

Lender: **Lender One**
Borrower: **ABC Builders, LP**
Property: **Multiple Properties. See attached property schedule, , Texas**
Order Number: **201210250148**

PeirsonPatterson, LLP
Loan Transmittal Memorandum

www.ppdocs.com

NOTE TO TITLE COMPANY: PeirsonPatterson's fee will not change if our warranty deed is not used or is not provided. PeirsonPatterson still needs to review the deed unless this *review* is waived by the lender.

This loan package was prepared by: **Ambra Costner**

Comments:

Thanks, have a great day!

Attorney Invoice
PeirsonPatterson, LLP
2310 Interstate 20 W, Suite 100
Arlington, TX 76017
Phone: (817) 461-5500 Fax: (817) 856-6060

Invoice To: Jen Ben
Texas Title
200 Commerce Street, Suite 123
Fort Worth, TX 76107
Phone: (817) 555-5555 Fax:
GF Number: 11-123456

Date	Order #	Description	Amount
10/25/2012	201210250148	For professional services in connection with the preparation of real estate documents.	\$125.00

Lender:

Lender One
2310 Interstate 20 W
Arlington, TX 76017
Phone: (817) 784-2010 Fax:
Closer: Ambra Costner
Loan #

Property:

Multiple Properties. See attached property schedule
, TX

Borrower(s):

ABC Builders, LP

TO INSURE PROPER CREDIT, PLEASE RETURN COPY OF INVOICE WITH REMITTANCE AND PLEASE
REFERENCE OUR INVOICE NUMBER ON YOUR CHECK.

**MAKE CHECK PAYABLE TO: * PeirsonPatterson, LLP. - ARLINGTON *
DO NOT MAIL TO DALLAS - MAIL CHECK TO ARLINGTON**

The fee(s) on this invoice must be separately itemized on the closing statement and shown as a fee to the Lender's attorney.
Please contact this office immediately should the transaction be cancelled so that our billing department can close this account.
Please make your payment within three days following the closing.

Please do not staple checks to this invoice.
THANK YOU FOR YOUR BUSINESS.

To Settlement Agent:
Texas Title
200 Commerce Street, Suite 123
Fort Worth, TX 76107
Attn: **Jen Ben**
Phone No.: (817) 555-5555
Fax No.:
Email: **jenben@whatever.com**

From Lender:
Lender One
2310 Interstate 20 W
Arlington, TX 76017
Attn: **Ambra Costner**
Phone No.: (817) 784-2010
Fax No.:
Email:

Loan Closing Instructions

SECTION I. LOAN INFORMATION

Borrower(s): **ABC Builders, LP**
Property Address: **1234 Investment Ct., Plano, TX 75024, 1111 Investment Ct., Plano, TX 75024, 2222 Investment Ct., Plano, TX 75024, 3333 Investment Ct., Plano, TX 75024, 4444 Investment Ct., Plano, TX 75024, 5555 Investment Ct., Plano, TX 75024, 6666 Investment Ct., Plano, TX 75024, and 7777 Investment Ct., Plano, TX 75024**
Loan Amount: **\$124,548.00, \$112,094.00, \$124,548.00, \$107,725.00, \$107,725.00, \$107,725.00, \$107,725.00, and \$124,548.00**

Loan #
GF No: **11-123456**
Order Number: **201210250148**
Invoice Number: **2-10-03651**
Closing Date: **October 23, 2012**
Document Exp. Date:

SECTION II. LOAN FEES AND ESCROWS

Settlement agent fees are provided as an estimate. Final settlement fees must comply with applicable federal laws, rules and regulations; and any applicable state laws or local ordinances.

A. Fees Paid at Closing.

The following fees must be indicated on the HUD-1 Settlement Statement. Collect same unless indicated as "POC" (Paid Outside Closing). Show all "POC"s as such on the HUD-1 Settlement Statement.

HUD Line # / Description	Paid To	Borrower (\$)	Seller (S)	Others (S)
803 Appraisal Fee	Appraisal Co	600.00		
813 Appraisal Review Fee	Lender One	150.00		
816 Flood Certification	Flood Group	136.00		
1105 Document preparation	PeirsonPatterson, LLP	125.00		

B. Per Diem Interest and Escrows:

Per Diem Interest is **not prepaid**. Do not collect per diem interest. Lender will bill Borrower(s) post closing.

C. Issuance of Separate Checks:

Lender requires the issuance of additional separate checks for the following, which have not been deducted from the loan proceeds.

- **PeirsonPatterson, LLP: \$125.00 Document preparation.**

SECTION III. LOAN DOCUMENTS

We are enclosing the following documents in connection with the above-referenced loan. Do not allow anyone to execute the loan documents before the date indicated on the Note. ALL PAPERS MUST BE SIGNED AS THE LEGAL DOCUMENTATION HAS BEEN TYPED. IF YOU HAVE INFORMATION THAT THE TYPED NAMES OR OTHER FACTUAL INFORMATION ARE INCORRECT, PLEASE CONTACT LENDER IMMEDIATELY. All documents requiring execution in the presence of a notary public shall be so executed, and this notary shall complete the proper notary acknowledgment and affix the proper seal to such documents. If there is any question as to the identity of the person executing any document, the responsibility of determining that person's identity is that of the notary public and the Settlement Agent. No corrections, erasures, changes or substitutions may be made

Loan Closing Instructions

to the documents without Lender's prior written approval. Such documents are conditionally delivered to Settlement Agent only for loan settlement and should under no circumstances leave Settlement Agent's possession or control except for delivery to Lender unless Settlement Agent is in receipt of written instructions otherwise from Lender. Powers of Attorney are not allowed unless specifically approved in writing by Lender. If you have information that the typed names are incorrect, please contact Lender immediately. Please follow the respective instructions for the disposition of each document.

Loan Transmittal Memorandum

Attorney Invoice Return with payment to PeirsonPatterson, LLP. @ 2310 W. Interstate-20, Suite 100, Arlington, Texas, 76017-1668.

Loan Closing Instructions Originals to be signed by Settlement Agent and returned to Lender.

Promissory Note #1 Borrower(s) must sign original. Return original and one (1) certified copy to Lender. Give Borrower(s) one (1) copy.

Promissory Note #2 Borrower(s) must sign original. Return original and one (1) certified copy to Lender. Give Borrower(s) one (1) copy.

Promissory Note #3 Borrower(s) must sign original. Return original and one (1) certified copy to Lender. Give Borrower(s) one (1) copy.

Promissory Note #4 Borrower(s) must sign original. Return original and one (1) certified copy to Lender. Give Borrower(s) one (1) copy.

Promissory Note #5 Borrower(s) must sign original. Return original and one (1) certified copy to Lender. Give Borrower(s) one (1) copy.

Promissory Note #6 Borrower(s) must sign original. Return original and one (1) certified copy to Lender. Give Borrower(s) one (1) copy.

Promissory Note #7 Borrower(s) must sign original. Return original and one (1) certified copy to Lender. Give Borrower(s) one (1) copy.

Promissory Note #8 Borrower(s) must sign original. Return original and one (1) certified copy to Lender. Give Borrower(s) one (1) copy.

Short Form Deed of Trust, Security Instrument and Financing Statement The indicated Grantor(s) must sign Original Short Form Deed of Trust, Security Instrument and Financing Statement. Obtain acknowledgements and file original. After recording, return original and one (1) certified copy to Lender. Give Borrower(s) one (1) copy.

Future Flood Insurance Authorization Borrower(s) must sign. Return original to Lender. Give Borrower(s) one (1) copy.

Flood Insurance Coverage Subject to Possible Change Borrower(s) must sign. Return original to Lender. Give Borrower(s) one (1) copy.

Attorney Representation Notice Borrower(s) must sign. Return original to Lender. Give Borrower(s) one (1) copy.

Disclosure of Right to Receive a Copy of an Appraisal Borrower(s) must sign. Return original to Lender. Give Borrower(s) one (1) copy.

Mineral Rights Acknowledgment Borrower(s) must sign. Return original to Lender. Give Borrower(s) one (1) copy.

Mortgage Fraud Warning FBI Borrower(s) must sign. Return original to Lender. Give Borrower(s) one (1) copy.

Property Schedule

Recorded Master Deed Of Trust - Collin County Give to Borrower(s).

SECTION IV. ADDITIONAL REQUIREMENTS

Title Insurance.

Loan Title Policy Binder on Interim Construction Loan (T-13) ("Interim Binder") - to be issued in favor of Lender in accordance with the terms, conditions, coverages and exceptions set forth in the Commitment for Title Insurance ("Commitment") previously issued by Settlement Agent and its Underwriter and delivered to Lender in connection with this loan transaction, subject however, to the various deletions, changes, corrections, endorsements and other revisions thereto required by Lender which are listed below, all of which are to be reflected in a revised Commitment to be issued and delivered to Lender prior to the date of Closing. The Interim Binder (which shall be issued by Settlement Agent and its Underwriter and delivered to Lender not later than 10 days after the date of Closing) shall insure Lender that the lien(s) securing this loan is/are valid first lien(s) on the fee simple title to the real property described in the Commitment and as described in the Deed of Trust and other of the Loan Documents listed above and delivered herewith;

Lender's Requirements. Lender makes the following requirements ("Requirements") in connection with the issuance of the revised Commitment and the Interim Binder, each such Requirement being equally applicable to both such forms when prepared and issued unless one or more of the following Requirements specifies to the contrary:

* The "insured" named in Schedule A must read: "[Lender's name as appearing in the Note] and each successor in ownership of the indebtedness secured by the insured mortgage except a successor who is an obligor under the provision of Section 12(c) of these Condition and Stipulations;"

* The "Effective Date" on Schedule A must be the date the Deed of Trust is recorded;

* Fee simple title to the real property described in the Deed of Trust must be shown by the Binder to be vested in Borrower;

* There can be no exception for reversionary rights of any kind in Schedule B;

* There can be no exceptions in Schedule B for "parties in possession;"

* Item 3 of Schedule B must be modified to read "and subsequent assessments, for prior years due to change in land usage or ownership," and must except only to taxes, assessments and stand-by fees for the current calendar year (if taxes for the current year are due and payable when the Closing occurs) and subsequent years, not yet due and payable;

* All curative matters in Schedule C of your Commitment shall be resolved to your satisfaction and not carried on as exceptions in the Binder;

Corrected Title Commitment. In addition to the requirements contained in the Master Closing Instructions, if provided, the Commitment must be amended as follows: (WE REQUIRE THE FOLLOWING ITEMS WITHIN TWENTY-FOUR HOURS OF THE EXECUTION OF THE DOCUMENTATION.)

Schedule A: Reflect our Loan Amount of \$904,184.00.

Schedule B: Reflect Tax Deletion. Guarantee all taxes are paid current.

Schedule C: Clear ALL Items.

Guarantee all HOA dues are paid current and all liens are subordinate to our 1st lien.

Provide an amended, original and countersigned Title Commitment, updated within 30 days of closing.

Lender's Privacy Requirements. Maintaining public confidence is important to the success and well-being of Lender. Additionally, Lender is bound by certain state and federal laws and regulations that require Lender and Lender's employees to transact business mindful that information shall be properly safeguarded. These closing instructions hereby put Settlement Agent on notice that the laws, regulations and safeguards that apply to Lender and its employees equally apply to vendors, agents and service providers [VASPs] of Lender. In conducting the business of Lender, certain customer information is obtained, used, created, stored and disposed. It is expected and required that all persons or entities with access to Lender's customer information shall keep that information confidential. VASPs are not authorized to access Lender's customer information except as is minimally necessary to complete assigned work. VASPs are not to make unauthorized copies of customer information. VASPs are not to discuss customer information with anyone other than authorized persons. Casual conversation about customers and customer information is prohibited and should be avoided even with other VASPs or Lender employees. VASPs shall not sell or otherwise share any customer information with any third party persons or companies. It is understood by Settlement Agent that Lender's customer information shall only be obtained, used, stored and disposed by methods and means that are necessary and permitted in order to conduct the business of Lender and Settlement Agent. All such access shall be in a safe guarded manner consistent with Lender's business practices and generally accepted professional business standards.

Other Items:

- **Borrower(s) must complete Social Security Number(s) or Tax ID number on any applicable documents.**
- **Provide any and all other state specific documents necessary to properly close and insure this transaction.**
- **HUD-1 must reference SETTLEMENT AGENT NAME, ADDRESS and PHONE NUMBER in Section H "Settlement Agent" and at least SETTLEMENT AGENT ADDRESS in "Place of Settlement" box.**
-

SECTION V: LOAN FUNDING

All papers must be signed as the legal documentation has been typed. If you have information that the typed names or other factual information are incorrect, please contact Lender immediately. All fees and charges required to be paid and known by Settlement Agent must be reflected on the Settlement Statement. The Settlement Statement must be faxed to Lender for approval prior to Closing. After Lender approval, no charges or fees can be added to the Settlement Statement without lender's written consent. The loan must close and fund by the Document Expiration Date indicated on page one of these Instructions. Do not file the Deed of Trust prior to

Loan Closing Instructions

Lender's funding authorization. The Closing of this loan is contingent upon the Sales Price captioned herein being true and correct. Should you have information indicating a lesser Sales Price or any secondary financing not shown above, do not close this loan and contact Lender immediately.

The escrow agent shall prepare the HUD-1 Settlement Statement in accordance with these instructions and provide it to us for our approval at least 24 hours before the real estate settlement transaction is closed. Then, the escrow agent shall close the transaction and disburse funds only in accordance with the approved HUD-1 Settlement Statement. If any party to the transaction requests that his/her funds be disbursed in any manner different from the approved HUD-1, the escrow agent shall advise us of the request and obtain prior approval from us before any funds are disbursed in a manner different from the approved HUD-1 Settlement Statement.

SUBJECT TO ANY LIMITATIONS IMPOSED BY PROCEDURAL RULE P-35 OF THE BASIC MANUAL OF TITLE INSURANCE IN THE STATE OF TEXAS, THE UNDERSIGNED AS AUTHORIZED AGENT FOR SETTLEMENT AGENT HEREBY ACKNOWLEDGES RECEIPT OF AND AGREES TO FOLLOW ALL THE TERMS AND REQUIREMENTS CONTAINED IN THESE CLOSING INSTRUCTIONS, AND THE REVISED COMMITMENT FOR TITLE INSURANCE ISSUED FOR THIS LOAN WHICH ARE INCORPORATED HEREIN BY REFERENCE PRIOR TO THE REQUEST FOR LOAN FUNDING, UNLESS OTHERWISE AUTHORIZED HEREIN. THIS ACKNOWLEDGEMENT DOES NOT OTHERWISE IMPLY A CERTIFICATION OR GUARANTY OF FACT, INSURANCE COVERAGE OR CONCLUSION OF LAW.

Texas Title

By: _____
Settlement Agent Signature
[ORIGINAL SIGNATURE, NOT STAMP, REQUIRED AS A CONDITION OF FUNDING.]

