power and authority to collect such Rents, and apply the same to the Indebtedness. Mortgagor irrevocably appoints Mortgagee its agent to, at any time, demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, either in the name of Mortgagor or in the name of Mortgagee, for all such Rents. Neither the foregoing assignment of Rents to Mortgagee nor the exercise by Mortgagee of any of its rights or remedies under this Mortgage shall be deemed to make Mortgagee a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Property or the use, occupancy, enjoyment or operation of all of any part thereof, unless and until Mortgagee, in person or by its own agent, assumes actual possession thereof, nor shall appointment of a Receiver for the Property by any court at the request of Mortgagee or by agreement with Mortgagor or the entering into possession of the Property or any part thereof by such Receiver be deemed to make Mortgagee a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Property or the use, occupancy, enjoyment or operation of all or any part thereof.

8.2 Collection of Rents. Notwithstanding anything to the contrary contained herein or in the Note, so long as no Event of Default shall occur, Mortgagor shall have a license, revocable upon the occurrence of an Event of Default or, if an Event of Default shall have occurred, so long as such Event of Default shall not have been waived by Mortgagee, to collect all Rents, and to first apply such Rents to the Indebtedness as and when due and thereafter to retain, use and enjoy the same and to otherwise exercise all rights with respect thereto, subject to the terms

hereof. Upon the occurrence of an Event of Default, Mortgagee shall have the right, on written notice to Mortgagor, to terminate and revoke the license herein granted to Mortgagor and shall have the complete right and authority then or thereafter to exercise and enforce any and all of its rights and remedies provided herein or by law or at equity.

ARTICLE 9: SECURITY AGREEMENT AND FIXTURE FILING

9.1 Security Agreement. Subject to Mortgagor's obligations to, and the right of, any senior lienholder, Mortgagor further grants to Mortgagee, pursuant to the Illinois Uniform Commercial Code, as amended or recodified from time to time (the "UCC"), a security interest in all present and future right, title and interest of Mortgagor in and to all or any part of the Property in which a security interest may be created (collectively, the "Personal Property") under the UCC, including but not limited to the following:

All goods, building materials, machinery, equipment, supplies, tools, tooling, furnishings, fixtures, inventory, raw materials, work in process and other personal property to be incorporated into the Property, or any and all buildings, landscaping and other improvements now or hereafter erected thereon including, without limitation, the fixtures, attachments, appliances, equipment, machinery, and other articles attached to said buildings and improvements (collectively, the "Improvements") (the Land together with the Improvements being referred to herein, collectively, as the "Property"), finished goods and materials, signs, general intangibles, chattel paper, documents, instruments (whether negotiable or non-negotiable), money, contract rights and accounts (unless secured or assigned to Mortgagee by separate collateral instrument) and other personal property now or hereafter appropriated for use on the Property, whether stored on the Property or elsewhere, used or to be used in connection with the Land, some of which may become fixtures on the Property; and as to all of the foregoing: (a) whether now owned or hereafter at any time acquired by Mortgagor and wherever located, (b) all products, additions, accessions, replacements and substitutions; (c) all books and records of Mortgagor with respect to the same; and (d) all proceeds, including but not limited to (i) whatever is now or hereafter receivable or received by Mortgagor upon the sale, exchange, collection or other disposition of any such item, whether voluntary or involuntary, and whether such proceeds constitute inventory, intangibles, equipment or intellectual property or other assets; (ii) any such items which are now or hereafter acquired by Mortgagor with any proceeds of collateral hereunder; and (iii) any insurance or payments under any indemnity, warranty or guaranty now or hereafter payable by reason of damage or loss or otherwise with respect to any item of collateral or any proceeds thereof.

9.2 Fixture Filing. As to all of the Personal Property which is or which hereafter becomes a "fixture" under applicable law, upon due recordation of this Mortgage in the real estate records of the county in which the Land is located, this Mortgage constitutes a fixture filing under Section 9313 and 9402 of the UCC, as amended or recodified from time to time.

9.3 Covenants. Mortgagor hereby consents and agrees that (i) all tangible personal property that is a part of the Personal Property shall be kept on the Land, and at such other locations disclosed to and approved by Mortgagee in writing, (ii) none of the Personal Property shall be used for any unlawful purpose, for hire or in any way which would limit or void any insurance required to be maintained under this Mortgage, (iii) it shall obtain appropriate consents from all persons and entities whose consents may be necessary or desirable in order to vest Mortgagee with a valid and enforceable security interest in the Personal Property, (iv) prior to the delivery of any Personal Property to any bailee under any circumstance whatsoever, it shall notify Mortgagee of such intention, (v) it shall notify Mortgagee immediately of any legal process levied against any of the Personal Property or any other event which affects the value, use or possession of the Personal Property or any of the rights of Mortgagor or Mortgagee in relation to any of the Personal Property, and (vi) upon Mortgagee's request, it shall deliver to

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Mortgagee statements certified by it describing with particularity all material items of Personal Property then subject to this Mortgage, the precise location of such Personal Property and any other security interests, mortgages, claims, pledges, liens, charges or encumbrances to which any of such Personal Property may be subject.

9.4 Rights of Mortgagee. In addition to Mortgagee's rights as a "Secured Party" under the UCC, Mortgagee may, but shall not be obligated to, at any time without notice and at the expense of Mortgagor: (a) give notice to any person of Mortgagee's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Personal Property or any rights or interests of Mortgagee therein; (c) inspect the Personal Property; and (d) upon the occurrence of any Event of Default hereunder, endorse, collection and receive any right to payment of money owing to Mortgagor under or from any account, chattel paper, contract, deposit account or instrument comprising the Personal Property.

9.5 Rights of Mortgagee on Default. Upon the occurrence of an Event of Default under this Mortgage or any Loan Agreement (if applicable), then in addition to all of Mortgagee's rights as a "Secured Party" under the UCC or otherwise by law:

9.5.1 Mortgagee may (i) upon written notice, request Mortgagor to assemble any or all of the Personal Property and make it available to Mortgagee at a place designated by Mortgagee; (ii) without prior notice, enter upon the Land or other place where any of the Personal Property may be located and take possession of, collect, sell, and dispose of any or all of the Personal Property and store the same at locations acceptable to Mortgagee at Mortgagor's expense; (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Personal Property at public or private sales and bid and become a purchaser at any such sales, for cash or on credit, to a wholesaler, retailer or user of each type of Personal Property or at public auction, each of which Mortgagor agrees constitute commercially reasonable methods of disposing of the Personal Property, since differences in the sales prices generally realized in the different kinds of sales are ordinarily offset by the difference in the speed, costs, and credit risks of such sales; (iv) apply any Personal Property or other security available for satisfaction of any or all the obligations secured by this Mortgage, including but not limited to deposit account balances pursuant to UCC Sections 9207 and 9502, as amended or recodified from time to time, to the payment of: any expenses incurred or paid by Mortgagee in connection with any use, sale, transfer or delivery of such Personal Property; any other costs, charges, attorneys' fees, or other expenses incurred or paid by Mortgagee in connection with the Loan Documents, and all or any other obligations of Mortgagor to Mortgagee that are secured by this Mortgage in such order, priority and manner as Mortgagee in its sole discretion may determine; and

9.5.2 Mortgagee may, for the account of Mortgagor and at Mortgagor's expense: (i) operate, use, consume, sell or dispose of the Personal Property as Mortgagee deems appropriate for the purpose of performing any one or more of the Obligations in such order as Mortgagee may elect; (ii) enter into any extension, reorganization, deposit, merger or consolidation, settlement or compromise or any other agreement relating to or affecting any of the Personal Property, and in connection therewith Mortgagee may (a) sell, transfer or dispose of, release, discharge or deposit or surrender control of any of the Personal Property; (b) accept other property in exchange for any of the Personal Property; (c) take such action as Mortgagee may deem proper; and (d) apply any money or property received in exchange for any of the Personal Property to any one or more Obligations in such order as Mortgagee may elect; (iii) make any compromise or settlement which Mortgagee may deem desirable or proper with respect to any of the Personal Property or any controversies or disputes relating to the Personal Property, and release any of the Personal Property and any persons liable on any of the Personal Property; (iv) endorse, deliver evidences of title, receive, enforce and collect by legal action or otherwise all Indebtedness and Obligations now or hereafter owing in connection with or on account of any or all of the Personal Property; (v) perform any one or more of the Obligations; (vi) enforce, adjust and receive payment or performance in connection with any insurance claims, claims for breach of warranty, claims under any letters of credit, instruments, documents, chattel paper or contracts and similar matters concerning any of the Personal Property; (vii) exercise any and all other rights, powers and remedies which Mortgagor would have, but for this Mortgage, in connection with the Personal Property; and (viii) sell or dispose of all or part of the Personal Property consisting of instruments that are "securities" under applicable law at one or more private sales to a restricted group of purchasers who will be obligated to agree, among other things, to acquire any such securities for their own account, for investment and not with a view to distribution or resale thereof. Mortgagor acknowledges that any such private sales may

be at prices and on terms less favorable to Mortgagee than those of public sale, and agrees that such private sales shall be deemed to have been made in a commercially reasonable manner and that Mortgagee has no obligation to delay sale of any such securities to permit the issuer thereof to register such securities for public sale under applicable law.