PROMISSORY NOTE

1234 Investment Ct., Plano, TX 75024
Lot A, Block 11, Country Club Creek Estates, 1 & 2, Collin County, Texas
[Property Address]

\$124,548.00

October 23, 2012

Loan # 111111

1. **Promise to Pay.** ABC Builders, LP ("Borrower", whether one or more), promises to pay to the order of **Lender One** ("Lender"), the principal sum of **One Hundred Twenty Four Thousand Five Hundred Forty Eight and 00/100 Dollars (\$124,548.00)** or so much thereof as may actually be outstanding under this Note, together with interest on the unpaid principal balance from time to time outstanding at the rate specified below and otherwise in strict accordance with the terms and provisions of this Note.

2. **Loan Agreement.** This Note is executed and delivered pursuant to, and is subject to certain terms and conditions set forth in, a Master Loan Agreement executed by Borrower and Lender dated **October 1, 2007**. The Master Loan Agreement as it may be amended from time to time is referred to in this Note as the "Loan Agreement". This Note evidences only one of the outstanding and unpaid loans made under the Loan Agreement and is only one of the Notes referred to in the Loan Agreement. The Loan Agreement governs advances on this Note. As used in this Note the terms "Loan", "Loan Documents", and "Short Form Deed of Trust", have the meanings ascribed to them in the Loan Agreement.

3. **Interest**

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

(i) **"Applicable Rate"** means, at any time, a rate of interest per annum equal to the Index Rate in effect from time to time **plus 0.250%**.

(ii) **"Index Rate"** means, on any day **The Wall Street Journal Prime rate, the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks**. The Index Rate is the index agreed upon by Borrower and Lender to determine the rate of interest for this Note. Fluctuations in the Index Rate become effective immediately, without necessity for any notice whatsoever. Use of the Index Rate is not to be construed as a warranty or representation that the Index Rate is more favorable than another rate or index, that rates on other loans or credit facilities may not be based on indices other than the Index Rate, or that rates on loans to others may not be made below the Index Rate. If this Index Rate ceases to be published or made available, Lender shall select another index to determine the Applicable Rate. Thereafter this alternative index shall be used to calculate the rate of interest that will be charged on this Note.

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

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

(v) **"Interest Period"** means the time interval between interest payments detailed in Section 4 (a) below.

Promissory Note

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

- b. **Interest Rate.** Except as otherwise provided in this Note, simple interest on the principal balance of this Note, outstanding from time to time, shall accrue at the lesser of (i) the Applicable Rate or (ii) the Maximum Lawful Rate. In no event will the rate be more than **18.000%** per annum. **In no event will this rate be less than 4.000% per annum.**
 - c. **Default Rate.** Upon the occurrence and during the continuance of an Event of Default under this Note or any of the other Loan Documents that continues past any applicable cure period, at the option of the Lender, the principal balance of this Note then outstanding shall bear interest at the Default Rate for the period beginning with the date of occurrence of such Event of Default and ending on the date the Event of Default is cured.
 - d. **Interest Limitation Recoupment.** Notwithstanding anything contained in this Note to the contrary, if at any time (1) interest at the Applicable Rate, (ii) interest at the Default Rate, if applicable, and (iii) the Charges computed over the full term of this Note, exceed the Maximum Lawful Rate, then the rate of interest payable on this Note, together with all Charges, shall be limited to the Maximum Lawful Rate; provided however, that any subsequent reduction in the Applicable Rate shall not cause a reduction of the rate of interest payable on this Note below the Maximum Lawful Rate until the total amount of interest earned on this Note, together with all Charges, equals the total amount of interest which would have accrued at the Applicable Rate if such interest rate had at all times been in effect. Changes in the Applicable Rate resulting from a change in the Prime Rate shall be subject to the provisions of this paragraph.
 - e. **Computation Period.** Except for the computation of the Maximum Lawful Rate which shall be undertaken on the basis of a 365 or 366-day year, interest on the indebtedness evidenced by this Note shall be computed on the basis of a 360-day year and shall accrue on the actual number of days any principal balance on this Note is outstanding.
4. **Payment.** This Note shall be due and payable as follows:
- a. **Monthly Interest Payments.** **Monthly** payments of interest shall be due and payable on the **Twenty-second** day of each **month**, beginning on **November 22, 2012** and continuing regularly thereafter until **October 22, 2013** (the “Maturity Date”), when the entire amount of unpaid principal and all accrued but unpaid interest shall be due and payable. The amount of each **monthly** payment of interest will be equal to the interest which accrued during the Interest Period immediately preceding the date the payment is due. Notwithstanding anything to the contrary set forth in the Note, the Deed of Trust or the other loan documents, to the extent not prohibited by Texas and applicable federal law, Borrower hereby agrees to the following:

Late Fee. In the event any installment, or any part thereof, remains unpaid for **10** or more days past the due date thereof as provided in the Note, Borrower shall pay to Lender, in addition to any other amounts to which Lender may be entitled hereunder, a reasonable late payment fee equal to **5.000%** of the amount of said installment, which amount is stipulated by Borrower to be reasonable in order to compensate Lender for its additional costs incurred as a result of having to

attend to such delinquency. This late charge should be paid only once, but promptly, as to each respective late payment. It is further agreed that the imposition of any such late payment fee shall in no way prejudice or limit Lender's rights or remedies against Borrower under the Note, the Deed of Trust or the other loan documents or any other instrument.

If not prohibited by applicable law, Borrower agrees to pay an amount charged by Lender not to exceed **\$30.00** (or the maximum amount allowed by applicable law if applicable law limits said fee to an amount less than **\$30.00**) for each check, draft, order or other instrument or form of remittance which Borrower gives in payment toward this obligation that is returned to Lender unpaid or dishonored for any reason.

- b. **Principal Payments.** The entire unpaid principal balance of this Note, together with all accrued but unpaid interest with respect to this Note, shall be due and payable on **October 22, 2013** (the "Maturity Date").
 - c. **Additional Payments.** In some instances the Loan Agreement may require payments on this Note in addition to the scheduled payments described above. Borrower promises to make all of the additional payments on this Note that are required by the Loan Agreement.
 - d. **Prepayments.** This Note may be prepaid, in whole or in part, at any time without penalty of any kind. Prepayments shall be credited first to accrued but unpaid interest to the date of the prepayment and the balance to the reduction of principal.
 - e. **Application.** All payments on this Note may, at the sole option of Lender, be applied at any time and from time to time and in any order, to the following: (i) the payment of accrued but unpaid interest, (ii) the payment or reimbursement of any expenses, costs, or obligations (other than principal and interest on this Note) which Borrower is obligated to pay or which Lender is entitled to receive pursuant to this Note or any of the other Loan Documents, and (iii) the payment of all or any portion of the principal balance then outstanding.
 - f. **Place.** All payments on this Note must be made to Lender at its offices in **Tarrant** County, Texas, at the address of Lender as specified in this Note or as Lender may from time to time designate in writing to Borrower.
 - g. **Business Days.** If any payment of principal or interest on this Note becomes due and payable on a Saturday, Sunday, or any other day on which Lender is not open for normal business, Borrower shall make such payment on the next succeeding business day of Lender. Any such extension of time for payment will be included in computing interest which has accrued and is payable in connection with such payment.
 - h. **Legal Tender.** All amounts payable under this Note are payable in lawful money or legal tender of the United States of America in immediately available funds.
5. **Default and Remedies.**
- a. **Default.** An Event of Default shall occur pursuant to this Note if (i) any default is made in the payment, in whole or in part, of any amount payable under this Note or any other Loan Document when due and such default is not cured within **15** days after the date on which Lender gives written notice of the default to Borrower or (ii) any Event of Default occurs pursuant to,

Promissory Note

and as defined in any other Loan Document.

- b. **Remedies.** If an Event of Default occurs under this Note or under any of the other Loan Documents, then Lender may, at its option, without further notice or demand, declare the unpaid principal balance of, and the accrued but unpaid interest on, this Note immediately due and payable, foreclose all liens and security interests securing payment of this Note, pursue any and all other rights and remedies available to Lender or pursue any combination of the foregoing. All remedies under this Note, the Loan Documents, and at law or in equity shall be cumulative.
- c. **Waiver.** Except as specifically provided in the Loan Documents, Borrower, any endorser of this Note, any guarantors of this Note, and all persons and entities liable or to become liable on this Note severally waive presentment and demand for payment, notice of intent to accelerate maturity, notice of acceleration of maturity, protest and notice of protest and non-payment, bringing of suit and diligence in taking any action to collect any sums owing under this Note or in proceeding against any of the rights and collateral securing payment of this Note. Borrower, any endorser of this Note, any guarantors of this Note, and all persons and entities liable or to become liable on this Note agree (i) that the time for any payments on this Note may be extended from time to time without notice and consent, (ii) to the acceptance of further collateral, and/or (iii) to the release of any existing collateral for the payment of this Note, all without in any manner affecting their liability under this Note. No extension of time for the payment of this Note or any installment of it shall affect the liability of Borrower, any endorser, any guarantor, or any person or entity liable or to become liable on this Note, under this Note even though Borrower, such endorser, such guarantor, or such other person or entity is not a party to such agreement.
- d. **No Waiver.** Failure of Lender to exercise any of the options granted to Lender under this Note upon the happening of one or more of the events giving rise to such options shall not constitute a waiver of the right to exercise the same or any other option at any subsequent time with respect to the same or any other event. The acceptance by Lender of any payment under this Note that is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the options granted in this Note to Lender at that time or at any subsequent time or nullify any prior exercise of any such option without the express written acknowledgment of the Lender.
- e. **Collection Costs.** Borrower agrees to pay all costs of collection of this Note when incurred, including attorneys' fees, whether or not any legal action is instituted to enforce this Note.
- 6. **Miscellaneous.**
 - a. **Notices.** All notices or other communications required or permitted to be given pursuant to this instrument must be in writing and will be deemed properly given if (i) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, or (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee. Notice so mailed is effective upon its deposit with the United States Postal Service or any successor to it; notice sent by a commercial delivery service is effective upon delivery to such commercial delivery service; notice given by personal delivery is effective only if and when received by the addressee; and notice given by other means is effective only if and when received at the designated address of the intended addressee. Either party may change its address for notice under this instrument to any other location within the

continental United States by giving thirty (30) days' notice to the other party in the manner described in this paragraph. For purposes of such notices, the addresses of the parties are as follows:

Lender: **Lender One**
 2310 Interstate 20 W
 Arlington, TX 76017

Borrower: **ABC Builders, LP**
 123 Nowhere Street
 Arlington, TX 76012

- b. **Governing Law.** THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. Any action or proceeding under or in connection with this Note against Borrower or any other party ever liable for payment of any sums of money payable on this Note may be brought in any state or federal court in **Tarrant County, Texas**. Borrower and each such other party irrevocably (i) submits to the nonexclusive jurisdiction of such courts, and (ii) waives any objection they may now or hereafter have as to the venue of any such action or proceeding brought in such court or that such court is an inconvenient forum.
- c. **Interest Limitation.** It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with the applicable Texas law governing the maximum rate or amount of interest payable on this Note or the indebtedness evidenced by it and the other Loan Documents (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, reserve, or receive a greater amount of interest than under Texas law). If (i) the applicable law is ever judicially interpreted so as to render usurious any amount called for under this Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the indebtedness evidenced by this Note and the other Loan Documents, or (ii) Lender's exercise of the option to accelerate the maturity of this Note, or (iii) any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable law, then it is Borrower's and Lender's express intent that (a) all excess amounts previously collected by Lender be credited on the principal balance of this Note (or, if this Note has been or would thereby be paid in full, refunded to Borrower), and (b) the provisions of this Note and the other Loan Documents immediately be deemed reformed and the amounts subsequently collectible under this Note and the other Loan Documents reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for under this Note and the other Loan Documents. All sums paid or agreed to be paid to Lender for the use, forbearance, and detention of the indebtedness evidenced by this Note and the other Loan Documents shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full term of such indebtedness until payment in full, so that the rate or amount of interest on account of such indebtedness does not exceed the usury ceiling from time to time in effect and applicable to such indebtedness for so long as the debt is outstanding. To the extent that Lender is relying on Chapter 303 of the Texas Finance Code, as amended and or succeeded, to determine the Maximum Lawful Rate payable on such indebtedness, Lender will utilize the "weekly ceiling" rate from time to time in effect as provided in Chapter 303 of the Texas Finance Code, as amended and/or succeeded. To the extent United States federal law permits Lender to contract

Promissory Note

for, charge, or receive a greater amount of interest than Texas law, Lender will rely on United States federal law instead of Chapter 303 of the Texas Finance Code, as amended and/or succeeded, for the purpose of determining the Maximum Lawful Rate. Additionally, to the extent permitted by applicable law now or hereafter in effect, Lender may, at its option and from time to time, implement any other method of computing the Maximum Lawful Rate under Chapter 303 of the Texas Finance Code, as amended and/or succeeded, or under other applicable law by giving notice, if required, to Borrower as provided by applicable law now or hereafter in effect. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to the indebtedness evidenced by this Note. Notwithstanding anything to the contrary contained in this Note or any of the other Loan Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

- d. **Joint and Several Liability.** If there is more than one Borrower of this Note, each such Borrower is jointly and severally liable for the obligations of Borrower under this Note. If Borrower is a partnership, each general partner of Borrower is jointly and severally liable for the obligations of Borrower under this Note, and each general partner waives any requirement of law that Lender exhaust any assets of Borrower before proceeding against the assets of such general partner.
- e. **Security.** This Note is secured, among other things, by one or more Deeds of Trust, a master form of which has been or will be recorded in various counties within the State of Texas pursuant to the Texas Property Code with the intention that such master forms be supplemented by Short Form Deeds of Trust in the future.

Mark with “x” if applicable:

☐ Purpose. This Note is executed in renewal of, substitution and replacement for, a note in the original face amount of \$ 0.00 dated October 1, 2007 executed by Borrower payable to _____.

Other: N/A

EXECUTED to be effective as of **October 23, 2012**.

ABC Builders, LP, a Texas corporation

By: _____

[Sign Originals Only]

Promissory Note

PROMISSORY NOTE

1111 Investment Ct., Plano, TX 75024
Lot B, Block 11, Country Club Creek Estates, 1 & 2, Collin County, Texas
[Property Address]

\$112,094.00

October 23, 2012

Loan # 222222

1. **Promise to Pay.** ABC Builders, LP ("Borrower", whether one or more), promises to pay to the order of **Lender One** ("Lender"), the principal sum of **One Hundred Twelve Thousand Ninety Four and 00/100** Dollars (**\$112,094.00**) or so much thereof as may actually be outstanding under this Note, together with interest on the unpaid principal balance from time to time outstanding at the rate specified below and otherwise in strict accordance with the terms and provisions of this Note.

2. **Loan Agreement.** This Note is executed and delivered pursuant to, and is subject to certain terms and conditions set forth in, a Master Loan Agreement executed by Borrower and Lender dated **October 1, 2007**. The Master Loan Agreement as it may be amended from time to time is referred to in this Note as the "Loan Agreement". This Note evidences only one of the outstanding and unpaid loans made under the Loan Agreement and is only one of the Notes referred to in the Loan Agreement. The Loan Agreement governs advances on this Note. As used in this Note the terms "Loan", "Loan Documents", and "Short Form Deed of Trust", have the meanings ascribed to them in the Loan Agreement.