Notwithstanding any other provision hereof, Mortgagee shall not be deemed to have accepted any property other than cash in satisfaction of any Secured Obligation unless Mortgagor shall make an express written election of said remedy under UCC Section 9505, or other applicable law. Mortgagee shall have no duty or obligation whatsoever to make or give any presentments, demands for performance, notices of nonperformance, notices of protest or notices of dishonor in connection with any of the Personal Property or to take any other action to preserve, protect or defend any right, title or interest of Mortgagor or Mortgagee with respect to any of the Personal Property or to preserve any value or utility of any of the Personal Property.

9.6 Further Assurances. Mortgagor shall cooperate fully with Mortgagee and from time to time shall execute and deliver all such further instruments and contracts and take all such further action as may be necessary or appropriate (or as Mortgagee from time to time reasonably deems necessary or appropriate) to: (i) create, perfect, protect and maintain the security interests in the Personal Property contemplated by this Mortgage; (ii) facilitate the performance of this Mortgage; (iii) secure or facilitate Mortgagee's exercise of its rights and remedies; (iv) evaluate the worth, condition and amount or extent of the Personal Property; (v) evaluate Mortgagor's performance of this Mortgage; (vi) determine the nature and source of prior or subsequent security interests, mortgages, adverse claims, pledges, liens, charges or encumbrances on or affect any of the Personal Property; and (vii) maintain, preserve and protect the Personal Property and keep the Personal Property in good and salable condition in accordance with standards and practices generally adhered to by users or owners of personal property similar in nature to the Personal Property.

9.7 Possession and Use of Personal Property. Except as otherwise provided in this Mortgage or any other Loan Documents, so long as no Event of Default exists under this Mortgage or any other Loan Documents, Mortgagor may possess, use, move, transfer or dispose of any of the Personal Property in the ordinary course of Mortgagor's business and in accordance with the terms of any Loan Agreement (if applicable).

ARTICLE 10: MISCELLANEOUS

10.1 No Waiver. No waiver by Mortgagee of any default or breach by Mortgagor hereunder shall be implied from any omission by Mortgagee to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default expressly referenced in the waiver and such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by Mortgagee to or any act by Mortgagor requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

10.2 Abandonment. Subject to such chattel mortgages, security agreements or other liens on title as may exist thereon with the consent of Mortgagee, or any provided for herein, any and all Personalty that upon foreclosure of the Property is owned by Mortgagor and is used in connection with the operation of the Property shall be deemed at the option of Mortgagee to have become on such date a part of the Property and abandoned to Mortgagee in its then condition.

10.3 Notices. Any notice, demand or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given upon delivery or refusal to accept delivery if sent via (i) personal delivery, (ii) United States registered or certified mail, postage prepaid, or (iii) via nationally recognized overnight courier service, and addressed to a party at its address set forth below or to such other address the party to receive such notice may have designated to all other parties by notice in accordance herewith:

If to Mortgagee:

Victor J. Cypher, Jr.
c/o ViCor Development, Inc.
400 North State Street, Suite 460
Chicago, Illinois 60610

If to Mortgagor:

Alexa Partnership, L.L.C.
c/o ViCor Development, Inc.
400 North State Street, Suite 460
Chicago, Illinois 60610
Attention: Victor J. Cypher, Jr.

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10.4 Severability. If any term, provision, covenant or condition hereof or any application thereof should be held by a court of competent jurisdiction to be invalid, void or unenforceable, in whole or in part, all terms, provisions, covenants and conditions hereof and all applications thereof not held invalid, void or unenforceable shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

10.5 Joinder of Foreclosure. Should Mortgagee hold any other or additional security for the payment of the Indebtedness or performance of the Obligations, its sale or foreclosure, upon any default in such payment or performance, in the sole discretion of Mortgagee, may be prior to, subsequent to, or joined or otherwise contemporaneous with any sale or foreclosure hereunder. In addition to the rights herein specifically conferred, Mortgagee, at any time and from time to time, may exercise any right or remedy now or hereafter given by law to beneficiaries under deeds of trust generally, or to the holders of any obligations of the kind hereby secured.

10.6 Governing Law. The parties expressly agree that the enforcement procedures contained in this Mortgage shall be governed by and construed in accordance with the laws of the State of Illinois.

10.7 Subordination. At the option of Mortgagee, this Mortgage shall become subject and subordinate in whole or in part (but not with respect to priority of entitlement to any insurance proceeds, damages, awards, or compensation resulting from damage to the Property or condemnation or exercise of power of eminent domain), to any and all contracts of sale and/or any and all Leases upon the execution by Mortgagee and recording thereof in the Official Records of the County in which the Land is located of a unilateral declaration to that effect.

10.8 Waiver of Statute of Limitations and Rights to Trial by Jury. The pleading of any statute of limitations as a defense to any and all obligations secured by this Mortgage and the right to a jury trial in any action under or relating to the Loan Documents is hereby waived, to the fullest extent allowed by law.

10.9 Entire Agreement. The Loan Documents set forth the entire understanding between Mortgagor and Mortgagee relative to the Loan, and the same shall not be amended except by a written instrument duly executed by each of Mortgagor and Mortgagee. Any and all previous representations, warranties, agreements and understandings between or among the parties regarding the subject matter of the Loan or the Loan Documents, whether written or oral, are superseded by this Mortgage and the other Loan Documents.

10.10 References to Foreclosure. References in this Mortgage to "foreclosure" and related phrases shall be deemed references to the appropriate procedure in connection with Trustee's private power of sale as well as any judicial foreclosure proceeding or a conveyance in lieu of foreclosure.

10.11 Effect of Extensions of Time. If the payment of said indebtedness, or any part thereof, be extended or varied, or if any part of any security for the payment of the indebtedness be released, or if any person or entity liable for the payment of the indebtedness be released, or if the Mortgagee takes other additional security for the payment of the indebtedness, or if the Mortgagee waives or fails to exercise any right granted herein, or in the Note secured hereby, or in any other instrument given to secure the payment hereof, all persons now or at any time hereafter liable for the payment of the indebtedness, or any part thereof, or interested in the Property shall be held to assent to such extension, variation, release, waiver, failure to exercise or the taking of additional security, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding such extension, variation, release, waiver, failure to exercise, or the taking of additional security.

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10.12 Copies. Mortgagor will promptly give to Mortgagee copies of all (a) notices of violation relating to the Property that Mortgagor receives from any governmental agency or authority, and (b) notices of default that Mortgagor shall give or receive under any agreement that Mortgagor covenants to perform hereunder, including, without limitation, notices of default relating to the Property that Mortgagor receives under any agreement relating to the borrowing of money by Mortgagor or from any Person.

10.13 Right of Entry. In addition to the rights granted to Mortgagee under Paragraph 3.9 hereof, Mortgagee may enter at any reasonable time upon any part of the Property for the purpose of performing any of the acts Mortgagee is authorized to perform under the terms of this Mortgage or of any of the other Loan Documents. Mortgagor agrees to cooperate with Mortgagee to facilitate such entry.

10.14 Performance by Mortgagor. Mortgagor will faithfully perform each and every Obligation to be performed by Mortgagor under any lien or encumbrance, including, without limitation, mortgages, deeds of trust, leases, declarations or covenants, conditions and/or restrictions and other agreements which affect the Property. If Mortgagor fails to do so, Mortgagee, without demand or notice, may do any or all things necessary to perform the Obligations of Mortgagor under the pertinent instrument.