3. **Interest**

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

(i) **"Applicable Rate"** means, at any time, a rate of interest per annum equal to the Index Rate in effect from time to time **plus 0.250%**.

(ii) **"Index Rate"** means, on any day **The Wall Street Journal Prime rate, the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks**. The Index Rate is the index agreed upon by Borrower and Lender to determine the rate of interest for this Note. Fluctuations in the Index Rate become effective immediately, without necessity for any notice whatsoever. Use of the Index Rate is not to be construed as a warranty or representation that the Index Rate is more favorable than another rate or index, that rates on other loans or credit facilities may not be based on indices other than the Index Rate, or that rates on loans to others may not be made below the Index Rate. If this Index Rate ceases to be published or made available, Lender shall select another index to determine the Applicable Rate. Thereafter this alternative index shall be used to calculate the rate of interest that will be charged on this Note.

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

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

(v) **"Interest Period"** means the time interval between interest payments detailed in Section 4 (a) below.

Promissory Note

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

- b. **Interest Rate.** Except as otherwise provided in this Note, simple interest on the principal balance of this Note, outstanding from time to time, shall accrue at the lesser of (i) the Applicable Rate or (ii) the Maximum Lawful Rate. In no event will the rate be more than **18.000%** per annum. **In no event will this rate be less than 4.000% per annum.**
 - c. **Default Rate.** Upon the occurrence and during the continuance of an Event of Default under this Note or any of the other Loan Documents that continues past any applicable cure period, at the option of the Lender, the principal balance of this Note then outstanding shall bear interest at the Default Rate for the period beginning with the date of occurrence of such Event of Default and ending on the date the Event of Default is cured.
 - d. **Interest Limitation Recoupment.** Notwithstanding anything contained in this Note to the contrary, if at any time (1) interest at the Applicable Rate, (ii) interest at the Default Rate, if applicable, and (iii) the Charges computed over the full term of this Note, exceed the Maximum Lawful Rate, then the rate of interest payable on this Note, together with all Charges, shall be limited to the Maximum Lawful Rate; provided however, that any subsequent reduction in the Applicable Rate shall not cause a reduction of the rate of interest payable on this Note below the Maximum Lawful Rate until the total amount of interest earned on this Note, together with all Charges, equals the total amount of interest which would have accrued at the Applicable Rate if such interest rate had at all times been in effect. Changes in the Applicable Rate resulting from a change in the Prime Rate shall be subject to the provisions of this paragraph.
 - e. **Computation Period.** Except for the computation of the Maximum Lawful Rate which shall be undertaken on the basis of a 365 or 366-day year, interest on the indebtedness evidenced by this Note shall be computed on the basis of a 360-day year and shall accrue on the actual number of days any principal balance on this Note is outstanding.
4. **Payment.** This Note shall be due and payable as follows:
- a. **Monthly Interest Payments.** **Monthly** payments of interest shall be due and payable on the **Twenty-second** day of each **month**, beginning on **November 22, 2012** and continuing regularly thereafter until **October 22, 2013** (the “Maturity Date”), when the entire amount of unpaid principal and all accrued but unpaid interest shall be due and payable. The amount of each **monthly** payment of interest will be equal to the interest which accrued during the Interest Period immediately preceding the date the payment is due. Notwithstanding anything to the contrary set forth in the Note, the Deed of Trust or the other loan documents, to the extent not prohibited by Texas and applicable federal law, Borrower hereby agrees to the following:

Late Fee. In the event any installment, or any part thereof, remains unpaid for 10 or more days past the due date thereof as provided in the Note, Borrower shall pay to Lender, in addition to any other amounts to which Lender may be entitled hereunder, a reasonable late payment fee equal to 5.000% of the amount of said installment, which amount is stipulated by Borrower to be reasonable in order to compensate Lender for its additional costs incurred as a result of having to

attend to such delinquency. This late charge should be paid only once, but promptly, as to each respective late payment. It is further agreed that the imposition of any such late payment fee shall in no way prejudice or limit Lender's rights or remedies against Borrower under the Note, the Deed of Trust or the other loan documents or any other instrument.

If not prohibited by applicable law, Borrower agrees to pay an amount charged by Lender not to exceed **\$30.00** (or the maximum amount allowed by applicable law if applicable law limits said fee to an amount less than **\$30.00**) for each check, draft, order or other instrument or form of remittance which Borrower gives in payment toward this obligation that is returned to Lender unpaid or dishonored for any reason.

- b. **Principal Payments.** The entire unpaid principal balance of this Note, together with all accrued but unpaid interest with respect to this Note, shall be due and payable on **October 22, 2013** (the "Maturity Date").
- c. **Additional Payments.** In some instances the Loan Agreement may require payments on this Note in addition to the scheduled payments described above. Borrower promises to make all of the additional payments on this Note that are required by the Loan Agreement.
- d. **Prepayments.** This Note may be prepaid, in whole or in part, at any time without penalty of any kind. Prepayments shall be credited first to accrued but unpaid interest to the date of the prepayment and the balance to the reduction of principal.
- e. **Application.** All payments on this Note may, at the sole option of Lender, be applied at any time and from time to time and in any order, to the following: (i) the payment of accrued but unpaid interest, (ii) the payment or reimbursement of any expenses, costs, or obligations (other than principal and interest on this Note) which Borrower is obligated to pay or which Lender is entitled to receive pursuant to this Note or any of the other Loan Documents, and (iii) the payment of all or any portion of the principal balance then outstanding.
- f. **Place.** All payments on this Note must be made to Lender at its offices in **Tarrant** County, Texas, at the address of Lender as specified in this Note or as Lender may from time to time designate in writing to Borrower.
- g. **Business Days.** If any payment of principal or interest on this Note becomes due and payable on a Saturday, Sunday, or any other day on which Lender is not open for normal business, Borrower shall make such payment on the next succeeding business day of Lender. Any such extension of time for payment will be included in computing interest which has accrued and is payable in connection with such payment.
- h. **Legal Tender.** All amounts payable under this Note are payable in lawful money or legal tender of the United States of America in immediately available funds.
- 5. **Default and Remedies.**
 - a. **Default.** An Event of Default shall occur pursuant to this Note if (i) any default is made in the payment, in whole or in part, of any amount payable under this Note or any other Loan Document when due and such default is not cured within **15** days after the date on which Lender gives written notice of the default to Borrower or (ii) any Event of Default occurs pursuant to,

Promissory Note

and as defined in any other Loan Document.

- b. **Remedies.** If an Event of Default occurs under this Note or under any of the other Loan Documents, then Lender may, at its option, without further notice or demand, declare the unpaid principal balance of, and the accrued but unpaid interest on, this Note immediately due and payable, foreclose all liens and security interests securing payment of this Note, pursue any and all other rights and remedies available to Lender or pursue any combination of the foregoing. All remedies under this Note, the Loan Documents, and at law or in equity shall be cumulative.
- c. **Waiver.** Except as specifically provided in the Loan Documents, Borrower, any endorser of this Note, any guarantors of this Note, and all persons and entities liable or to become liable on this Note severally waive presentment and demand for payment, notice of intent to accelerate maturity, notice of acceleration of maturity, protest and notice of protest and non-payment, bringing of suit and diligence in taking any action to collect any sums owing under this Note or in proceeding against any of the rights and collateral securing payment of this Note. Borrower, any endorser of this Note, any guarantors of this Note, and all persons and entities liable or to become liable on this Note agree (i) that the time for any payments on this Note may be extended from time to time without notice and consent, (ii) to the acceptance of further collateral, and/or (iii) to the release of any existing collateral for the payment of this Note, all without in any manner affecting their liability under this Note. No extension of time for the payment of this Note or any installment of it shall affect the liability of Borrower, any endorser, any guarantor, or any person or entity liable or to become liable on this Note, under this Note even though Borrower, such endorser, such guarantor, or such other person or entity is not a party to such agreement.
- d. **No Waiver.** Failure of Lender to exercise any of the options granted to Lender under this Note upon the happening of one or more of the events giving rise to such options shall not constitute a waiver of the right to exercise the same or any other option at any subsequent time with respect to the same or any other event. The acceptance by Lender of any payment under this Note that is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the options granted in this Note to Lender at that time or at any subsequent time or nullify any prior exercise of any such option without the express written acknowledgment of the Lender.
- e. **Collection Costs.** Borrower agrees to pay all costs of collection of this Note when incurred, including attorneys' fees, whether or not any legal action is instituted to enforce this Note.
- 6. **Miscellaneous.**
 - a. **Notices.** All notices or other communications required or permitted to be given pursuant to this instrument must be in writing and will be deemed properly given if (i) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, or (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee. Notice so mailed is effective upon its deposit with the United States Postal Service or any successor to it; notice sent by a commercial delivery service is effective upon delivery to such commercial delivery service; notice given by personal delivery is effective only if and when received by the addressee; and notice given by other means is effective only if and when received at the designated address of the intended addressee. Either party may change its address for notice under this instrument to any other location within the

continental United States by giving thirty (30) days' notice to the other party in the manner described in this paragraph. For purposes of such notices, the addresses of the parties are as follows:

Lender: **Lender One**
 2310 Interstate 20 W
 Arlington, TX 76017

Borrower: **ABC Builders, LP**
 123 Nowhere Street
 Arlington, TX 76012

- b. **Governing Law.** THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. Any action or proceeding under or in connection with this Note against Borrower or any other party ever liable for payment of any sums of money payable on this Note may be brought in any state or federal court in **Tarrant County, Texas**. Borrower and each such other party irrevocably (i) submits to the nonexclusive jurisdiction of such courts, and (ii) waives any objection they may now or hereafter have as to the venue of any such action or proceeding brought in such court or that such court is an inconvenient forum.
- c. **Interest Limitation.** It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with the applicable Texas law governing the maximum rate or amount of interest payable on this Note or the indebtedness evidenced by it and the other Loan Documents (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, reserve, or receive a greater amount of interest than under Texas law). If (i) the applicable law is ever judicially interpreted so as to render usurious any amount called for under this Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the indebtedness evidenced by this Note and the other Loan Documents, or (ii) Lender's exercise of the option to accelerate the maturity of this Note, or (iii) any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable law, then it is Borrower's and Lender's express intent that (a) all excess amounts previously collected by Lender be credited on the principal balance of this Note (or, if this Note has been or would thereby be paid in full, refunded to Borrower), and (b) the provisions of this Note and the other Loan Documents immediately be deemed reformed and the amounts subsequently collectible under this Note and the other Loan Documents reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for under this Note and the other Loan Documents. All sums paid or agreed to be paid to Lender for the use, forbearance, and detention of the indebtedness evidenced by this Note and the other Loan Documents shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full term of such indebtedness until payment in full, so that the rate or amount of interest on account of such indebtedness does not exceed the usury ceiling from time to time in effect and applicable to such indebtedness for so long as the debt is outstanding. To the extent that Lender is relying on Chapter 303 of the Texas Finance Code, as amended and or succeeded, to determine the Maximum Lawful Rate payable on such indebtedness, Lender will utilize the "weekly ceiling" rate from time to time in effect as provided in Chapter 303 of the Texas Finance Code, as amended and/or succeeded. To the extent United States federal law permits Lender to contract

Promissory Note

for, charge, or receive a greater amount of interest than Texas law, Lender will rely on United States federal law instead of Chapter 303 of the Texas Finance Code, as amended and/or succeeded, for the purpose of determining the Maximum Lawful Rate. Additionally, to the extent permitted by applicable law now or hereafter in effect, Lender may, at its option and from time to time, implement any other method of computing the Maximum Lawful Rate under Chapter 303 of the Texas Finance Code, as amended and/or succeeded, or under other applicable law by giving notice, if required, to Borrower as provided by applicable law now or hereafter in effect. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to the indebtedness evidenced by this Note. Notwithstanding anything to the contrary contained in this Note or any of the other Loan Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

- d. **Joint and Several Liability.** If there is more than one Borrower of this Note, each such Borrower is jointly and severally liable for the obligations of Borrower under this Note. If Borrower is a partnership, each general partner of Borrower is jointly and severally liable for the obligations of Borrower under this Note, and each general partner waives any requirement of law that Lender exhaust any assets of Borrower before proceeding against the assets of such general partner.
- e. **Security.** This Note is secured, among other things, by one or more Deeds of Trust, a master form of which has been or will be recorded in various counties within the State of Texas pursuant to the Texas Property Code with the intention that such master forms be supplemented by Short Form Deeds of Trust in the future.

Mark with “x” if applicable:

☐ Purpose. This Note is executed in renewal of, substitution and replacement for, a note in the original face amount of \$ 0.00 dated October 1, 2007 executed by Borrower payable to _____.

Other: N/A

EXECUTED to be effective as of **October 23, 2012** .

ABC Builders, LP, a Texas corporation

By: _____

[Sign Originals Only]

Promissory Note

PROMISSORY NOTE

2222 Investment Ct., Plano, TX 75024
Lot C, Block 11, Country Club Creek Estates, 1 & 2, Collin County, Texas
[Property Address]

\$124,548.00

October 23, 2012

Loan # 333333

1. **Promise to Pay.** ABC Builders, LP ("Borrower", whether one or more), promises to pay to the order of **Lender One** ("Lender"), the principal sum of **One Hundred Twenty Four Thousand Five Hundred Forty Eight and 00/100 Dollars (\$124,548.00)** or so much thereof as may actually be outstanding under this Note, together with interest on the unpaid principal balance from time to time outstanding at the rate specified below and otherwise in strict accordance with the terms and provisions of this Note.

2. **Loan Agreement.** This Note is executed and delivered pursuant to, and is subject to certain terms and conditions set forth in, a Master Loan Agreement executed by Borrower and Lender dated **October 1, 2007**. The Master Loan Agreement as it may be amended from time to time is referred to in this Note as the "Loan Agreement". This Note evidences only one of the outstanding and unpaid loans made under the Loan Agreement and is only one of the Notes referred to in the Loan Agreement. The Loan Agreement governs advances on this Note. As used in this Note the terms "Loan", "Loan Documents", and "Short Form Deed of Trust", have the meanings ascribed to them in the Loan Agreement.

3. **Interest**

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

(i) **"Applicable Rate"** means, at any time, a rate of interest per annum equal to the Index Rate in effect from time to time **plus 0.250%**.

(ii) **"Index Rate"** means, on any day **The Wall Street Journal Prime rate, the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks**. The Index Rate is the index agreed upon by Borrower and Lender to determine the rate of interest for this Note. Fluctuations in the Index Rate become effective immediately, without necessity for any notice whatsoever. Use of the Index Rate is not to be construed as a warranty or representation that the Index Rate is more favorable than another rate or index, that rates on other loans or credit facilities may not be based on indices other than the Index Rate, or that rates on loans to others may not be made below the Index Rate. If this Index Rate ceases to be published or made available, Lender shall select another index to determine the Applicable Rate. Thereafter this alternative index shall be used to calculate the rate of interest that will be charged on this Note.

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

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

(v) **"Interest Period"** means the time interval between interest payments detailed in Section 4 (a) below.