10.15 Personal Security Instruments. Mortgagor covenants and agrees that if Mortgagee at anytime holds additional security for any obligations secured hereby, it may enforce the terms thereof or otherwise realize upon the same, at its option, either before or concurrently herewith or after a sale is made hereunder, and may apply the proceeds upon the Indebtedness secured hereby without affecting the status or of waiving any right to exhaust all or any other security, including the security hereunder, and without waiving any breach or default or any right or power whether exercised hereunder, or contained herein or in any such other security.

10.16 Suits to Protect Property. Mortgagor covenants and agrees to appear in and defend any action or proceeding purporting to affect the security of the Mortgage, or of any additional or other security for the Obligations, the interest of Mortgagee or the rights, powers, and duties of Trustee hereunder; and to pay all costs and expenses, including, without limitation, costs of evidence of title and reasonable attorneys' fees, in any action or proceeding in which Mortgagee and/or Trustee may appear or be made a party, including, without limitation, foreclosure or other proceedings commenced by those claiming a right to any part of the Property in any action to partition or condemn all or part of the Property, whether or not pursued to final judgment, and in any exercise of the power of sale contained herein, whether or not the sale is actually consummated. Mortgagor agrees that in such action or proceeding in which Mortgagee is made a party, Mortgagee may at its option defend such action, and all costs of such defense, including all court costs and reasonable attorneys' fees, shall be born and paid by Mortgagor.

10.17 Junior Liens. Mortgagor represents and warrants that as of the date hereof there are no encumbrances to secure debt junior to this Mortgage and covenants that there are to be none as of the date when this Mortgage becomes of record.

10.18 Usury. In the event that Mortgagee determines that any charge, fee or interest paid or agreed to be paid in connection with the Loan may, under the applicable usury laws, cause the interest rate on the Loan to exceed the maximum permitted by law, then such charges, fees or interest shall be reduced and any amounts actually paid in excess of the maximum interest permitted by such laws shall be applied by Mortgagee to reduce the outstanding principal balance of the Loan. The parties intend that Mortgagor shall not be required to pay, and Mortgagee shall not be entitled to collect, interest in excess of the maximum legal rate permitted under the applicable usury laws.

10.19 Information Reporting Under IRC Section 6045(e). Any information returns or certifications that must be filed with the Internal Revenue Service and/or provided to other parties, pursuant to Internal Revenue Code Section 6045(e) shall be prepared, filed by and sent to the appropriate parties by Mortgagor. To the extent permitted by law, Mortgagee shall have no responsibility to perform such services; provided, however, upon demand Mortgagor shall reimburse Mortgagee for any costs incurred by Mortgagee in doing so and shall also pay such fee as Mortgagee may reasonably and lawfully request. Mortgagee shall, where requested by

Mortgagor, promptly supply Mortgagee with all information pertaining to Mortgagee reasonably required by Mortgagee to prepare and file any such return or certification. Mortgagor shall indemnify Mortgagee and defend, protect and hold Mortgagee harmless from and against all loss, cost, damage and expense (including, without limitation, attorneys' fees and costs incurred in the investigation, defense and settlement of claims) that Mortgagee may incur, directly or indirectly, as a result of or in connection with the assertion against Mortgagee of any claim relating to the failure of Mortgagor to comply with its obligations under this Paragraph.

10.20 Destruction of Note. Mortgagor shall, if the Note is mutilated or destroyed by any cause whatsoever, or otherwise lost or stolen and regardless of whether due to the act or neglect of Mortgagee or Trustee, execute and deliver to Mortgagee in substitution therefor a duplicate promissory note containing the same terms and conditions as the Note, within thirty (30) days after Mortgagee notifies Mortgagor of any such mutilation, destruction, loss or theft of the Note. Any new promissory note executed and delivered hereunder shall be in full substitution for the Note, shall not constitute any new or additional indebtedness of Mortgagor to Mortgagee, shall constitute solely a substitute evidence of the Indebtedness evidenced by the original Note, and shall not affect in any manner the priority of this Mortgage, or any other document or instrument executed in connection with or evidencing or securing the Indebtedness under the Note. Failure or delay by Mortgagee to notify Mortgagor hereunder shall not affect in any manner Mortgagor's liability for the Indebtedness under the Note or Mortgagor's obligation to execute a new promissory note hereunder; and Mortgagor's failure to execute a new promissory note on Mortgagee's request hereunder shall likewise not affect Mortgagor's liability for the Indebtedness under the Note.

10.21 Mortgagor and Mortgagee Defined. As used in this Mortgage, "Mortgagor" includes the original signatories of this Mortgage as Mortgagor, and their successors and assigns; the term "Mortgagee" means the Mortgagee named herein or any future owner or holder, including pledgee and participants, of any note, notes or instrument secured hereby, or any participation therein.

10.22 Commingling of Funds. Any and all sums collected or retained by Mortgagee hereunder (including insurance and condemnation proceeds and any amounts paid by Mortgagor to Mortgagee under Article 5 hereof), shall not be deemed to be held in trust, and Mortgagee may commingle any and all such funds or proceeds with its general assets and shall not be liable for the payment of any interest or other return thereon, except to the extent expressly provided herein or otherwise required by law.

10.23 Effect of Changes in Laws Regarding Taxation. In the event of the enactment after this date of any law of the state in which the Property are located deducting from the value of the land for the purpose of taxation any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Property, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holders thereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments, or reimburse the Mortgagee therefor; provided, however, that if in the opinion of counsel for the Mortgagee:

10.23.1 it might be unlawful to require Mortgagor to make such payment;
or

10.23.2 the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, the Mortgagee may elect, by notice in writing given to the Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable sixty (60) days from the giving of such notice.

10.24 Waiver of Defense. No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note hereby secured.

10.25 Waiver of Statutory Rights. Mortgagor shall not, and will not, apply for or avail itself of any appraisalment, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the

enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the Property marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety. Mortgagor does hereby expressly waive any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, the trust estate and all persons beneficially interested therein and each and every person, acquiring any interest in or title to the Property subsequent to the date of this Mortgage.

10.26 Business Purpose. Mortgagor covenants and agrees that all of the proceeds of the Note secured by this Mortgage will be used solely for business purposes and in furtherance of the regular business affairs of the Mortgagor and Mortgagor's beneficiary, and the entire principal obligation secured hereby constitutes: (i) a "business loan" as that term is defined in, and for all purposes of, 815ILCS205/4, Subsection(1)(c); and (ii) "a loan secured by a mortgage on real estate" within the purview and operation of 815ILCS 205/4, Subsection 1(1).

10.27 Successors and Assigns. This Mortgage and all provisions hereof shall extend to and be binding upon Mortgagor and its successors, grantees and assigns, any subsequent owner or owners of the Property and all persons claiming under or through Mortgagor (but this clause shall not be construed as constituting the consent by Mortgagee to the transfer of any interest in the Property), and the word "Mortgagor" when used herein shall include all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed said Note or this Mortgage. The word "Mortgagee", when used herein, shall include the successors and assigns of the Mortgagee named herein, and the holder or holders, from time to time, of the Note secured hereby.

10.28 Other Property. Mortgagor shall not by act or omission permit any building or other improvement on any premises not subject to the lien of this Mortgage to rely on the Property or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Property or any interest therein to be so used. Similarly, no building or other improvement on the Property shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Mortgagor shall not by act or omission impair the integrity of the Property as a single zoning lot separate and apart from all other premises. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this paragraph shall be void.

10.29 Statement of Indebtedness. Mortgagor, on written request of the Mortgagee, will furnish a signed statement of the amount of the indebtedness secured hereby and whether or not any default then exists hereunder and specifying the nature of such default.

10.30 Decree of Foreclosure and Sale. Mortgagee shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a Decree of Foreclosure and Sale subject to the rights of any tenant or tenants of the Property. The failure to join any such tenant or tenants as party defendant or defendants in any such civil action or the failure of any Decree of Foreclosure and Sale to foreclose their rights shall not be asserted by the Mortgagor as a defense in any civil action instituted to collect the indebtedness secured hereby, or any part thereof, or any deficiency remaining unpaid after foreclosure and sale of the Property, any statute or rule of law at any time existing to the contrary notwithstanding.

10.31 Acceleration. In the event that maturity of the indebtedness is accelerated by Mortgagee because of default hereunder, a tender of payment is made by or on behalf of Mortgagor in the amount necessary to satisfy such indebtedness at any time prior to judicial confirmation of a foreclosure sale, such tender shall constitute a prepayment under the Note and shall require payment of the prepayment premium provided for in the Note and shall be treated as a prepayment thereunder.