Promissory Note

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

- b. **Interest Rate.** Except as otherwise provided in this Note, simple interest on the principal balance of this Note, outstanding from time to time, shall accrue at the lesser of (i) the Applicable Rate or (ii) the Maximum Lawful Rate. In no event will the rate be more than **18.000%** per annum. **In no event will this rate be less than 4.000% per annum.**
 - c. **Default Rate.** Upon the occurrence and during the continuance of an Event of Default under this Note or any of the other Loan Documents that continues past any applicable cure period, at the option of the Lender, the principal balance of this Note then outstanding shall bear interest at the Default Rate for the period beginning with the date of occurrence of such Event of Default and ending on the date the Event of Default is cured.
 - d. **Interest Limitation Recoupment.** Notwithstanding anything contained in this Note to the contrary, if at any time (1) interest at the Applicable Rate, (ii) interest at the Default Rate, if applicable, and (iii) the Charges computed over the full term of this Note, exceed the Maximum Lawful Rate, then the rate of interest payable on this Note, together with all Charges, shall be limited to the Maximum Lawful Rate; provided however, that any subsequent reduction in the Applicable Rate shall not cause a reduction of the rate of interest payable on this Note below the Maximum Lawful Rate until the total amount of interest earned on this Note, together with all Charges, equals the total amount of interest which would have accrued at the Applicable Rate if such interest rate had at all times been in effect. Changes in the Applicable Rate resulting from a change in the Prime Rate shall be subject to the provisions of this paragraph.
 - e. **Computation Period.** Except for the computation of the Maximum Lawful Rate which shall be undertaken on the basis of a 365 or 366-day year, interest on the indebtedness evidenced by this Note shall be computed on the basis of a 360-day year and shall accrue on the actual number of days any principal balance on this Note is outstanding.
4. **Payment.** This Note shall be due and payable as follows:
- a. **Monthly Interest Payments.** **Monthly** payments of interest shall be due and payable on the **Twenty-second** day of each **month**, beginning on **November 22, 2012** and continuing regularly thereafter until **October 22, 2013** (the “Maturity Date”), when the entire amount of unpaid principal and all accrued but unpaid interest shall be due and payable. The amount of each **monthly** payment of interest will be equal to the interest which accrued during the Interest Period immediately preceding the date the payment is due. Notwithstanding anything to the contrary set forth in the Note, the Deed of Trust or the other loan documents, to the extent not prohibited by Texas and applicable federal law, Borrower hereby agrees to the following:

Late Fee. In the event any installment, or any part thereof, remains unpaid for 10 or more days past the due date thereof as provided in the Note, Borrower shall pay to Lender, in addition to any other amounts to which Lender may be entitled hereunder, a reasonable late payment fee equal to 5.000% of the amount of said installment, which amount is stipulated by Borrower to be reasonable in order to compensate Lender for its additional costs incurred as a result of having to

attend to such delinquency. This late charge should be paid only once, but promptly, as to each respective late payment. It is further agreed that the imposition of any such late payment fee shall in no way prejudice or limit Lender's rights or remedies against Borrower under the Note, the Deed of Trust or the other loan documents or any other instrument.

If not prohibited by applicable law, Borrower agrees to pay an amount charged by Lender not to exceed **\$30.00** (or the maximum amount allowed by applicable law if applicable law limits said fee to an amount less than **\$30.00**) for each check, draft, order or other instrument or form of remittance which Borrower gives in payment toward this obligation that is returned to Lender unpaid or dishonored for any reason.

- b. **Principal Payments.** The entire unpaid principal balance of this Note, together with all accrued but unpaid interest with respect to this Note, shall be due and payable on **October 22, 2013** (the "Maturity Date").
- c. **Additional Payments.** In some instances the Loan Agreement may require payments on this Note in addition to the scheduled payments described above. Borrower promises to make all of the additional payments on this Note that are required by the Loan Agreement.
- d. **Prepayments.** This Note may be prepaid, in whole or in part, at any time without penalty of any kind. Prepayments shall be credited first to accrued but unpaid interest to the date of the prepayment and the balance to the reduction of principal.
- e. **Application.** All payments on this Note may, at the sole option of Lender, be applied at any time and from time to time and in any order, to the following: (i) the payment of accrued but unpaid interest, (ii) the payment or reimbursement of any expenses, costs, or obligations (other than principal and interest on this Note) which Borrower is obligated to pay or which Lender is entitled to receive pursuant to this Note or any of the other Loan Documents, and (iii) the payment of all or any portion of the principal balance then outstanding.
- f. **Place.** All payments on this Note must be made to Lender at its offices in **Tarrant** County, Texas, at the address of Lender as specified in this Note or as Lender may from time to time designate in writing to Borrower.
- g. **Business Days.** If any payment of principal or interest on this Note becomes due and payable on a Saturday, Sunday, or any other day on which Lender is not open for normal business, Borrower shall make such payment on the next succeeding business day of Lender. Any such extension of time for payment will be included in computing interest which has accrued and is payable in connection with such payment.
- h. **Legal Tender.** All amounts payable under this Note are payable in lawful money or legal tender of the United States of America in immediately available funds.
- 5. **Default and Remedies.**
 - a. **Default.** An Event of Default shall occur pursuant to this Note if (i) any default is made in the payment, in whole or in part, of any amount payable under this Note or any other Loan Document when due and such default is not cured within **15** days after the date on which Lender gives written notice of the default to Borrower or (ii) any Event of Default occurs pursuant to,

Promissory Note

and as defined in any other Loan Document.

- b. **Remedies.** If an Event of Default occurs under this Note or under any of the other Loan Documents, then Lender may, at its option, without further notice or demand, declare the unpaid principal balance of, and the accrued but unpaid interest on, this Note immediately due and payable, foreclose all liens and security interests securing payment of this Note, pursue any and all other rights and remedies available to Lender or pursue any combination of the foregoing. All remedies under this Note, the Loan Documents, and at law or in equity shall be cumulative.
- c. **Waiver.** Except as specifically provided in the Loan Documents, Borrower, any endorser of this Note, any guarantors of this Note, and all persons and entities liable or to become liable on this Note severally waive presentment and demand for payment, notice of intent to accelerate maturity, notice of acceleration of maturity, protest and notice of protest and non-payment, bringing of suit and diligence in taking any action to collect any sums owing under this Note or in proceeding against any of the rights and collateral securing payment of this Note. Borrower, any endorser of this Note, any guarantors of this Note, and all persons and entities liable or to become liable on this Note agree (i) that the time for any payments on this Note may be extended from time to time without notice and consent, (ii) to the acceptance of further collateral, and/or (iii) to the release of any existing collateral for the payment of this Note, all without in any manner affecting their liability under this Note. No extension of time for the payment of this Note or any installment of it shall affect the liability of Borrower, any endorser, any guarantor, or any person or entity liable or to become liable on this Note, under this Note even though Borrower, such endorser, such guarantor, or such other person or entity is not a party to such agreement.
- d. **No Waiver.** Failure of Lender to exercise any of the options granted to Lender under this Note upon the happening of one or more of the events giving rise to such options shall not constitute a waiver of the right to exercise the same or any other option at any subsequent time with respect to the same or any other event. The acceptance by Lender of any payment under this Note that is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the options granted in this Note to Lender at that time or at any subsequent time or nullify any prior exercise of any such option without the express written acknowledgment of the Lender.
- e. **Collection Costs.** Borrower agrees to pay all costs of collection of this Note when incurred, including attorneys' fees, whether or not any legal action is instituted to enforce this Note.
- 6. **Miscellaneous.**
 - a. **Notices.** All notices or other communications required or permitted to be given pursuant to this instrument must be in writing and will be deemed properly given if (i) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, or (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee. Notice so mailed is effective upon its deposit with the United States Postal Service or any successor to it; notice sent by a commercial delivery service is effective upon delivery to such commercial delivery service; notice given by personal delivery is effective only if and when received by the addressee; and notice given by other means is effective only if and when received at the designated address of the intended addressee. Either party may change its address for notice under this instrument to any other location within the

continental United States by giving thirty (30) days' notice to the other party in the manner described in this paragraph. For purposes of such notices, the addresses of the parties are as follows:

Lender: **Lender One**
 2310 Interstate 20 W
 Arlington, TX 76017

Borrower: **ABC Builders, LP**
 123 Nowhere Street
 Arlington, TX 76012

- b. **Governing Law.** THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. Any action or proceeding under or in connection with this Note against Borrower or any other party ever liable for payment of any sums of money payable on this Note may be brought in any state or federal court in **Tarrant County, Texas**. Borrower and each such other party irrevocably (i) submits to the nonexclusive jurisdiction of such courts, and (ii) waives any objection they may now or hereafter have as to the venue of any such action or proceeding brought in such court or that such court is an inconvenient forum.
- c. **Interest Limitation.** It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with the applicable Texas law governing the maximum rate or amount of interest payable on this Note or the indebtedness evidenced by it and the other Loan Documents (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, reserve, or receive a greater amount of interest than under Texas law). If (i) the applicable law is ever judicially interpreted so as to render usurious any amount called for under this Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the indebtedness evidenced by this Note and the other Loan Documents, or (ii) Lender's exercise of the option to accelerate the maturity of this Note, or (iii) any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable law, then it is Borrower's and Lender's express intent that (a) all excess amounts previously collected by Lender be credited on the principal balance of this Note (or, if this Note has been or would thereby be paid in full, refunded to Borrower), and (b) the provisions of this Note and the other Loan Documents immediately be deemed reformed and the amounts subsequently collectible under this Note and the other Loan Documents reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for under this Note and the other Loan Documents. All sums paid or agreed to be paid to Lender for the use, forbearance, and detention of the indebtedness evidenced by this Note and the other Loan Documents shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full term of such indebtedness until payment in full, so that the rate or amount of interest on account of such indebtedness does not exceed the usury ceiling from time to time in effect and applicable to such indebtedness for so long as the debt is outstanding. To the extent that Lender is relying on Chapter 303 of the Texas Finance Code, as amended and or succeeded, to determine the Maximum Lawful Rate payable on such indebtedness, Lender will utilize the "weekly ceiling" rate from time to time in effect as provided in Chapter 303 of the Texas Finance Code, as amended and/or succeeded. To the extent United States federal law permits Lender to contract

Promissory Note

for, charge, or receive a greater amount of interest than Texas law, Lender will rely on United States federal law instead of Chapter 303 of the Texas Finance Code, as amended and/or succeeded, for the purpose of determining the Maximum Lawful Rate. Additionally, to the extent permitted by applicable law now or hereafter in effect, Lender may, at its option and from time to time, implement any other method of computing the Maximum Lawful Rate under Chapter 303 of the Texas Finance Code, as amended and/or succeeded, or under other applicable law by giving notice, if required, to Borrower as provided by applicable law now or hereafter in effect. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to the indebtedness evidenced by this Note. Notwithstanding anything to the contrary contained in this Note or any of the other Loan Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

- d. **Joint and Several Liability.** If there is more than one Borrower of this Note, each such Borrower is jointly and severally liable for the obligations of Borrower under this Note. If Borrower is a partnership, each general partner of Borrower is jointly and severally liable for the obligations of Borrower under this Note, and each general partner waives any requirement of law that Lender exhaust any assets of Borrower before proceeding against the assets of such general partner.
- e. **Security.** This Note is secured, among other things, by one or more Deeds of Trust, a master form of which has been or will be recorded in various counties within the State of Texas pursuant to the Texas Property Code with the intention that such master forms be supplemented by Short Form Deeds of Trust in the future.

Mark with "x" if applicable:

☐ Purpose. This Note is executed in renewal of, substitution and replacement for, a note in the original face amount of \$ 0.00 dated October 1, 2007 executed by Borrower payable to _____.

Other: N/A

EXECUTED to be effective as of **October 23, 2012**.

ABC Builders, LP, a Texas corporation

By: _____

[Sign Originals Only]

Promissory Note

PROMISSORY NOTE

3333 Investment Ct., Plano, TX 75024
Lot D, Block 11, Country Club Creek Estates, 1 & 2, Collin County, Texas
[Property Address]

\$107,725.00

October 23, 2012
Loan # Loan # 444444

1. **Promise to Pay.** ABC Builders, LP ("Borrower", whether one or more), promises to pay to the order of **Lender One** ("Lender"), the principal sum of **One Hundred Seven Thousand Seven Hundred Twenty Five and 00/100 Dollars (\$107,725.00)** or so much thereof as may actually be outstanding under this Note, together with interest on the unpaid principal balance from time to time outstanding at the rate specified below and otherwise in strict accordance with the terms and provisions of this Note.

2. **Loan Agreement.** This Note is executed and delivered pursuant to, and is subject to certain terms and conditions set forth in, a Master Loan Agreement executed by Borrower and Lender dated **October 1, 2007**. The Master Loan Agreement as it may be amended from time to time is referred to in this Note as the "Loan Agreement". This Note evidences only one of the outstanding and unpaid loans made under the Loan Agreement and is only one of the Notes referred to in the Loan Agreement. The Loan Agreement governs advances on this Note. As used in this Note the terms "Loan", "Loan Documents", and "Short Form Deed of Trust", have the meanings ascribed to them in the Loan Agreement.

3. **Interest**

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

(i) **"Applicable Rate"** means, at any time, a rate of interest per annum equal to the Index Rate in effect from time to time **plus 0.250%**.

(ii) **"Index Rate"** means, on any day **The Wall Street Journal Prime rate, the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks**. The Index Rate is the index agreed upon by Borrower and Lender to determine the rate of interest for this Note. Fluctuations in the Index Rate become effective immediately, without necessity for any notice whatsoever. Use of the Index Rate is not to be construed as a warranty or representation that the Index Rate is more favorable than another rate or index, that rates on other loans or credit facilities may not be based on indices other than the Index Rate, or that rates on loans to others may not be made below the Index Rate. If this Index Rate ceases to be published or made available, Lender shall select another index to determine the Applicable Rate. Thereafter this alternative index shall be used to calculate the rate of interest that will be charged on this Note.

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

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

(v) **"Interest Period"** means the time interval between interest payments detailed in Section 4 (a) below.

Promissory Note

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

- b. **Interest Rate.** Except as otherwise provided in this Note, simple interest on the principal balance of this Note, outstanding from time to time, shall accrue at the lesser of (i) the Applicable Rate or (ii) the Maximum Lawful Rate. In no event will the rate be more than **18.000%** per annum. **In no event will this rate be less than 4.000% per annum.**
 - c. **Default Rate.** Upon the occurrence and during the continuance of an Event of Default under this Note or any of the other Loan Documents that continues past any applicable cure period, at the option of the Lender, the principal balance of this Note then outstanding shall bear interest at the Default Rate for the period beginning with the date of occurrence of such Event of Default and ending on the date the Event of Default is cured.
 - d. **Interest Limitation Recoupment.** Notwithstanding anything contained in this Note to the contrary, if at any time (1) interest at the Applicable Rate, (ii) interest at the Default Rate, if applicable, and (iii) the Charges computed over the full term of this Note, exceed the Maximum Lawful Rate, then the rate of interest payable on this Note, together with all Charges, shall be limited to the Maximum Lawful Rate; provided however, that any subsequent reduction in the Applicable Rate shall not cause a reduction of the rate of interest payable on this Note below the Maximum Lawful Rate until the total amount of interest earned on this Note, together with all Charges, equals the total amount of interest which would have accrued at the Applicable Rate if such interest rate had at all times been in effect. Changes in the Applicable Rate resulting from a change in the Prime Rate shall be subject to the provisions of this paragraph.
 - e. **Computation Period.** Except for the computation of the Maximum Lawful Rate which shall be undertaken on the basis of a 365 or 366-day year, interest on the indebtedness evidenced by this Note shall be computed on the basis of a **360-day** year and shall accrue on the actual number of days any principal balance on this Note is outstanding.
4. **Payment.** This Note shall be due and payable as follows:
- a. **Monthly Interest Payments.** **Monthly** payments of interest shall be due and payable on the **Twenty-second** day of each **month**, beginning on **November 22, 2012** and continuing regularly thereafter until **October 22, 2013** (the “Maturity Date”), when the entire amount of unpaid principal and all accrued but unpaid interest shall be due and payable. The amount of each **monthly** payment of interest will be equal to the interest which accrued during the Interest Period immediately preceding the date the payment is due. Notwithstanding anything to the contrary set forth in the Note, the Deed of Trust or the other loan documents, to the extent not prohibited by Texas and applicable federal law, Borrower hereby agrees to the following:

Late Fee. In the event any installment, or any part thereof, remains unpaid for 10 or more days past the due date thereof as provided in the Note, Borrower shall pay to Lender, in addition to any other amounts to which Lender may be entitled hereunder, a reasonable late payment fee equal to 5.000% of the amount of said installment, which amount is stipulated by Borrower to be reasonable in order to compensate Lender for its additional costs incurred as a result of having to

attend to such delinquency. This late charge should be paid only once, but promptly, as to each respective late payment. It is further agreed that the imposition of any such late payment fee shall in no way prejudice or limit Lender's rights or remedies against Borrower under the Note, the Deed of Trust or the other loan documents or any other instrument.

If not prohibited by applicable law, Borrower agrees to pay an amount charged by Lender not to exceed **\$30.00** (or the maximum amount allowed by applicable law if applicable law limits said fee to an amount less than **\$30.00**) for each check, draft, order or other instrument or form of remittance which Borrower gives in payment toward this obligation that is returned to Lender unpaid or dishonored for any reason.

- b. **Principal Payments.** The entire unpaid principal balance of this Note, together with all accrued but unpaid interest with respect to this Note, shall be due and payable on **October 22, 2013** (the "Maturity Date").
 - c. **Additional Payments.** In some instances the Loan Agreement may require payments on this Note in addition to the scheduled payments described above. Borrower promises to make all of the additional payments on this Note that are required by the Loan Agreement.
 - d. **Prepayments.** This Note may be prepaid, in whole or in part, at any time without penalty of any kind. Prepayments shall be credited first to accrued but unpaid interest to the date of the prepayment and the balance to the reduction of principal.
 - e. **Application.** All payments on this Note may, at the sole option of Lender, be applied at any time and from time to time and in any order, to the following: (i) the payment of accrued but unpaid interest, (ii) the payment or reimbursement of any expenses, costs, or obligations (other than principal and interest on this Note) which Borrower is obligated to pay or which Lender is entitled to receive pursuant to this Note or any of the other Loan Documents, and (iii) the payment of all or any portion of the principal balance then outstanding.
 - f. **Place.** All payments on this Note must be made to Lender at its offices in **Tarrant** County, Texas, at the address of Lender as specified in this Note or as Lender may from time to time designate in writing to Borrower.
 - g. **Business Days.** If any payment of principal or interest on this Note becomes due and payable on a Saturday, Sunday, or any other day on which Lender is not open for normal business, Borrower shall make such payment on the next succeeding business day of Lender. Any such extension of time for payment will be included in computing interest which has accrued and is payable in connection with such payment.
 - h. **Legal Tender.** All amounts payable under this Note are payable in lawful money or legal tender of the United States of America in immediately available funds.
5. **Default and Remedies.**
- a. **Default.** An Event of Default shall occur pursuant to this Note if (i) any default is made in the payment, in whole or in part, of any amount payable under this Note or any other Loan Document when due and such default is not cured within **15** days after the date on which Lender gives written notice of the default to Borrower or (ii) any Event of Default occurs pursuant to,

Promissory Note

and as defined in any other Loan Document.

- b. **Remedies.** If an Event of Default occurs under this Note or under any of the other Loan Documents, then Lender may, at its option, without further notice or demand, declare the unpaid principal balance of, and the accrued but unpaid interest on, this Note immediately due and payable, foreclose all liens and security interests securing payment of this Note, pursue any and all other rights and remedies available to Lender or pursue any combination of the foregoing. All remedies under this Note, the Loan Documents, and at law or in equity shall be cumulative.
- c. **Waiver.** Except as specifically provided in the Loan Documents, Borrower, any endorser of this Note, any guarantors of this Note, and all persons and entities liable or to become liable on this Note severally waive presentment and demand for payment, notice of intent to accelerate maturity, notice of acceleration of maturity, protest and notice of protest and non-payment, bringing of suit and diligence in taking any action to collect any sums owing under this Note or in proceeding against any of the rights and collateral securing payment of this Note. Borrower, any endorser of this Note, any guarantors of this Note, and all persons and entities liable or to become liable on this Note agree (i) that the time for any payments on this Note may be extended from time to time without notice and consent, (ii) to the acceptance of further collateral, and/or (iii) to the release of any existing collateral for the payment of this Note, all without in any manner affecting their liability under this Note. No extension of time for the payment of this Note or any installment of it shall affect the liability of Borrower, any endorser, any guarantor, or any person or entity liable or to become liable on this Note, under this Note even though Borrower, such endorser, such guarantor, or such other person or entity is not a party to such agreement.
- d. **No Waiver.** Failure of Lender to exercise any of the options granted to Lender under this Note upon the happening of one or more of the events giving rise to such options shall not constitute a waiver of the right to exercise the same or any other option at any subsequent time with respect to the same or any other event. The acceptance by Lender of any payment under this Note that is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the options granted in this Note to Lender at that time or at any subsequent time or nullify any prior exercise of any such option without the express written acknowledgment of the Lender.
- e. **Collection Costs.** Borrower agrees to pay all costs of collection of this Note when incurred, including attorneys' fees, whether or not any legal action is instituted to enforce this Note.
- 6. **Miscellaneous.**
 - a. **Notices.** All notices or other communications required or permitted to be given pursuant to this instrument must be in writing and will be deemed properly given if (i) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, or (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee. Notice so mailed is effective upon its deposit with the United States Postal Service or any successor to it; notice sent by a commercial delivery service is effective upon delivery to such commercial delivery service; notice given by personal delivery is effective only if and when received by the addressee; and notice given by other means is effective only if and when received at the designated address of the intended addressee. Either party may change its address for notice under this instrument to any other location within the

continental United States by giving thirty (30) days' notice to the other party in the manner described in this paragraph. For purposes of such notices, the addresses of the parties are as follows:

Lender: **Lender One**
 2310 Interstate 20 W
 Arlington, TX 76017

Borrower: **ABC Builders, LP**
 123 Nowhere Street
 Arlington, TX 76012

- b. **Governing Law.** THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. Any action or proceeding under or in connection with this Note against Borrower or any other party ever liable for payment of any sums of money payable on this Note may be brought in any state or federal court in **Tarrant County, Texas**. Borrower and each such other party irrevocably (i) submits to the nonexclusive jurisdiction of such courts, and (ii) waives any objection they may now or hereafter have as to the venue of any such action or proceeding brought in such court or that such court is an inconvenient forum.
- c. **Interest Limitation.** It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with the applicable Texas law governing the maximum rate or amount of interest payable on this Note or the indebtedness evidenced by it and the other Loan Documents (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, reserve, or receive a greater amount of interest than under Texas law). If (i) the applicable law is ever judicially interpreted so as to render usurious any amount called for under this Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the indebtedness evidenced by this Note and the other Loan Documents, or (ii) Lender's exercise of the option to accelerate the maturity of this Note, or (iii) any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable law, then it is Borrower's and Lender's express intent that (a) all excess amounts previously collected by Lender be credited on the principal balance of this Note (or, if this Note has been or would thereby be paid in full, refunded to Borrower), and (b) the provisions of this Note and the other Loan Documents immediately be deemed reformed and the amounts subsequently collectible under this Note and the other Loan Documents reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for under this Note and the other Loan Documents. All sums paid or agreed to be paid to Lender for the use, forbearance, and detention of the indebtedness evidenced by this Note and the other Loan Documents shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full term of such indebtedness until payment in full, so that the rate or amount of interest on account of such indebtedness does not exceed the usury ceiling from time to time in effect and applicable to such indebtedness for so long as the debt is outstanding. To the extent that Lender is relying on Chapter 303 of the Texas Finance Code, as amended and or succeeded, to determine the Maximum Lawful Rate payable on such indebtedness, Lender will utilize the "weekly ceiling" rate from time to time in effect as provided in Chapter 303 of the Texas Finance Code, as amended and/or succeeded. To the extent United States federal law permits Lender to contract

Promissory Note

for, charge, or receive a greater amount of interest than Texas law, Lender will rely on United States federal law instead of Chapter 303 of the Texas Finance Code, as amended and/or succeeded, for the purpose of determining the Maximum Lawful Rate. Additionally, to the extent permitted by applicable law now or hereafter in effect, Lender may, at its option and from time to time, implement any other method of computing the Maximum Lawful Rate under Chapter 303 of the Texas Finance Code, as amended and/or succeeded, or under other applicable law by giving notice, if required, to Borrower as provided by applicable law now or hereafter in effect. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to the indebtedness evidenced by this Note. Notwithstanding anything to the contrary contained in this Note or any of the other Loan Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

- d. **Joint and Several Liability.** If there is more than one Borrower of this Note, each such Borrower is jointly and severally liable for the obligations of Borrower under this Note. If Borrower is a partnership, each general partner of Borrower is jointly and severally liable for the obligations of Borrower under this Note, and each general partner waives any requirement of law that Lender exhaust any assets of Borrower before proceeding against the assets of such general partner.
- e. **Security.** This Note is secured, among other things, by one or more Deeds of Trust, a master form of which has been or will be recorded in various counties within the State of Texas pursuant to the Texas Property Code with the intention that such master forms be supplemented by Short Form Deeds of Trust in the future.

Mark with "x" if applicable:

☐ Purpose. This Note is executed in renewal of, substitution and replacement for, a note in the original face amount of \$ 0.00 dated October 1, 2007 executed by Borrower payable to _____.

Other: N/A

EXECUTED to be effective as of **October 23, 2012**.

ABC Builders, LP, a Texas corporation

By: _____

[Sign Originals Only]

Promissory Note

PROMISSORY NOTE

4444 Investment Ct., Plano, TX 75024
Lot E, Block 11, Country Club Creek Estates, 1 & 2, Collin County, Texas
[Property Address]

\$107,725.00

October 23, 2012
Loan # Loan # 555555

1. **Promise to Pay.** ABC Builders, LP ("Borrower", whether one or more), promises to pay to the order of **Lender One** ("Lender"), the principal sum of **One Hundred Seven Thousand Seven Hundred Twenty Five and 00/100 Dollars (\$107,725.00)** or so much thereof as may actually be outstanding under this Note, together with interest on the unpaid principal balance from time to time outstanding at the rate specified below and otherwise in strict accordance with the terms and provisions of this Note.

2. **Loan Agreement.** This Note is executed and delivered pursuant to, and is subject to certain terms and conditions set forth in, a Master Loan Agreement executed by Borrower and Lender dated **October 1, 2007**. The Master Loan Agreement as it may be amended from time to time is referred to in this Note as the "Loan Agreement". This Note evidences only one of the outstanding and unpaid loans made under the Loan Agreement and is only one of the Notes referred to in the Loan Agreement. The Loan Agreement governs advances on this Note. As used in this Note the terms "Loan", "Loan Documents", and "Short Form Deed of Trust", have the meanings ascribed to them in the Loan Agreement.

3. **Interest**

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

(i) **"Applicable Rate"** means, at any time, a rate of interest per annum equal to the Index Rate in effect from time to time **plus 0.250%**.

(ii) **"Index Rate"** means, on any day **The Wall Street Journal Prime rate, the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks**. The Index Rate is the index agreed upon by Borrower and Lender to determine the rate of interest for this Note. Fluctuations in the Index Rate become effective immediately, without necessity for any notice whatsoever. Use of the Index Rate is not to be construed as a warranty or representation that the Index Rate is more favorable than another rate or index, that rates on other loans or credit facilities may not be based on indices other than the Index Rate, or that rates on loans to others may not be made below the Index Rate. If this Index Rate ceases to be published or made available, Lender shall select another index to determine the Applicable Rate. Thereafter this alternative index shall be used to calculate the rate of interest that will be charged on this Note.

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

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

(v) **"Interest Period"** means the time interval between interest payments detailed in Section 4 (a) below.

Promissory Note

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

- b. **Interest Rate.** Except as otherwise provided in this Note, simple interest on the principal balance of this Note, outstanding from time to time, shall accrue at the lesser of (i) the Applicable Rate or (ii) the Maximum Lawful Rate. In no event will the rate be more than **18.000%** per annum. **In no event will this rate be less than 4.000% per annum.**
 - c. **Default Rate.** Upon the occurrence and during the continuance of an Event of Default under this Note or any of the other Loan Documents that continues past any applicable cure period, at the option of the Lender, the principal balance of this Note then outstanding shall bear interest at the Default Rate for the period beginning with the date of occurrence of such Event of Default and ending on the date the Event of Default is cured.
 - d. **Interest Limitation Recoupment.** Notwithstanding anything contained in this Note to the contrary, if at any time (1) interest at the Applicable Rate, (ii) interest at the Default Rate, if applicable, and (iii) the Charges computed over the full term of this Note, exceed the Maximum Lawful Rate, then the rate of interest payable on this Note, together with all Charges, shall be limited to the Maximum Lawful Rate; provided however, that any subsequent reduction in the Applicable Rate shall not cause a reduction of the rate of interest payable on this Note below the Maximum Lawful Rate until the total amount of interest earned on this Note, together with all Charges, equals the total amount of interest which would have accrued at the Applicable Rate if such interest rate had at all times been in effect. Changes in the Applicable Rate resulting from a change in the Prime Rate shall be subject to the provisions of this paragraph.
 - e. **Computation Period.** Except for the computation of the Maximum Lawful Rate which shall be undertaken on the basis of a 365 or 366-day year, interest on the indebtedness evidenced by this Note shall be computed on the basis of a **360**-day year and shall accrue on the actual number of days any principal balance on this Note is outstanding.
4. **Payment.** This Note shall be due and payable as follows:
- a. **Monthly Interest Payments.** **Monthly** payments of interest shall be due and payable on the **Twenty-second** day of each **month**, beginning on **November 22, 2012** and continuing regularly thereafter until **October 22, 2013** (the “Maturity Date”), when the entire amount of unpaid principal and all accrued but unpaid interest shall be due and payable. The amount of each **monthly** payment of interest will be equal to the interest which accrued during the Interest Period immediately preceding the date the payment is due. Notwithstanding anything to the contrary set forth in the Note, the Deed of Trust or the other loan documents, to the extent not prohibited by Texas and applicable federal law, Borrower hereby agrees to the following:

Late Fee. In the event any installment, or any part thereof, remains unpaid for 10 or more days past the due date thereof as provided in the Note, Borrower shall pay to Lender, in addition to any other amounts to which Lender may be entitled hereunder, a reasonable late payment fee equal to 5.000% of the amount of said installment, which amount is stipulated by Borrower to be reasonable in order to compensate Lender for its additional costs incurred as a result of having to

attend to such delinquency. This late charge should be paid only once, but promptly, as to each respective late payment. It is further agreed that the imposition of any such late payment fee shall in no way prejudice or limit Lender's rights or remedies against Borrower under the Note, the Deed of Trust or the other loan documents or any other instrument.