10.32 Interest. All agreements between Mortgagor and Mortgagee (including, without limitation, those contained in this Mortgage and the Note) are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid to the Mortgagee exceed the highest lawful rate of interest permissible under the laws of the State of Illinois. If, from any circumstances whatsoever, fulfillment of any provision hereof or the Note or any other documents securing the indebtedness secured hereby, at the time performance of such provision

shall be due, shall involve the payment of interest exceeding the highest rate of interest permitted by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the highest lawful rate of interest permissible under the laws of the State of Illinois; and if for any reason whatsoever, the Mortgagee shall ever receive as interest an amount which would be deemed unlawful, such interest shall be applied to the payment of the last maturing installment or installments of the principal indebtedness secured hereby (whether or not then due and payable) and not to the payment of interest.

10.33 Margin Security. Mortgagor covenants and agrees that it shall constitute a default hereunder if any of the proceeds of the loan for which the Note is given will be used, or were used, as the case may be, for the purpose (whether immediate, incidental or ultimate) of "purchasing" or "carrying" any "margin security" as such terms are defined in Regulation G of the Board of Governors of the Federal Reserve System (12 CFR Part 207) or for the purpose of reducing or retiring any indebtedness which was originally incurred for any such purpose.

10.34 Property Management. Mortgagor shall include a "no lien" provision in any property management agreement hereafter entered into by Mortgagor or its beneficiary with a property manager for the Property, whereby the property manager waives and releases any and all mechanics' lien rights that he, or anyone claiming through or under him, may have pursuant to 770ILCS 60/1. Such property management agreement containing such "no lien" provision or a short form thereof shall, at Mortgagee's request, be recorded with the Recorder of Deeds of Cook County, Illinois, as appropriate.

10.35 Subrogation. To the extent that Mortgagee, on or after the date hereof, pays any sum due under any provision of law or any instrument or document creating any lien prior or superior to the lien of this Mortgage, or Mortgagor or any other person pays any such sum with the proceeds of the loan secured hereby, Mortgagee shall have and be entitled to a lien on the Property equal in priority to the lien discharged, and Mortgagee shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such lien, which shall remain in existence and benefit Mortgagee in securing the indebtedness secured hereby. Mortgagee shall be subrogated, notwithstanding their release of record, to the lien of all mortgages, trust deeds, superior titles, vendors' liens, liens, charges, encumbrances, rights and equities on the Property, to the extent that any obligation under any thereof is directly or indirectly paid or discharged with proceeds of disbursements or advances under the Note secured hereby.

10.36 Fees. Mortgagor acknowledges and confirms that Mortgagee shall impose certain administrative processing and/or commitment fees in connection with (a) the extension, renewal, modification and amendment of its loans, (b) the release or substitution of collateral therefor, (c) obtaining certain consents, waivers and approvals with respect to the Property, or (d) the review of any lease or proposed lease or the preparation or review of any subordination, non-disturbance agreement (the occurrence of any of the above shall be called an "Event"). Mortgagor hereby acknowledges and agrees to pay, immediately, with or without demand, all such fees (as the same may be increased or decreased from time to time), and any additional fees of a similar type or nature which may be imposed by Mortgagee from time to time, upon the occurrence of any Event or otherwise. Wherever it is provided for herein that Mortgagor pay any costs and expenses, such costs and expenses shall include, but not be limited to, all legal fees and disbursements of Mortgagee, whether retained firms, the reimbursement for the expenses of in-house staff or otherwise.

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UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed as of the day and year first above written.

MORTGAGOR:

ALEXA PARTNERSHIP, L.L.C., an Illinois limited liability company

By: _____

Victor J. Cypher, Jr., its Managing Member

STATE OF ILLINOIS)

) SS.

COUNTY OF COOK)

I, _____, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Victor J. Cypher, Jr., personally known to me to be the managing member of ALEXA PARTNERSHIP, L.L.C., an Illinois limited liability company, whose name is subscribed to the within instrument, appeared before me this day in person and acknowledged that as such member, he signed and delivered the said instrument as member of such limited liability company, as his free and voluntary act and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this ____ day of August, 2001.

Notary Public

My Commission expires: _____

EXHIBIT "A"
PROPERTY DESCRIPTION

All that certain real property located in Cook County, Illinois, described as follows:

LOTS 2 TO 7 AND THE NORTH 15 FEET OF LOT 8 IN GEORGE LILLS SHERIDAN ROAD ADDITION TO CHICAGO, BEING A SUBDIVISION OF THE SOUTHEAST FRACTIONAL $\frac{1}{4}$ OF SECTION 8, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THAT PART TAKEN FOR WIDENING OF SHEFFIELD AVENUE) IN COOK COUNTY, ILLINOIS.

PIN NUMBERS: 14-08-416-018-0000
14-08-416-019-0000
14-08-416-020-0000
14-08-416-021-0000
14-08-416-022-0000

Property of Cook County Clerk's Office

UNOFFICIAL COPY

20132704

EXHIBIT F

ARCHITECTURAL CONTRACT

Property of Cook County Clerk's Office

20132704

AIA DOCUMENT B151-1997

Abbreviated Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the
in the year
(In words, indicate day, month and year)

FIRST day of NOVEMBER
TWO THOUSAND

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

BETWEEN the Architect's client identified as the Owner:
(Name, address and other information)

MR. VICTOR J. CYPHER, JR.
VICO DEVELOPMENT, INC.
2100 SOUTH INDIANA AVE.
SUITE 306
CHICAGO, IL 60616

and the Architect:
(Name, address and other information)

WILLIAM WORN ARCHITECTS, P.C.
401 W. SUPERIOR, SUITE 34
CHICAGO, IL 60610

For the following Project:
(Include detailed description of Project)

THE ALEXA
4848 N. SHERIDAN RD.
CHICAGO, IL
48 SENIOR CONDOMINIUM
UNITS



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ABBREVIATED OWNER-
ARCHITECT AGREEMENT

The Owner and Architect agree as follows.

The American Institute
of Architects
1735 New York Avenue, N.W.
Washington, D.C. 20006-5292

ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

1.1 The services performed by the Architect, Architect's employees and Architect's consultants shall be as enumerated in Articles 2, 3 and 12.

1.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which may be adjusted as the Project proceeds. This schedule shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner.

1.3 The Architect shall designate a representative authorized to act on behalf of the Architect with respect to the Project.

1.4 The services covered by this Agreement are subject to the time limitations contained in Subparagraph 11.5.1.

ARTICLE 2 SCOPE OF ARCHITECT'S BASIC SERVICES

2.1 DEFINITION

The Architect's Basic Services consist of those described in Paragraphs 2.2 through 2.6 and any other services identified in Article 12 as part of Basic Services, and include normal structural, mechanical and electrical engineering services.

2.2 SCHEMATIC DESIGN PHASE

2.2.1 The Architect shall review the program furnished by the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner.

2.2.2 The Architect shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in Subparagraph 5.2.1.

2.2.3 The Architect shall review with the Owner alternative approaches to design and construction of the Project.

2.2.4 Based on the mutually agreed-upon program, schedule and construction budget requirements, the Architect shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

2.2.5 The Architect shall submit to the Owner a preliminary estimate of Construction Cost based on current area, volume or similar conceptual estimating techniques.

2.3 DESIGN DEVELOPMENT PHASE

2.3.1 Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, the Architect shall prepare, for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

2.3.2 The Architect shall advise the Owner of any adjustments to the preliminary estimate of Construction Cost.



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2.4 CONSTRUCTION DOCUMENTS PHASE

2.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the Architect shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project.

2.4.2 The Architect shall assist the Owner in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and Contractor.

2.4.3 The Architect shall advise the Owner of any adjustments to previous preliminary estimates of Construction Cost indicated by changes in requirements or general market conditions.

2.4.4 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

2.5 BIDDING OR NEGOTIATION PHASE

The Architect, following the Owner's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall assist the Owner in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction.

2.6 CONSTRUCTION PHASE - ADMINISTRATION OF THE CONSTRUCTION CONTRACT

2.6.1 The Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the earlier of the issuance to the Owner of the final Certificate for Payment or 60 days after the date of Substantial Completion of the Work.

2.6.2 The Architect shall provide administration of the Contract for Construction as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement, unless otherwise provided in this Agreement. Modifications made to the General Conditions, when adopted as part of the Contract Documents, shall be enforceable under this Agreement only to the extent that they are consistent with this Agreement or approved in writing by the Architect.