If not prohibited by applicable law, Borrower agrees to pay an amount charged by Lender not to exceed **\$30.00** (or the maximum amount allowed by applicable law if applicable law limits said fee to an amount less than **\$30.00**) for each check, draft, order or other instrument or form of remittance which Borrower gives in payment toward this obligation that is returned to Lender unpaid or dishonored for any reason.

- b. **Principal Payments.** The entire unpaid principal balance of this Note, together with all accrued but unpaid interest with respect to this Note, shall be due and payable on **October 22, 2013** (the "Maturity Date").
 - c. **Additional Payments.** In some instances the Loan Agreement may require payments on this Note in addition to the scheduled payments described above. Borrower promises to make all of the additional payments on this Note that are required by the Loan Agreement.
 - d. **Prepayments.** This Note may be prepaid, in whole or in part, at any time without penalty of any kind. Prepayments shall be credited first to accrued but unpaid interest to the date of the prepayment and the balance to the reduction of principal.
 - e. **Application.** All payments on this Note may, at the sole option of Lender, be applied at any time and from time to time and in any order, to the following: (i) the payment of accrued but unpaid interest, (ii) the payment or reimbursement of any expenses, costs, or obligations (other than principal and interest on this Note) which Borrower is obligated to pay or which Lender is entitled to receive pursuant to this Note or any of the other Loan Documents, and (iii) the payment of all or any portion of the principal balance then outstanding.
 - f. **Place.** All payments on this Note must be made to Lender at its offices in **Tarrant** County, Texas, at the address of Lender as specified in this Note or as Lender may from time to time designate in writing to Borrower.
 - g. **Business Days.** If any payment of principal or interest on this Note becomes due and payable on a Saturday, Sunday, or any other day on which Lender is not open for normal business, Borrower shall make such payment on the next succeeding business day of Lender. Any such extension of time for payment will be included in computing interest which has accrued and is payable in connection with such payment.
 - h. **Legal Tender.** All amounts payable under this Note are payable in lawful money or legal tender of the United States of America in immediately available funds.
5. **Default and Remedies.**
- a. **Default.** An Event of Default shall occur pursuant to this Note if (i) any default is made in the payment, in whole or in part, of any amount payable under this Note or any other Loan Document when due and such default is not cured within **15** days after the date on which Lender gives written notice of the default to Borrower or (ii) any Event of Default occurs pursuant to,

Promissory Note

and as defined in any other Loan Document.

- b. **Remedies.** If an Event of Default occurs under this Note or under any of the other Loan Documents, then Lender may, at its option, without further notice or demand, declare the unpaid principal balance of, and the accrued but unpaid interest on, this Note immediately due and payable, foreclose all liens and security interests securing payment of this Note, pursue any and all other rights and remedies available to Lender or pursue any combination of the foregoing. All remedies under this Note, the Loan Documents, and at law or in equity shall be cumulative.
- c. **Waiver.** Except as specifically provided in the Loan Documents, Borrower, any endorser of this Note, any guarantors of this Note, and all persons and entities liable or to become liable on this Note severally waive presentment and demand for payment, notice of intent to accelerate maturity, notice of acceleration of maturity, protest and notice of protest and non-payment, bringing of suit and diligence in taking any action to collect any sums owing under this Note or in proceeding against any of the rights and collateral securing payment of this Note. Borrower, any endorser of this Note, any guarantors of this Note, and all persons and entities liable or to become liable on this Note agree (i) that the time for any payments on this Note may be extended from time to time without notice and consent, (ii) to the acceptance of further collateral, and/or (iii) to the release of any existing collateral for the payment of this Note, all without in any manner affecting their liability under this Note. No extension of time for the payment of this Note or any installment of it shall affect the liability of Borrower, any endorser, any guarantor, or any person or entity liable or to become liable on this Note, under this Note even though Borrower, such endorser, such guarantor, or such other person or entity is not a party to such agreement.
- d. **No Waiver.** Failure of Lender to exercise any of the options granted to Lender under this Note upon the happening of one or more of the events giving rise to such options shall not constitute a waiver of the right to exercise the same or any other option at any subsequent time with respect to the same or any other event. The acceptance by Lender of any payment under this Note that is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the options granted in this Note to Lender at that time or at any subsequent time or nullify any prior exercise of any such option without the express written acknowledgment of the Lender.
- e. **Collection Costs.** Borrower agrees to pay all costs of collection of this Note when incurred, including attorneys' fees, whether or not any legal action is instituted to enforce this Note.
- 6. **Miscellaneous.**
 - a. **Notices.** All notices or other communications required or permitted to be given pursuant to this instrument must be in writing and will be deemed properly given if (i) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, or (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee. Notice so mailed is effective upon its deposit with the United States Postal Service or any successor to it; notice sent by a commercial delivery service is effective upon delivery to such commercial delivery service; notice given by personal delivery is effective only if and when received by the addressee; and notice given by other means is effective only if and when received at the designated address of the intended addressee. Either party may change its address for notice under this instrument to any other location within the

continental United States by giving thirty (30) days' notice to the other party in the manner described in this paragraph. For purposes of such notices, the addresses of the parties are as follows:

Lender: **Lender One**
 2310 Interstate 20 W
 Arlington, TX 76017

Borrower: **ABC Builders, LP**
 123 Nowhere Street
 Arlington, TX 76012

- b. **Governing Law.** THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. Any action or proceeding under or in connection with this Note against Borrower or any other party ever liable for payment of any sums of money payable on this Note may be brought in any state or federal court in Tarrant County, Texas. Borrower and each such other party irrevocably (i) submits to the nonexclusive jurisdiction of such courts, and (ii) waives any objection they may now or hereafter have as to the venue of any such action or proceeding brought in such court or that such court is an inconvenient forum.
- c. **Interest Limitation.** It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with the applicable Texas law governing the maximum rate or amount of interest payable on this Note or the indebtedness evidenced by it and the other Loan Documents (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, reserve, or receive a greater amount of interest than under Texas law). If (i) the applicable law is ever judicially interpreted so as to render usurious any amount called for under this Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the indebtedness evidenced by this Note and the other Loan Documents, or (ii) Lender's exercise of the option to accelerate the maturity of this Note, or (iii) any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable law, then it is Borrower's and Lender's express intent that (a) all excess amounts previously collected by Lender be credited on the principal balance of this Note (or, if this Note has been or would thereby be paid in full, refunded to Borrower), and (b) the provisions of this Note and the other Loan Documents immediately be deemed reformed and the amounts subsequently collectible under this Note and the other Loan Documents reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for under this Note and the other Loan Documents. All sums paid or agreed to be paid to Lender for the use, forbearance, and detention of the indebtedness evidenced by this Note and the other Loan Documents shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full term of such indebtedness until payment in full, so that the rate or amount of interest on account of such indebtedness does not exceed the usury ceiling from time to time in effect and applicable to such indebtedness for so long as the debt is outstanding. To the extent that Lender is relying on Chapter 303 of the Texas Finance Code, as amended and or succeeded, to determine the Maximum Lawful Rate payable on such indebtedness, Lender will utilize the "weekly ceiling" rate from time to time in effect as provided in Chapter 303 of the Texas Finance Code, as amended and/or succeeded. To the extent United States federal law permits Lender to contract

Promissory Note

for, charge, or receive a greater amount of interest than Texas law, Lender will rely on United States federal law instead of Chapter 303 of the Texas Finance Code, as amended and/or succeeded, for the purpose of determining the Maximum Lawful Rate. Additionally, to the extent permitted by applicable law now or hereafter in effect, Lender may, at its option and from time to time, implement any other method of computing the Maximum Lawful Rate under Chapter 303 of the Texas Finance Code, as amended and/or succeeded, or under other applicable law by giving notice, if required, to Borrower as provided by applicable law now or hereafter in effect. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to the indebtedness evidenced by this Note. Notwithstanding anything to the contrary contained in this Note or any of the other Loan Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

- d. **Joint and Several Liability.** If there is more than one Borrower of this Note, each such Borrower is jointly and severally liable for the obligations of Borrower under this Note. If Borrower is a partnership, each general partner of Borrower is jointly and severally liable for the obligations of Borrower under this Note, and each general partner waives any requirement of law that Lender exhaust any assets of Borrower before proceeding against the assets of such general partner.
- e. **Security.** This Note is secured, among other things, by one or more Deeds of Trust, a master form of which has been or will be recorded in various counties within the State of Texas pursuant to the Texas Property Code with the intention that such master forms be supplemented by Short Form Deeds of Trust in the future.

Mark with “x” if applicable:

☐ Purpose. This Note is executed in renewal of, substitution and replacement for, a note in the original face amount of \$ 0.00 dated October 1, 2007 executed by Borrower payable to _____.

Other: N/A

EXECUTED to be effective as of **October 23, 2012**.

ABC Builders, LP, a Texas corporation

By: _____

[Sign Originals Only]

Promissory Note

PROMISSORY NOTE

5555 Investment Ct., Plano, TX 75024
Lot F, Block 11, Country Club Creek Estates, 1 & 2, Collin County, Texas
[Property Address]

\$107,725.00

October 23, 2012
Loan # Loan # 666666

1. **Promise to Pay.** ABC Builders, LP ("Borrower", whether one or more), promises to pay to the order of **Lender One** ("Lender"), the principal sum of **One Hundred Seven Thousand Seven Hundred Twenty Five and 00/100 Dollars (\$107,725.00)** or so much thereof as may actually be outstanding under this Note, together with interest on the unpaid principal balance from time to time outstanding at the rate specified below and otherwise in strict accordance with the terms and provisions of this Note.

2. **Loan Agreement.** This Note is executed and delivered pursuant to, and is subject to certain terms and conditions set forth in, a Master Loan Agreement executed by Borrower and Lender dated **October 1, 2007**. The Master Loan Agreement as it may be amended from time to time is referred to in this Note as the "Loan Agreement". This Note evidences only one of the outstanding and unpaid loans made under the Loan Agreement and is only one of the Notes referred to in the Loan Agreement. The Loan Agreement governs advances on this Note. As used in this Note the terms "Loan", "Loan Documents", and "Short Form Deed of Trust", have the meanings ascribed to them in the Loan Agreement.

3. **Interest**

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

(i) **"Applicable Rate"** means, at any time, a rate of interest per annum equal to the Index Rate in effect from time to time **plus 0.250%**.

(ii) **"Index Rate"** means, on any day **The Wall Street Journal Prime rate, the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks**. The Index Rate is the index agreed upon by Borrower and Lender to determine the rate of interest for this Note. Fluctuations in the Index Rate become effective immediately, without necessity for any notice whatsoever. Use of the Index Rate is not to be construed as a warranty or representation that the Index Rate is more favorable than another rate or index, that rates on other loans or credit facilities may not be based on indices other than the Index Rate, or that rates on loans to others may not be made below the Index Rate. If this Index Rate ceases to be published or made available, Lender shall select another index to determine the Applicable Rate. Thereafter this alternative index shall be used to calculate the rate of interest that will be charged on this Note.

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

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

(v) **"Interest Period"** means the time interval between interest payments detailed in Section 4 (a) below.

Promissory Note

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

- b. **Interest Rate.** Except as otherwise provided in this Note, simple interest on the principal balance of this Note, outstanding from time to time, shall accrue at the lesser of (i) the Applicable Rate or (ii) the Maximum Lawful Rate. In no event will the rate be more than **18.000%** per annum. **In no event will this rate be less than 4.000% per annum.**
 - c. **Default Rate.** Upon the occurrence and during the continuance of an Event of Default under this Note or any of the other Loan Documents that continues past any applicable cure period, at the option of the Lender, the principal balance of this Note then outstanding shall bear interest at the Default Rate for the period beginning with the date of occurrence of such Event of Default and ending on the date the Event of Default is cured.
 - d. **Interest Limitation Recoupment.** Notwithstanding anything contained in this Note to the contrary, if at any time (1) interest at the Applicable Rate, (ii) interest at the Default Rate, if applicable, and (iii) the Charges computed over the full term of this Note, exceed the Maximum Lawful Rate, then the rate of interest payable on this Note, together with all Charges, shall be limited to the Maximum Lawful Rate; provided however, that any subsequent reduction in the Applicable Rate shall not cause a reduction of the rate of interest payable on this Note below the Maximum Lawful Rate until the total amount of interest earned on this Note, together with all Charges, equals the total amount of interest which would have accrued at the Applicable Rate if such interest rate had at all times been in effect. Changes in the Applicable Rate resulting from a change in the Prime Rate shall be subject to the provisions of this paragraph.
 - e. **Computation Period.** Except for the computation of the Maximum Lawful Rate which shall be undertaken on the basis of a 365 or 366-day year, interest on the indebtedness evidenced by this Note shall be computed on the basis of a **360-day** year and shall accrue on the actual number of days any principal balance on this Note is outstanding.
4. **Payment.** This Note shall be due and payable as follows:
- a. **Monthly Interest Payments.** **Monthly** payments of interest shall be due and payable on the **Twenty-second** day of each **month**, beginning on **November 22, 2012** and continuing regularly thereafter until **October 22, 2013** (the “Maturity Date”), when the entire amount of unpaid principal and all accrued but unpaid interest shall be due and payable. The amount of each **monthly** payment of interest will be equal to the interest which accrued during the Interest Period immediately preceding the date the payment is due. Notwithstanding anything to the contrary set forth in the Note, the Deed of Trust or the other loan documents, to the extent not prohibited by Texas and applicable federal law, Borrower hereby agrees to the following:

Late Fee. In the event any installment, or any part thereof, remains unpaid for 10 or more days past the due date thereof as provided in the Note, Borrower shall pay to Lender, in addition to any other amounts to which Lender may be entitled hereunder, a reasonable late payment fee equal to 5.000% of the amount of said installment, which amount is stipulated by Borrower to be reasonable in order to compensate Lender for its additional costs incurred as a result of having to

attend to such delinquency. This late charge should be paid only once, but promptly, as to each respective late payment. It is further agreed that the imposition of any such late payment fee shall in no way prejudice or limit Lender's rights or remedies against Borrower under the Note, the Deed of Trust or the other loan documents or any other instrument.

If not prohibited by applicable law, Borrower agrees to pay an amount charged by Lender not to exceed **\$30.00** (or the maximum amount allowed by applicable law if applicable law limits said fee to an amount less than **\$30.00**) for each check, draft, order or other instrument or form of remittance which Borrower gives in payment toward this obligation that is returned to Lender unpaid or dishonored for any reason.

- b. **Principal Payments.** The entire unpaid principal balance of this Note, together with all accrued but unpaid interest with respect to this Note, shall be due and payable on **October 22, 2013** (the "Maturity Date").
 - c. **Additional Payments.** In some instances the Loan Agreement may require payments on this Note in addition to the scheduled payments described above. Borrower promises to make all of the additional payments on this Note that are required by the Loan Agreement.
 - d. **Prepayments.** This Note may be prepaid, in whole or in part, at any time without penalty of any kind. Prepayments shall be credited first to accrued but unpaid interest to the date of the prepayment and the balance to the reduction of principal.
 - e. **Application.** All payments on this Note may, at the sole option of Lender, be applied at any time and from time to time and in any order, to the following: (i) the payment of accrued but unpaid interest, (ii) the payment or reimbursement of any expenses, costs, or obligations (other than principal and interest on this Note) which Borrower is obligated to pay or which Lender is entitled to receive pursuant to this Note or any of the other Loan Documents, and (iii) the payment of all or any portion of the principal balance then outstanding.
 - f. **Place.** All payments on this Note must be made to Lender at its offices in **Tarrant** County, Texas, at the address of Lender as specified in this Note or as Lender may from time to time designate in writing to Borrower.
 - g. **Business Days.** If any payment of principal or interest on this Note becomes due and payable on a Saturday, Sunday, or any other day on which Lender is not open for normal business, Borrower shall make such payment on the next succeeding business day of Lender. Any such extension of time for payment will be included in computing interest which has accrued and is payable in connection with such payment.
 - h. **Legal Tender.** All amounts payable under this Note are payable in lawful money or legal tender of the United States of America in immediately available funds.
5. **Default and Remedies.**
- a. **Default.** An Event of Default shall occur pursuant to this Note if (i) any default is made in the payment, in whole or in part, of any amount payable under this Note or any other Loan Document when due and such default is not cured within **15** days after the date on which Lender gives written notice of the default to Borrower or (ii) any Event of Default occurs pursuant to,

Promissory Note

and as defined in any other Loan Document.

- b. **Remedies.** If an Event of Default occurs under this Note or under any of the other Loan Documents, then Lender may, at its option, without further notice or demand, declare the unpaid principal balance of, and the accrued but unpaid interest on, this Note immediately due and payable, foreclose all liens and security interests securing payment of this Note, pursue any and all other rights and remedies available to Lender or pursue any combination of the foregoing. All remedies under this Note, the Loan Documents, and at law or in equity shall be cumulative.
- c. **Waiver.** Except as specifically provided in the Loan Documents, Borrower, any endorsers of this Note, any guarantors of this Note, and all persons and entities liable or to become liable on this Note severally waive presentment and demand for payment, notice of intent to accelerate maturity, notice of acceleration of maturity, protest and notice of protest and non-payment, bringing of suit and diligence in taking any action to collect any sums owing under this Note or in proceeding against any of the rights and collateral securing payment of this Note. Borrower, any endorsers of this Note, any guarantors of this Note, and all persons and entities liable or to become liable on this Note agree (i) that the time for any payments on this Note may be extended from time to time without notice and consent, (ii) to the acceptance of further collateral, and/or (iii) to the release of any existing collateral for the payment of this Note, all without in any manner affecting their liability under this Note. No extension of time for the payment of this Note or any installment of it shall affect the liability of Borrower, any endorser, any guarantor, or any person or entity liable or to become liable on this Note, under this Note even though Borrower, such endorser, such guarantor, or such other person or entity is not a party to such agreement.
- d. **No Waiver.** Failure of Lender to exercise any of the options granted to Lender under this Note upon the happening of one or more of the events giving rise to such options shall not constitute a waiver of the right to exercise the same or any other option at any subsequent time with respect to the same or any other event. The acceptance by Lender of any payment under this Note that is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the options granted in this Note to Lender at that time or at any subsequent time or nullify any prior exercise of any such option without the express written acknowledgment of the Lender.
- e. **Collection Costs.** Borrower agrees to pay all costs of collection of this Note when incurred, including attorneys' fees, whether or not any legal action is instituted to enforce this Note.
- 6. **Miscellaneous.**
 - a. **Notices.** All notices or other communications required or permitted to be given pursuant to this instrument must be in writing and will be deemed properly given if (i) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, or (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee. Notice so mailed is effective upon its deposit with the United States Postal Service or any successor to it; notice sent by a commercial delivery service is effective upon delivery to such commercial delivery service; notice given by personal delivery is effective only if and when received by the addressee; and notice given by other means is effective only if and when received at the designated address of the intended addressee. Either party may change its address for notice under this instrument to any other location within the

continental United States by giving thirty (30) days' notice to the other party in the manner described in this paragraph. For purposes of such notices, the addresses of the parties are as follows:

Lender: **Lender One**
 2310 Interstate 20 W
 Arlington, TX 76017

Borrower: **ABC Builders, LP**
 123 Nowhere Street
 Arlington, TX 76012

- b. **Governing Law.** THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. Any action or proceeding under or in connection with this Note against Borrower or any other party ever liable for payment of any sums of money payable on this Note may be brought in any state or federal court in Tarrant County, Texas. Borrower and each such other party irrevocably (i) submits to the nonexclusive jurisdiction of such courts, and (ii) waives any objection they may now or hereafter have as to the venue of any such action or proceeding brought in such court or that such court is an inconvenient forum.
- c. **Interest Limitation.** It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with the applicable Texas law governing the maximum rate or amount of interest payable on this Note or the indebtedness evidenced by it and the other Loan Documents (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, reserve, or receive a greater amount of interest than under Texas law). If (i) the applicable law is ever judicially interpreted so as to render usurious any amount called for under this Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the indebtedness evidenced by this Note and the other Loan Documents, or (ii) Lender's exercise of the option to accelerate the maturity of this Note, or (iii) any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable law, then it is Borrower's and Lender's express intent that (a) all excess amounts previously collected by Lender be credited on the principal balance of this Note (or, if this Note has been or would thereby be paid in full, refunded to Borrower), and (b) the provisions of this Note and the other Loan Documents immediately be deemed reformed and the amounts subsequently collectible under this Note and the other Loan Documents reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for under this Note and the other Loan Documents. All sums paid or agreed to be paid to Lender for the use, forbearance, and detention of the indebtedness evidenced by this Note and the other Loan Documents shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full term of such indebtedness until payment in full, so that the rate or amount of interest on account of such indebtedness does not exceed the usury ceiling from time to time in effect and applicable to such indebtedness for so long as the debt is outstanding. To the extent that Lender is relying on Chapter 303 of the Texas Finance Code, as amended and or succeeded, to determine the Maximum Lawful Rate payable on such indebtedness, Lender will utilize the "weekly ceiling" rate from time to time in effect as provided in Chapter 303 of the Texas Finance Code, as amended and/or succeeded. To the extent United States federal law permits Lender to contract

for, charge, or receive a greater amount of interest than Texas law, Lender will rely on United States federal law instead of Chapter 303 of the Texas Finance Code, as amended and/or succeeded, for the purpose of determining the Maximum Lawful Rate. Additionally, to the extent permitted by applicable law now or hereafter in effect, Lender may, at its option and from time to time, implement any other method of computing the Maximum Lawful Rate under Chapter 303 of the Texas Finance Code, as amended and/or succeeded, or under other applicable law by giving notice, if required, to Borrower as provided by applicable law now or hereafter in effect. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to the indebtedness evidenced by this Note. Notwithstanding anything to the contrary contained in this Note or any of the other Loan Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

- d. **Joint and Several Liability.** If there is more than one Borrower of this Note, each such Borrower is jointly and severally liable for the obligations of Borrower under this Note. If Borrower is a partnership, each general partner of Borrower is jointly and severally liable for the obligations of Borrower under this Note, and each general partner waives any requirement of law that Lender exhaust any assets of Borrower before proceeding against the assets of such general partner.
- e. **Security.** This Note is secured, among other things, by one or more Deeds of Trust, a master form of which has been or will be recorded in various counties within the State of Texas pursuant to the Texas Property Code with the intention that such master forms be supplemented by Short Form Deeds of Trust in the future.

Mark with “x” if applicable:

☐ Purpose. This Note is executed in renewal of, substitution and replacement for, a note in the original face amount of \$ 0.00 dated October 1, 2007 executed by Borrower payable to _____.

Other: N/A

EXECUTED to be effective as of **October 23, 2012**.

ABC Builders, LP, a Texas corporation

By: _____

[Sign Originals Only]

Promissory Note

PROMISSORY NOTE

6666 Investment Ct., Plano, TX 75024
Lot G, Block 11, Country Club Creek Estates, 1 & 2, Collin County, Texas
[Property Address]

\$107,725.00

October 23, 2012
Loan # Loan # 777777

1. **Promise to Pay.** ABC Builders, LP ("Borrower", whether one or more), promises to pay to the order of **Lender One** ("Lender"), the principal sum of **One Hundred Seven Thousand Seven Hundred Twenty Five and 00/100 Dollars (\$107,725.00)** or so much thereof as may actually be outstanding under this Note, together with interest on the unpaid principal balance from time to time outstanding at the rate specified below and otherwise in strict accordance with the terms and provisions of this Note.

2. **Loan Agreement.** This Note is executed and delivered pursuant to, and is subject to certain terms and conditions set forth in, a Master Loan Agreement executed by Borrower and Lender dated **October 1, 2007**. The Master Loan Agreement as it may be amended from time to time is referred to in this Note as the "Loan Agreement". This Note evidences only one of the outstanding and unpaid loans made under the Loan Agreement and is only one of the Notes referred to in the Loan Agreement. The Loan Agreement governs advances on this Note. As used in this Note the terms "Loan", "Loan Documents", and "Short Form Deed of Trust", have the meanings ascribed to them in the Loan Agreement.

3. **Interest**

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

(i) **"Applicable Rate"** means, at any time, a rate of interest per annum equal to the Index Rate in effect from time to time **plus 0.250%**.

(ii) **"Index Rate"** means, on any day **The Wall Street Journal Prime rate, the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks**. The Index Rate is the index agreed upon by Borrower and Lender to determine the rate of interest for this Note. Fluctuations in the Index Rate become effective immediately, without necessity for any notice whatsoever. Use of the Index Rate is not to be construed as a warranty or representation that the Index Rate is more favorable than another rate or index, that rates on other loans or credit facilities may not be based on indices other than the Index Rate, or that rates on loans to others may not be made below the Index Rate. If this Index Rate ceases to be published or made available, Lender shall select another index to determine the Applicable Rate. Thereafter this alternative index shall be used to calculate the rate of interest that will be charged on this Note.

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

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

(v) **"Interest Period"** means the time interval between interest payments detailed in Section 4 (a) below.

Promissory Note

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

- b. **Interest Rate.** Except as otherwise provided in this Note, simple interest on the principal balance of this Note, outstanding from time to time, shall accrue at the lesser of (i) the Applicable Rate or (ii) the Maximum Lawful Rate. In no event will the rate be more than **18.000%** per annum. **In no event will this rate be less than 4.000% per annum.**
 - c. **Default Rate.** Upon the occurrence and during the continuance of an Event of Default under this Note or any of the other Loan Documents that continues past any applicable cure period, at the option of the Lender, the principal balance of this Note then outstanding shall bear interest at the Default Rate for the period beginning with the date of occurrence of such Event of Default and ending on the date the Event of Default is cured.
 - d. **Interest Limitation Recoupment.** Notwithstanding anything contained in this Note to the contrary, if at any time (1) interest at the Applicable Rate, (ii) interest at the Default Rate, if applicable, and (iii) the Charges computed over the full term of this Note, exceed the Maximum Lawful Rate, then the rate of interest payable on this Note, together with all Charges, shall be limited to the Maximum Lawful Rate; provided however, that any subsequent reduction in the Applicable Rate shall not cause a reduction of the rate of interest payable on this Note below the Maximum Lawful Rate until the total amount of interest earned on this Note, together with all Charges, equals the total amount of interest which would have accrued at the Applicable Rate if such interest rate had at all times been in effect. Changes in the Applicable Rate resulting from a change in the Prime Rate shall be subject to the provisions of this paragraph.
 - e. **Computation Period.** Except for the computation of the Maximum Lawful Rate which shall be undertaken on the basis of a 365 or 366-day year, interest on the indebtedness evidenced by this Note shall be computed on the basis of a **360-day** year and shall accrue on the actual number of days any principal balance on this Note is outstanding.
4. **Payment.** This Note shall be due and payable as follows:
- a. **Monthly Interest Payments.** **Monthly** payments of interest shall be due and payable on the **Twenty-second** day of each **month**, beginning on **November 22, 2012** and continuing regularly thereafter until **October 22, 2013** (the “Maturity Date”), when the entire amount of unpaid principal and all accrued but unpaid interest shall be due and payable. The amount of each **monthly** payment of interest will be equal to the interest which accrued during the Interest Period immediately preceding the date the payment is due. Notwithstanding anything to the contrary set forth in the Note, the Deed of Trust or the other loan documents, to the extent not prohibited by Texas and applicable federal law, Borrower hereby agrees to the following:

Late Fee. In the event any installment, or any part thereof, remains unpaid for 10 or more days past the due date thereof as provided in the Note, Borrower shall pay to Lender, in addition to any other amounts to which Lender may be entitled hereunder, a reasonable late payment fee equal to 5.000% of the amount of said installment, which amount is stipulated by Borrower to be reasonable in order to compensate Lender for its additional costs incurred as a result of having to

attend to such delinquency. This late charge should be paid only once, but promptly, as to each respective late payment. It is further agreed that the imposition of any such late payment fee shall in no way prejudice or limit Lender's rights or remedies against Borrower under the Note, the Deed of Trust or the other loan documents or any other instrument.

If not prohibited by applicable law, Borrower agrees to pay an amount charged by Lender not to exceed **\$30.00** (or the maximum amount allowed by applicable law if applicable law limits said fee to an amount less than **\$30.00**) for each check, draft, order or other instrument or form of remittance which Borrower gives in payment toward this obligation that is returned to Lender unpaid or dishonored for any reason.

- b. **Principal Payments.** The entire unpaid principal balance of this Note, together with all accrued but unpaid interest with respect to this Note, shall be due and payable on **October 22, 2013** (the "Maturity Date").
- c. **Additional Payments.** In some instances the Loan Agreement may require payments on this Note in addition to the scheduled payments described above. Borrower promises to make all of the additional payments on this Note that are required by the Loan Agreement.
- d. **Prepayments.** This Note may be prepaid, in whole or in part, at any time without penalty of any kind. Prepayments shall be credited first to accrued but unpaid interest to the date of the prepayment and the balance to the reduction of principal.
- e. **Application.** All payments on this Note may, at the sole option of Lender, be applied at any time and from time to time and in any order, to the following: (i) the payment of accrued but unpaid interest, (ii) the payment or reimbursement of any expenses, costs, or obligations (other than principal and interest on this Note) which Borrower is obligated to pay or which Lender is entitled to receive pursuant to this Note or any of the other Loan Documents, and (iii) the payment of all or any portion of the principal balance then outstanding.
- f. **Place.** All payments on this Note must be made to Lender at its offices in **Tarrant** County, Texas, at the address of Lender as specified in this Note or as Lender may from time to time designate in writing to Borrower.
- g. **Business Days.** If any payment of principal or interest on this Note becomes due and payable on a Saturday, Sunday, or any other day on which Lender is not open for normal business, Borrower shall make such payment on the next succeeding business day of Lender. Any such extension of time for payment will be included in computing interest which has accrued and is payable in connection with such payment.
- h. **Legal Tender.** All amounts payable under this Note are payable in lawful money or legal tender of the United States of America in immediately available funds.
- 5. **Default and Remedies.**
 - a. **Default.** An Event of Default shall occur pursuant to this Note if (i) any default is made in the payment, in whole or in part, of any amount payable under this Note or any other Loan Document when due and such default is not cured within **15** days after the date on which Lender gives written notice of the default to Borrower or (ii) any Event of Default occurs pursuant to,

Promissory Note

and as defined in any other Loan Document.