2.6.3 Duties, responsibilities and limitations of authority of the Architect under this Paragraph 2.6 shall not be restricted, modified or extended without written agreement of the Owner and Architect with consent of the Contractor, which consent will not be unreasonably withheld.

2.6.4 The Architect shall be a representative of and shall advise and consult with the Owner during the administration of the Contract for Construction. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written amendment.

2.6.5 The Architect, as a representative of the Owner, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the Owner and the Architect in Article 12, (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or



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ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

1.1 The services performed by the Architect, Architect's employees and Architect's consultants shall be as enumerated in Articles 2, 3 and 12.

1.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which may be adjusted as the Project proceeds. This schedule shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner.

1.3 The Architect shall designate a representative authorized to act on behalf of the Architect with respect to the Project.

1.4 The services covered by this Agreement are subject to the time limitations contained in Subparagraph 11.5.1.

ARTICLE 2 SCOPE OF ARCHITECT'S BASIC SERVICES

2.1 DEFINITION

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2.2 SCHEMATIC DESIGN PHASE

2.2.1 The Architect shall review the program furnished by the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner.

2.2.2 The Architect shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in Subparagraph 5.2.1.

2.2.3 The Architect shall review with the Owner alternative approaches to design and construction of the Project.

2.2.4 Based on the mutually agreed-upon program, schedule and construction budget requirements, the Architect shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

2.2.5 The Architect shall submit to the Owner a preliminary estimate of Construction Cost based on current area, volume or similar conceptual estimating techniques.

2.3 DESIGN DEVELOPMENT PHASE

2.3.1 Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, the Architect shall prepare, for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

2.3.2 The Architect shall advise the Owner of any adjustments to the preliminary estimate of Construction Cost.



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continuous on-site inspections to check the quality or quantity of the Work. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

2.6.6 The Architect shall report to the Owner known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the Architect shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

2.6.7 The Architect shall at all times have access to the Work wherever it is in preparation or progress.

2.6.8 Except as otherwise provided in this Agreement or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultant shall be through the Architect.

2.6.9 CERTIFICATES FOR PAYMENT

2.6.9.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts.

2.6.9.2 The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Subparagraph 2.6.5 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

2.6.9.3 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

2.6.10 The Architect shall have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.



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2.6.11 The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

2.6.12 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Architect shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

2.6.13 The Architect shall prepare Change Orders and Construction Change Directives, with supporting documentation and data if deemed necessary by the Architect as provided in Subparagraphs 3.1.1 and 3.3.3, for the Owner's approval and execution in accordance with the Contract Documents, and may authorize minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents.

2.6.14 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, shall receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

2.6.15 The Architect shall interpret and decide matters concerning performance of the Owner and Contractor under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

2.6.16 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions so rendered in good faith.

2.6.17 The Architect shall render initial decisions on claims, disputes or other matters in question between the Owner and Contractor as provided in the Contract Documents. However, the Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.



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continuous on-site inspections to check the quality or quantity of the Work. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

2.6.6 The Architect shall report to the Owner known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the Architect shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

2.6.7 The Architect shall at all times have access to the Work wherever it is in preparation or progress.

2.6.8 Except as otherwise provided in this Agreement or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect.

2.6.9. CERTIFICATES FOR PAYMENT

2.6.9.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts.

2.6.9.2 The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Subparagraph 2.6.5 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

2.6.9.3 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

2.6.10 The Architect shall have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.



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2.6.18 The Architect's decisions on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in Subparagraph 2.6.17, shall be subject to mediation and arbitration as provided in this Agreement and in the Contract Documents.

ARTICLE 3 ADDITIONAL SERVICES

3.1 GENERAL

3.1.1 The services described in this Article 3 are not included in Basic Services unless so identified in Article 12, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. The services described under Paragraphs 3.2 and 3.4 shall only be provided if authorized or confirmed in writing by the Owner. If services described under Contingent Additional Services in Paragraph 3.3 are required due to circumstances beyond the Architect's control, the Architect shall notify the Owner prior to commencing such services. If the Owner deems that such services described under Paragraph 3.3 are not required, the Owner shall give prompt written notice to the Architect. If the Owner indicates in writing that all or part of such Contingent Additional Services are not required, the Architect shall have no obligation to provide those services.

3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES

3.2.1 If more extensive representation at the site than is described in Subparagraph 2.6.5 is required, the Architect shall provide one or more Project Representatives to assist in carrying out such additional on-site responsibilities.

3.2.2 Project Representatives shall be selected, employed and directed by the Architect, and the Architect shall be compensated therefor as agreed by the Owner and Architect. The duties, responsibilities and limitations of authority of Project Representatives shall be as described in the edition of AIA Document B352 current as of the date of this Agreement, unless otherwise agreed.

3.2.3 Through the presence at the site of such Project Representatives, the Architect shall endeavor to provide further protection for the Owner against defects and deficiencies in the Work, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the Architect as described elsewhere in this Agreement.

3.3 CONTINGENT ADDITIONAL SERVICES

3.3.1 Making revisions in drawings, specifications or other documents when such revisions are:

1. inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or Project budget;
2. required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or
3. due to changes required as a result of the Owner's failure to render decisions in a timely manner.

3.3.2 Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contracting for construction, except for services required under Subparagraph 5.2.5.

3.3.3 Preparing Drawings, Specifications and other documentation and supporting data, evaluating Contractor's proposals, and providing other services in connection with Change Orders and Construction Change Directives.

3.3.4 Providing services in connection with evaluating substitutions proposed by the Contractor and making subsequent revisions to Drawings, Specifications and other documentation resulting therefrom.



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3.3.5 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

3.3.6 Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.

3.3.7 Providing services in evaluating an extensive number of claims submitted by the Contractor or others in connection with the Work.

3.3.8 Providing services in connection with a public hearing, a dispute resolution proceeding or a legal proceeding except where the Architect is party thereto.

3.3.9 Preparing documents for alternate, separate or sequential bids or providing services in connection with bidding, negotiation or construction prior to the completion of the Construction Documents Phase.

3.4 OPTIONAL ADDITIONAL SERVICES

3.4.1 Providing analyses of the Owner's needs and programming the requirements of the Project.

3.4.2 Providing financial feasibility or other special studies.

3.4.3 Providing planning surveys, site evaluations or comparative studies of prospective sites.

3.4.4 Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.

3.4.5 Providing services relative to future facilities, systems and equipment.

3.4.6 Providing services to investigate existing conditions or facilities or to make measured drawings thereof.

3.4.7 Providing services to verify the accuracy of drawings or other information furnished by the Owner.

3.4.8 Providing coordination of construction performed by separate contractors or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.

3.4.9 Providing services in connection with the work of a construction manager or separate consultants retained by the Owner.

3.4.10 Providing detailed estimates of Construction Cost.

3.4.11 Providing detailed quantity surveys or inventories of material, equipment and labor.

3.4.12 Providing analyses of owning and operating costs.

3.4.13 Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.



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2.6.18 The Architect's decisions on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in Subparagraph 2.6.17, shall be subject to mediation and arbitration as provided in this Agreement and in the Contract Documents.

ARTICLE 3 ADDITIONAL SERVICES

3.1 GENERAL

3.1.1 The services described in this Article 3 are not included in Basic Services unless so identified in Article 12, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. The services described under Paragraphs 3.2 and 3.4 shall only be provided if authorized or confirmed in writing by the Owner. If services described under Contingent Additional Services in Paragraph 3.3 are required due to circumstances beyond the Architect's control, the Architect shall notify the Owner prior to commencing such services. If the Owner deems that such services described under Paragraph 3.3 are not required, the Owner shall give prompt written notice to the Architect. If the Owner indicates in writing that all or part of such Contingent Additional Services are not required, the Architect shall have no obligation to provide those services.

3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES

3.2.1 If more extensive representation at the site than is described in Subparagraph 2.6.5 is required, the Architect shall provide one or more Project Representatives to assist in carrying out such additional on-site responsibilities.

3.2.2 Project Representatives shall be selected, employed and directed by the Architect, and the Architect shall be compensated therefor as agreed by the Owner and Architect. The duties, responsibilities and limitations of authority of Project Representatives shall be as described in the edition of AIA Document B352 current as of the date of this Agreement, unless otherwise agreed.

3.2.3 Through the presence at the site of such Project Representatives, the Architect shall endeavor to provide further protection for the Owner against defects and deficiencies in the Work, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the Architect as described elsewhere in this Agreement.

3.3 CONTINGENT ADDITIONAL SERVICES

3.3.1 Making revisions in drawings, specifications or other documents when such revisions are:

- 1 inconsistent with approvals or instructions previously given by the Owner including revisions made necessary by adjustments in the Owner's program or Project budget;
- 2 required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or
- 3 due to changes required as a result of the Owner's failure to render decisions in a timely manner.

3.3.2 Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contracting for construction, except for services required under Subparagraph 5.2.5.

3.3.3 Preparing Drawings, Specifications and other documentation and supporting data, evaluating Contractor's proposals, and providing other services in connection with Change Orders and Construction Change Directives.

3.3.4 Providing services in connection with evaluating substitutions proposed by the Contractor and making subsequent revisions to Drawings, Specifications and other documentation resulting therefrom.



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3.4.14 Providing services for planning tenant or rental spaces.

3.4.15 Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.

3.4.16 Preparing a set of reproducible record drawings showing significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Architect.

3.4.17 Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.

3.4.18 Providing services after issuance to the Owner of the final Certificate for Payment, or in the absence of a final Certificate for Payment, more than 60 days after the date of Substantial Completion of the Work.

3.4.19 Providing services of consultants for other than architectural, structural, mechanical and electrical engineering portions of the Project provided as a part of Basic Services.

3.4.20 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice.

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 The Owner shall provide full information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. The Owner shall furnish to the Architect, within 15 days after receipt of a written request, information necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

4.2 The Owner shall establish and periodically update an overall budget for the Project, including the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs.

4.3 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such designated representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

4.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

4.5 The Owner shall furnish the services of geotechnical engineers when such services are requested by the Architect. Such services may include but are not limited to test borings, test pits,



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determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate recommendations.

4.6 The Owner shall furnish the services of consultants other than those designated in Paragraph 4.5 when such services are requested by the Architect and are reasonably required by the scope of the Project.

4.7 The Owner shall furnish structural, mechanical, and chemical tests; tests for air and water pollution; tests for hazardous materials; and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

4.8 The Owner shall furnish all legal, accounting and insurance services that may be necessary at any time for the Project to meet the Owner's needs and interests. Such services shall include auditing services the Owner may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the Owner.

4.9 The services, information, surveys and reports required by Paragraphs 4.4 through 4.8 shall be furnished at the Owner's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof.

4.10 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's Instruments of Service.

ARTICLE 5 CONSTRUCTION COST

5.1 DEFINITION

5.1.1 The Construction Cost shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Owner of all elements of the Project designed or specified by the Architect.

5.1.2 The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for their overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.

5.1.3 Construction Cost does not include the compensation of the Architect and the Architect's consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Owner as provided in Article 4.

5.2 RESPONSIBILITY FOR CONSTRUCTION COST

5.2.1 Evaluations of the Owner's Project budget, the preliminary estimate of Construction Cost and detailed estimates of Construction Cost, if any, prepared by the Architect, represent the Architect's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the Architect.



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3.4.14 Providing services for planning tenant or rental spaces.

3.4.15 Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.

3.4.16 Preparing a set of reproducible record drawings showing significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Architect.

3.4.17 Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.

3.4.18 Providing services after issuance to the Owner of the final Certificate for Payment, or in the absence of a final Certificate for Payment, more than 60 days after the date of Substantial Completion of the Work.

3.4.19 Providing services of consultants for other than architectural, structural, mechanical and electrical engineering portions of the Project provided as a part of Basic Services.

3.4.20 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice.

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 The Owner shall provide full information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. The Owner shall furnish to the Architect, within 15 days after receipt of a written request, information necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

4.2 The Owner shall establish and periodically update an overall budget for the Project, including the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs.

4.3 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such designated representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

4.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

4.5 The Owner shall furnish the services of geotechnical engineers when such services are requested by the Architect. Such services may include but are not limited to test borings, test pits,



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5.2.2 No fixed limit of Construction Cost shall be established as a condition of this Agreement by the furnishing, proposal or establishment of a Project budget, unless such fixed limit has been agreed upon in writing and signed by the parties hereto. If such a fixed limit has been established, the Architect shall be permitted to include contingencies for design, bidding and price escalation, to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the Construction Cost to the fixed limit. Fixed limits, if any, shall be increased in the amount of an increase in the Contract Sum occurring after execution of the Contract for Construction.

5.2.3 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry.

5.2.4 If a fixed limit of Construction Cost (adjusted as provided in Subparagraph 5.2.3) is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall:

- 1 give written approval of an increase in such fixed limit;
- 2 authorize rebidding or renegotiating of the Project within a reasonable time;
- 3 terminate in accordance with Paragraph 8.5; or
- 4 cooperate in revising the Project scope and quality as required to reduce the Construction Cost.

5.2.5 If the Owner chooses to proceed under Clause 5.2.4.4, the Architect, without additional compensation, shall modify the documents for which the Architect is responsible under this Agreement as necessary to comply with the fixed limit, if established as a condition of this Agreement. The modification of such documents without cost to the Owner shall be the limit of the Architect's responsibility under this Subparagraph 5.2.5. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

ARTICLE 6 USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

6.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service for use solely with respect to this Project. The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

6.2 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to reproduce the Architect's Instruments of Service solely for purposes of constructing, using and maintaining the Project, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate this license. Upon such termination, the Owner shall refrain from making further reproductions of Instruments of Service and shall return to the Architect within seven days of termination all originals and reproductions in the Owner's possession or control. If and upon the date the Architect is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.



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6.3 Except for the licenses granted in Paragraph 6.2, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. However, the Owner shall be permitted to authorize the Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the Work by license granted in Paragraph 6.2. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. The Owner shall not use the Instruments of Service for future additions or alterations to this Project or for other projects, unless the Owner obtains the prior written agreement of the Architect and the Architect's consultants. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

5.4 Prior to the Architect providing to the Owner any Instruments of Service in electronic form or the Owner providing to the Architect any electronic data for incorporation into the Instruments of Service, the Owner and the Architect shall by separate written agreement set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations or licenses not otherwise provided in this Agreement.

ARTICLE 7 DISPUTE RESOLUTION

7.1 MEDIATION

7.1.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.

7.1.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

7.1.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

7.2 ARBITRATION

7.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with Paragraph 7.1.

7.2.2 Claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall



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5.2.2 No fixed limit of Construction Cost shall be established as a condition of this Agreement by the furnishing, proposal or establishment of a Project budget, unless such fixed limit has been agreed upon in writing and signed by the parties hereto. If such a fixed limit has been established, the Architect shall be permitted to include contingencies for design, bidding and price escalation, to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the Construction Cost to the fixed limit. Fixed limits, if any, shall be increased in the amount of an increase in the Contract Sum occurring after execution of the Contract for Construction.

5.2.3 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry.

5.2.4 If a fixed limit of Construction Cost (adjusted as provided in Subparagraph 5.2.3) is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall:

1. give written approval of an increase in such fixed limit;
2. authorize rebidding or renegotiating of the Project within a reasonable time;
3. terminate in accordance with Paragraph 8.5; or
4. cooperate in revising the Project scope and quality as required to reduce the Construction Cost.

5.2.5 If the Owner chooses to proceed under Clause 5.2.4.4, the Architect, without additional compensation, shall modify the documents for which the Architect is responsible under this Agreement as necessary to comply with the fixed limit, if established as a condition of this Agreement. The modification of such documents without cost to the Owner shall be the limit of the Architect's responsibility under this Subparagraph 5.2.5. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

ARTICLE 6 USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

6.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service for use solely with respect to this Project. The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

6.2 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to reproduce the Architect's Instruments of Service solely for purposes of constructing, using and maintaining the Project, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate this license. Upon such termination, the Owner shall refrain from making further reproductions of Instruments of Service and shall return to the Architect within seven days of termination all originals and reproductions in the Owner's possession or control. If and upon the date the Architect is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.



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ARCHITECT AGREEMENT

The American Institute
of Architects
1735 New York Avenue, N.W.
Washington, D.C. 20006-5292

be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.

7.2.3 A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

7.2.4 No arbitration arising out of or relating to this Agreement shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement and signed by the Owner, Architect, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

7.2.5 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

7.3 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 8.

ARTICLE 8 TERMINATION OR SUSPENSION

8.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, prior to suspension of services, the Architect shall give seven days' written notice to the Owner. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

8.2 If the Project is suspended by the Owner for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

8.3 If the Project is suspended or the Architect's services are suspended for more than 90 consecutive days, the Architect may terminate this Agreement by giving not less than seven days' written notice.

8.4 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.



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8.5 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

8.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Paragraph 8.7.

8.7 Termination Expenses are in addition to compensation for the services of the Agreement and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

ARTICLE 9 MISCELLANEOUS PROVISIONS

9.1 This Agreement shall be governed by the law of the principal place of business of the Architect, unless otherwise provided in Article 12.

9.2 Terms in this Agreement shall have the same meaning as those in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement.

9.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when the Architect's services are substantially completed.

9.4 To the extent damages are covered by property insurance during construction, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

9.5 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under this Agreement. The Architect shall execute all consents reasonably required to facilitate such assignment.

9.6 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

9.7 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.



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7.2.3 A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

7.2.4 No arbitration arising out of or relating to this Agreement shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement and signed by the Owner, Architect, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

7.2.5 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

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8.4 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.



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9.8 Unless otherwise provided in this Agreement, the Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site.

9.9 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

9.10 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of this Agreement.

ARTICLE 10 PAYMENTS TO THE ARCHITECT

10.1 DIRECT PERSONNEL EXPENSE

Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employer retirement plans and similar contributions.

10.2 REIMBURSABLE EXPENSES

10.2.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and Architect's employees and consultants directly related to the Project, as identified in the following Clauses:

1. transportation in connection with the Project, authorized out-of-town travel and subsistence, and electronic communications;
2. fees paid for securing approval of authorities having jurisdiction over the Project;
3. reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service;
4. expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
5. renderings, models and mock-ups requested by the Owner;
6. expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and the Architect's consultants;
7. reimbursable expenses as designated in Article 12;
8. other similar direct Project-related expenditures.

10.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES

10.3.1 An initial payment as set forth in Paragraph 11.1 is the minimum payment under this Agreement.

10.3.2 Subsequent payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in Subparagraph 11.2.2.

10.3.3 If and to the extent that the time initially established in Subparagraph 11.5.1 of this Agreement is exceeded or extended through no fault of the Architect, compensation for any services rendered during the additional period of time shall be computed in the manner set forth in Subparagraph 11.3.2.



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10.3.4 When compensation is based on a percentage of Construction Cost and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Subparagraph 11.2.2, based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent preliminary estimate of Construction Cost or detailed estimate of Construction Cost for such portions of the Project.

10.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

Payments on account of the Architect's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Architect's statement of services rendered or expenses incurred.

10.5 PAYMENTS WITHHELD

No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect has been adjudged to be liable.

10.6 ARCHITECT'S ACCOUNTING RECORDS

Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

ARTICLE 11 BASIS OF COMPENSATION

The Owner shall compensate the Architect as follows

11.1 An Initial Payment of TEN THOUSAND _____ Dollars
(\$ 10,000.00) shall be made upon execution of this Agreement and credited to the Owner's account at final payment.

11.2 BASIC COMPENSATION

11.2.1 For Basic Services, as described in Article 2, and any other services included in Article 12 as part of Basic Services, Basic Compensation shall be computed as follows:

(Insert basis of compensation, including stipulated sums, multiples or percentages, and identify phases to which particular methods of compensation apply, if necessary.)

SINGLE STIPULATED SUM OF
TWO HUNDRED TWENTY TWO THOUSAND
SEVEN HUNDRED FIFTY DOLLARS
(\$222,750.)



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11.2.2 Where compensation is based on a stipulated sum or percentage of Construction Cost, progress payments for Basic Services in each phase shall total the following percentages of the total Basic Compensation payable:

(Insert additional phases as appropriate.)

Schematic Design Phase:	COMPLETE	percent (—%)
Design Development Phase:	FORTY	percent (40%)
Construction Documents Phase:	FIFTY	percent (50%)
Bidding or Negotiation Phase:		percent (—%)
Construction Phase:	TEN	percent (10%)

Total Basic Compensation: one hundred percent (100%)

11.3 COMPENSATION FOR ADDITIONAL SERVICES

11.3.1 For Project Representation Beyond Basic Services, as described in Paragraph 3.2, compensation shall be computed as follows:

HOURLY @ THE FOLLOWING RATES:

PRINCIPAL \$150/HOUR
 ASSOCIATE \$105/HOUR
 ARCHITECT I \$95/HOUR

11.3.2 For Additional Services of the Architect, as described in Articles 3 and 12, other than (1) Additional Project Representation, as described in Paragraph 3.2, and (2) services included in Article 12 as part of Basic Services, but excluding services of consultants, compensation shall be computed as follows:

(Insert basis of compensation, including rates and multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply, if necessary.)

HOURLY @ THE FOLLOWING RATES:

PRINCIPAL \$150/HOUR
 ASSOCIATE \$105/HOUR
 ARCHITECT I \$95/HOUR



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11.3.3 For Additional Services of Consultants, including additional structural, mechanical and electrical engineering services and those provided under Subparagraph 3.4.19 or identified in Article 12 as part of Additional Services, a multiple of ~~ONE POINT ZERO~~ (1.0) times the amounts billed to the Architect for such services.

(Identify specific types of consultants in Article 12, if required.)

11.4 REIMBURSABLE EXPENSES

For Reimbursable Expenses, as described in Paragraph 10.2, and any other items included in Article 12 as Reimbursable Expenses, a multiple of ~~ONE POINT ZERO~~ (1.0) times the expenses incurred by the Architect, the Architect's employees and consultants directly related to the Project.

11.5 ADDITIONAL PROVISIONS

11.5.1 If the Basic Services covered by this Agreement have not been completed within ~~THIRTY~~ (30) months of the date hereof, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Subparagraphs 10.3.3 and 11.3.2.

11.5.2 Payments are due and payable ~~TEN~~ (10) days from the date of the Architect's invoice. Amounts unpaid ~~THIRTY~~ (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of interest agreed upon.)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

11.5.3 The rates and multiples set forth for Additional Services shall be adjusted in accordance with the normal salary review practices of the Architect.



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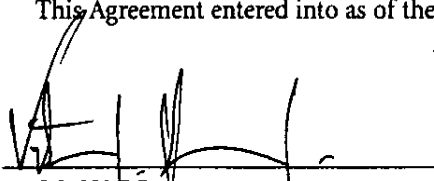
ARTICLE 12 OTHER CONDITIONS OR SERVICES

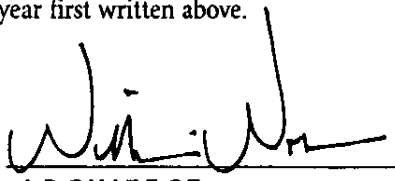
(Insert descriptions of other services, identify Additional Services included within Basic Compensation and modifications to the payment and compensation terms included in this Agreement.)

12.1 STRUCTURAL ENGINEERING IS INCLUDED IN BASIC SERVICES.

12.2 MECHANICAL, ELECTRIC, PLUMBING, FIRE PROTECTION, CIVIL ENGINEERING AND LANDSCAPE DESIGN ARE NOT INCLUDED IN BASIC SERVICES.

This Agreement entered into as of the day and year first written above.


OWNER (Signature)


ARCHITECT (Signature)

VICTOR CYPHER PRESIDENT
(Printed name and title)

William K. Hart, Pres.
(Printed name and title)



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EXHIBIT G

ENGINEERING CONTRACT

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505 N. LASALLE ST. SUITE 250 • CHICAGO, IL 60610 • (312) 467-0125 FAX (312) 467-0220

May 14, 2001

Mr. Victor Cypher
ViCor Development, Inc.
400 N. State Street, Suite 460
Chicago, ILL 60610

RE: Alexa, 4848 N. Sheridan Road, Chicago, IL.
Proposal for Extra Civil Engineering Services.

Dear Mr. Cypher:

We are pleased to provide extra civil engineering services for the above referenced project. The following is a proposal for designing driveway, parking lot, detention, grading and utility connections for the revised proposed development. The proposal is based on Revised Drawings by William Worn Architects, P.C. dated March 26, 2001, and our discussions with Mr. Todd Wilkey of William Worn. The proposal scope is defined below and is inclusive through construction documents:

SCOPE OF WORK

1. Review existing drawings and studies.
2. Prepare revised construction documents including plans, and detail drawings of the civil works.
3. Prepare specifications.
4. Coordinate with Owner, Architect, Landscape Architect, MEP and local permitting agencies.
5. Assist in obtaining permit.
6. Provide periodic construction observation (three site visits), respond to field questions, and shop drawings review.



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Mr. Victor Cypher

Page 2

DELIVERABLES

1. Construction plans (CADD)
 - Demolition Plan
 - Geometry Plan
 - Grading & Utility Plan
 - Details
2. Specifications
3. Construction Observation

LIMIT OF SERVICES

1. This scope of work is based on documents available as of this date and discussions with the Architect.
2. Additional information such as geotechnical report, shall be provided by others.
3. A recent topographic survey of the site showing the location of all existing utilities and any above or below ground features that will affect the development of the site shall be provided by other. The data will be in digital format compatible with AutoCAD V.14 or V.2000
4. No off-site work with the exception of connection to utilities within 20' of the site will be included in the scope as outlined above.
5. Site Plan will be provided by the Architects in AutoCAD Format.

SCHEDULE

The above work will correspond to the submittal as determined by the Owner.

COMPENSATION

Construction Documents	\$ 7,200
Construction Observation & Shop Drawing Review	\$ 1,300
TOTAL	\$ 8,500

Reimbursable expenses include travel to and from the site, printing and other reasonable expenses encountered during the project. Expenses will be billed at cost plus 10 percent.

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Mr. Victor Cypher
Page 3

ADDITIONAL SERVICES

Fees for other additional services, if requested by ViCor Development, Inc. will be developed once the scope of those services is defined.

ACCEPTANCE

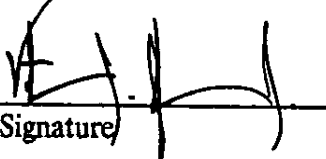
This proposal, with the signature of the responsible party, constitutes acceptance of the fee and terms as state herein. Please return one copy of the signed proposal to me as authorization to begin work.

If you have any questions or need clarification on any of the above, please do not hesitate to call. We look forward to working with you on this project and appreciate you including us in your team.

Sincerely yours,
TERRA ENGINEERING, LTD.


Jamil F. Bou-Saab, P.E.
Vice President

ACCEPTED BY:


Signature

6/14/01
Dated

PRESIDENT
Title

Cc: Mr. Michael Jerabek, Willaim Worn Architects, P.C.
Mr. Todd Wilkey, Willaim Worn Architects, P.C.

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EXHIBIT H

DESIGN AGREEMENT

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*Bella Maison, Ltd.**161 East Chicago Avenue, Suite 2401 Chicago, Illinois 60611**Telephone 312-268-8113 Telefax 312-268-8731*

DESIGN, DEVELOPMENT & MERCHANDISING AGREEMENT

This agreement is entered into between Bella Maison, Ltd. ("Designer" herein) and Vicor Development ("Client" herein) on _____. Client employs Designer to provide the following design, development and merchandising services with respect to the Alexa.

I. Scope of Services

Designer will provide the following services:

A. Review of Client's plans and make recommendations regarding the Alexa.

B. Preparation and development of the design concept of the Alexa including the following selections and specifications:

1. First floor

- a. Specifications for Flooring
- b. Specifications for Lighting
- c. Specifications for Wall elevations
- d. Specifications for Ceiling design
- e. Specifications for Furniture
- f. Elevator interior

2. Floors 2-7

- a. Specifications for Flooring
- b. Specifications for Wall Design
- c. Specifications for Furniture

3. Penthouse

- a. Specifications for Flooring
- b. Specifications for Wall Design
- c. Specifications for Furniture

E. Designer will cooperate and assist Client's architect, advertising consultants, sales staff, contractors and trades people in all reasonable ways within Designer's expertise and experience.

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Bella Maison, Ltd.

161 East Chicago Avenue, Suite 2401 Chicago, Illinois 60611
Telephone 312-266-8718 Telefax 312-266-8731

F. Designer will assist Client in submitting entries for local and national awards programs. Client shall have final approval over the submissions and Client shall be responsible for payment of all fees and charges in connection herewith.

II. Sequential Phase of the Project

Phase I: Designer will present all design concepts and development information for review and approval by Client, including all specifications, elevations, furniture, fabrics, finishes and materials, and detailed floor plan indicating placement of such.

Phase II: Designer will be responsible for purchasing all specified. Designer shall use its best efforts to obtain the most suitable materials and articles required for the performance of its services. However, Designer makes no warranty of any kind as the items purchased by the Client. Designer is not responsible for any delays caused by anyone other than the Designer, Client, shipping or anyone. Designer is not responsible for any defect, damage or any other problem that may arise in regard to the ordering, purchasing, inventorying, warehousing, freight or delivery of any item of furniture or furnishings.

III. Payment

Total design and development fee is \$10,000.00. Upon signing of this agreement a deposit in the amount of \$7,500.00 is due for Phase 1. At presentation of Phase 1 the balance of 2,500.00 will be due.

Client shall pay Designer in advance for all purchases to be made by Designer.

Any additional time requested of the Designer will be billed at \$125.00/hr and will be submitted monthly to be paid within 10 days thereafter.

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161 East Chicago Avenue, Suite 2401 Chicago, Illinois 60611

Telephone 312-266-8713 Telefax 312-266-8731

IV. Other Conditions and Collateral Matters

- A. Before any changes are made in respect to any matter or area, which will directly or indirectly, affect the services of the Designer, Client shall notify Designer in writing and Client shall consult with Designer. In such case, Designer shall be entitled to an additional fee in the amount of \$125.00/Hr. of time spent by reason of such change.
- B. It is acknowledged and agreed that all drawing and designs created by the Designer shall remain the property of the Designer. Prints may be provided to the Client upon request and reimbursement of the reproduction expense.
- C. Designer shall receive credit in any promotional material or publicity prepared or displayed on behalf of the client.
- D. Designer shall have the right to take photographs and videos of work and/or services rendered herein and to use the same in connection with the business of the Designer.
- E. This document expresses the complete agreement of the parties. There are no oral agreements, representations, warranties, or promises. Any modifications or additions to the terms contained herein must be in writing and signed by both parties. In the event of any dispute, the laws of the State where applicable, shall apply. And in the event of any lawsuit concerning the rights or obligations hereunder, the losing party (as determined by the court or other tribunal) shall reimburse the winning party for reasonable attorney's fees and court cost.
- F. All notices to the Designer shall be sent to Bella Maison, Ltd., 161 Chicago Ave. #2401, Chicago, Illinois 60611. All notices shall be sent Vicor Development, 400 N. State St. Chicago, Illinois 60610.

By: _____
Vicor Development

By: _____
Bella Maison, Ltd.

Date: _____

Date: _____

Boca Raton, New York, Greenwich, Chicago, Santa Fe, Los Angeles, Negril, Jamaica

Bella Maison, Ltd.

161 East Chicago Avenue, Suite 2401 Chicago, Illinois 60611
Telephone 312-268-8418 Telefax 312-268-8781

IV: Client Obligations

- A. At a time designated by the Designer and prior to the design presentation the Client shall provide:
- A. A complete set of blueprints of the building.
 - B. One set of each elevation and sections, floor plans, and electrical plans.
 - C. All relevant information concerning the use of the building area (which Designer may rely on without making any independent inquiry or investigation).
- B. Client shall inform Designer of any changes or alterations to any relevant to the building and this lease, including but not limited to, changes in structure, completion date or change of finish building material. In the event of any such changes, the Designer shall have an additional time for the completion of its services to the extent reasonably made necessary hereby.
- D. Client shall make all necessary provisions for the proper preparation of the specified areas so that they are suitable for the installation to include the following:
- 1. All construction work shall be complete prior to the commencement of the installation. This shall include, but not be limited to, completed kitchen and baths with all plumbing fixtures in operating condition. All painting, wallpaper, tile, hardwood flooring, carpet, lighting, appliances, built-ins, mirrors, doors and any special effects.
 - 2. All areas related to the services required of the Designer, including bath and kitchens, shall be thoroughly cleaned with windows washed, shelving dust free and floors cleaned and free of any construction debris. The Alexa shall be secured with locks and a full set of keys given to the Designer at the commencement of the installation.
 - 3. All access areas shall be complete and all areas involved shall have electricity functioning and at least temporary heating and air conditioning in operating order.