- b. **Remedies.** If an Event of Default occurs under this Note or under any of the other Loan Documents, then Lender may, at its option, without further notice or demand, declare the unpaid principal balance of, and the accrued but unpaid interest on, this Note immediately due and payable, foreclose all liens and security interests securing payment of this Note, pursue any and all other rights and remedies available to Lender or pursue any combination of the foregoing. All remedies under this Note, the Loan Documents, and at law or in equity shall be cumulative.
- c. **Waiver.** Except as specifically provided in the Loan Documents, Borrower, any endorser of this Note, any guarantors of this Note, and all persons and entities liable or to become liable on this Note severally waive presentment and demand for payment, notice of intent to accelerate maturity, notice of acceleration of maturity, protest and notice of protest and non-payment, bringing of suit and diligence in taking any action to collect any sums owing under this Note or in proceeding against any of the rights and collateral securing payment of this Note. Borrower, any endorser of this Note, any guarantors of this Note, and all persons and entities liable or to become liable on this Note agree (i) that the time for any payments on this Note may be extended from time to time without notice and consent, (ii) to the acceptance of further collateral, and/or (iii) to the release of any existing collateral for the payment of this Note, all without in any manner affecting their liability under this Note. No extension of time for the payment of this Note or any installment of it shall affect the liability of Borrower, any endorser, any guarantor, or any person or entity liable or to become liable on this Note, under this Note even though Borrower, such endorser, such guarantor, or such other person or entity is not a party to such agreement.
- d. **No Waiver.** Failure of Lender to exercise any of the options granted to Lender under this Note upon the happening of one or more of the events giving rise to such options shall not constitute a waiver of the right to exercise the same or any other option at any subsequent time with respect to the same or any other event. The acceptance by Lender of any payment under this Note that is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the options granted in this Note to Lender at that time or at any subsequent time or nullify any prior exercise of any such option without the express written acknowledgment of the Lender.
- e. **Collection Costs.** Borrower agrees to pay all costs of collection of this Note when incurred, including attorneys' fees, whether or not any legal action is instituted to enforce this Note.
- 6. **Miscellaneous.**
 - a. **Notices.** All notices or other communications required or permitted to be given pursuant to this instrument must be in writing and will be deemed properly given if (i) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, or (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee. Notice so mailed is effective upon its deposit with the United States Postal Service or any successor to it; notice sent by a commercial delivery service is effective upon delivery to such commercial delivery service; notice given by personal delivery is effective only if and when received by the addressee; and notice given by other means is effective only if and when received at the designated address of the intended addressee. Either party may change its address for notice under this instrument to any other location within the

continental United States by giving thirty (30) days' notice to the other party in the manner described in this paragraph. For purposes of such notices, the addresses of the parties are as follows:

Lender: **Lender One**
 2310 Interstate 20 W
 Arlington, TX 76017

Borrower: **ABC Builders, LP**
 123 Nowhere Street
 Arlington, TX 76012

- b. **Governing Law.** THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. Any action or proceeding under or in connection with this Note against Borrower or any other party ever liable for payment of any sums of money payable on this Note may be brought in any state or federal court in Tarrant County, Texas. Borrower and each such other party irrevocably (i) submits to the nonexclusive jurisdiction of such courts, and (ii) waives any objection they may now or hereafter have as to the venue of any such action or proceeding brought in such court or that such court is an inconvenient forum.
- c. **Interest Limitation.** It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with the applicable Texas law governing the maximum rate or amount of interest payable on this Note or the indebtedness evidenced by it and the other Loan Documents (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, reserve, or receive a greater amount of interest than under Texas law). If (i) the applicable law is ever judicially interpreted so as to render usurious any amount called for under this Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the indebtedness evidenced by this Note and the other Loan Documents, or (ii) Lender's exercise of the option to accelerate the maturity of this Note, or (iii) any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable law, then it is Borrower's and Lender's express intent that (a) all excess amounts previously collected by Lender be credited on the principal balance of this Note (or, if this Note has been or would thereby be paid in full, refunded to Borrower), and (b) the provisions of this Note and the other Loan Documents immediately be deemed reformed and the amounts subsequently collectible under this Note and the other Loan Documents reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for under this Note and the other Loan Documents. All sums paid or agreed to be paid to Lender for the use, forbearance, and detention of the indebtedness evidenced by this Note and the other Loan Documents shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full term of such indebtedness until payment in full, so that the rate or amount of interest on account of such indebtedness does not exceed the usury ceiling from time to time in effect and applicable to such indebtedness for so long as the debt is outstanding. To the extent that Lender is relying on Chapter 303 of the Texas Finance Code, as amended and or succeeded, to determine the Maximum Lawful Rate payable on such indebtedness, Lender will utilize the "weekly ceiling" rate from time to time in effect as provided in Chapter 303 of the Texas Finance Code, as amended and/or succeeded. To the extent United States federal law permits Lender to contract

Promissory Note

for, charge, or receive a greater amount of interest than Texas law, Lender will rely on United States federal law instead of Chapter 303 of the Texas Finance Code, as amended and/or succeeded, for the purpose of determining the Maximum Lawful Rate. Additionally, to the extent permitted by applicable law now or hereafter in effect, Lender may, at its option and from time to time, implement any other method of computing the Maximum Lawful Rate under Chapter 303 of the Texas Finance Code, as amended and/or succeeded, or under other applicable law by giving notice, if required, to Borrower as provided by applicable law now or hereafter in effect. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to the indebtedness evidenced by this Note. Notwithstanding anything to the contrary contained in this Note or any of the other Loan Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

- d. **Joint and Several Liability.** If there is more than one Borrower of this Note, each such Borrower is jointly and severally liable for the obligations of Borrower under this Note. If Borrower is a partnership, each general partner of Borrower is jointly and severally liable for the obligations of Borrower under this Note, and each general partner waives any requirement of law that Lender exhaust any assets of Borrower before proceeding against the assets of such general partner.
- e. **Security.** This Note is secured, among other things, by one or more Deeds of Trust, a master form of which has been or will be recorded in various counties within the State of Texas pursuant to the Texas Property Code with the intention that such master forms be supplemented by Short Form Deeds of Trust in the future.

Mark with “x” if applicable:

☐ Purpose. This Note is executed in renewal of, substitution and replacement for, a note in the original face amount of \$ 0.00 dated October 1, 2007 executed by Borrower payable to _____.

Other: N/A

EXECUTED to be effective as of **October 23, 2012**.

ABC Builders, LP, a Texas corporation

By: _____

[Sign Originals Only]

Promissory Note

PROMISSORY NOTE

7777 Investment Ct., Plano, TX 75024
Lot H, Block 11, Country Club Creek Estates, 1 & 2, Collin County, Texas
[Property Address]

\$124,548.00

October 23, 2012
Loan # Loan # 888888

1. **Promise to Pay.** ABC Builders, LP ("Borrower", whether one or more), promises to pay to the order of **Lender One** ("Lender"), the principal sum of **One Hundred Twenty Four Thousand Five Hundred Forty Eight and 00/100 Dollars (\$124,548.00)** or so much thereof as may actually be outstanding under this Note, together with interest on the unpaid principal balance from time to time outstanding at the rate specified below and otherwise in strict accordance with the terms and provisions of this Note.

2. **Loan Agreement.** This Note is executed and delivered pursuant to, and is subject to certain terms and conditions set forth in, a Master Loan Agreement executed by Borrower and Lender dated **October 1, 2007**. The Master Loan Agreement as it may be amended from time to time is referred to in this Note as the "Loan Agreement". This Note evidences only one of the outstanding and unpaid loans made under the Loan Agreement and is only one of the Notes referred to in the Loan Agreement. The Loan Agreement governs advances on this Note. As used in this Note the terms "Loan", "Loan Documents", and "Short Form Deed of Trust", have the meanings ascribed to them in the Loan Agreement.

3. **Interest**

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

(i) **"Applicable Rate"** means, at any time, a rate of interest per annum equal to the Index Rate in effect from time to time **plus 0.250%**.

(ii) **"Index Rate"** means, on any day **The Wall Street Journal Prime rate, the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks**. The Index Rate is the index agreed upon by Borrower and Lender to determine the rate of interest for this Note. Fluctuations in the Index Rate become effective immediately, without necessity for any notice whatsoever. Use of the Index Rate is not to be construed as a warranty or representation that the Index Rate is more favorable than another rate or index, that rates on other loans or credit facilities may not be based on indices other than the Index Rate, or that rates on loans to others may not be made below the Index Rate. If this Index Rate ceases to be published or made available, Lender shall select another index to determine the Applicable Rate. Thereafter this alternative index shall be used to calculate the rate of interest that will be charged on this Note.

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

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

(v) **"Interest Period"** means the time interval between interest payments detailed in Section 4 (a) below.

Promissory Note

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

- b. **Interest Rate.** Except as otherwise provided in this Note, simple interest on the principal balance of this Note, outstanding from time to time, shall accrue at the lesser of (i) the Applicable Rate or (ii) the Maximum Lawful Rate. In no event will the rate be more than **18.000%** per annum. **In no event will this rate be less than 4.000% per annum.**
 - c. **Default Rate.** Upon the occurrence and during the continuance of an Event of Default under this Note or any of the other Loan Documents that continues past any applicable cure period, at the option of the Lender, the principal balance of this Note then outstanding shall bear interest at the Default Rate for the period beginning with the date of occurrence of such Event of Default and ending on the date the Event of Default is cured.
 - d. **Interest Limitation Recoupment.** Notwithstanding anything contained in this Note to the contrary, if at any time (1) interest at the Applicable Rate, (ii) interest at the Default Rate, if applicable, and (iii) the Charges computed over the full term of this Note, exceed the Maximum Lawful Rate, then the rate of interest payable on this Note, together with all Charges, shall be limited to the Maximum Lawful Rate; provided however, that any subsequent reduction in the Applicable Rate shall not cause a reduction of the rate of interest payable on this Note below the Maximum Lawful Rate until the total amount of interest earned on this Note, together with all Charges, equals the total amount of interest which would have accrued at the Applicable Rate if such interest rate had at all times been in effect. Changes in the Applicable Rate resulting from a change in the Prime Rate shall be subject to the provisions of this paragraph.
 - e. **Computation Period.** Except for the computation of the Maximum Lawful Rate which shall be undertaken on the basis of a 365 or 366-day year, interest on the indebtedness evidenced by this Note shall be computed on the basis of a **360**-day year and shall accrue on the actual number of days any principal balance on this Note is outstanding.
4. **Payment.** This Note shall be due and payable as follows:
- a. **Monthly Interest Payments.** **Monthly** payments of interest shall be due and payable on the **Twenty-second** day of each **month**, beginning on **November 22, 2012** and continuing regularly thereafter until **October 22, 2013** (the “Maturity Date”), when the entire amount of unpaid principal and all accrued but unpaid interest shall be due and payable. The amount of each **monthly** payment of interest will be equal to the interest which accrued during the Interest Period immediately preceding the date the payment is due. Notwithstanding anything to the contrary set forth in the Note, the Deed of Trust or the other loan documents, to the extent not prohibited by Texas and applicable federal law, Borrower hereby agrees to the following:

Late Fee. In the event any installment, or any part thereof, remains unpaid for 10 or more days past the due date thereof as provided in the Note, Borrower shall pay to Lender, in addition to any other amounts to which Lender may be entitled hereunder, a reasonable late payment fee equal to 5.000% of the amount of said installment, which amount is stipulated by Borrower to be reasonable in order to compensate Lender for its additional costs incurred as a result of having to

attend to such delinquency. This late charge should be paid only once, but promptly, as to each respective late payment. It is further agreed that the imposition of any such late payment fee shall in no way prejudice or limit Lender's rights or remedies against Borrower under the Note, the Deed of Trust or the other loan documents or any other instrument.

If not prohibited by applicable law, Borrower agrees to pay an amount charged by Lender not to exceed **\$30.00** (or the maximum amount allowed by applicable law if applicable law limits said fee to an amount less than **\$30.00**) for each check, draft, order or other instrument or form of remittance which Borrower gives in payment toward this obligation that is returned to Lender unpaid or dishonored for any reason.

- b. **Principal Payments.** The entire unpaid principal balance of this Note, together with all accrued but unpaid interest with respect to this Note, shall be due and payable on **October 22, 2013** (the "Maturity Date").
 - c. **Additional Payments.** In some instances the Loan Agreement may require payments on this Note in addition to the scheduled payments described above. Borrower promises to make all of the additional payments on this Note that are required by the Loan Agreement.
 - d. **Prepayments.** This Note may be prepaid, in whole or in part, at any time without penalty of any kind. Prepayments shall be credited first to accrued but unpaid interest to the date of the prepayment and the balance to the reduction of principal.
 - e. **Application.** All payments on this Note may, at the sole option of Lender, be applied at any time and from time to time and in any order, to the following: (i) the payment of accrued but unpaid interest, (ii) the payment or reimbursement of any expenses, costs, or obligations (other than principal and interest on this Note) which Borrower is obligated to pay or which Lender is entitled to receive pursuant to this Note or any of the other Loan Documents, and (iii) the payment of all or any portion of the principal balance then outstanding.
 - f. **Place.** All payments on this Note must be made to Lender at its offices in **Tarrant** County, Texas, at the address of Lender as specified in this Note or as Lender may from time to time designate in writing to Borrower.
 - g. **Business Days.** If any payment of principal or interest on this Note becomes due and payable on a Saturday, Sunday, or any other day on which Lender is not open for normal business, Borrower shall make such payment on the next succeeding business day of Lender. Any such extension of time for payment will be included in computing interest which has accrued and is payable in connection with such payment.
 - h. **Legal Tender.** All amounts payable under this Note are payable in lawful money or legal tender of the United States of America in immediately available funds.
5. **Default and Remedies.**
- a. **Default.** An Event of Default shall occur pursuant to this Note if (i) any default is made in the payment, in whole or in part, of any amount payable under this Note or any other Loan Document when due and such default is not cured within **15** days after the date on which Lender gives written notice of the default to Borrower or (ii) any Event of Default occurs pursuant to,

Promissory Note

and as defined in any other Loan Document.

- b. **Remedies.** If an Event of Default occurs under this Note or under any of the other Loan Documents, then Lender may, at its option, without further notice or demand, declare the unpaid principal balance of, and the accrued but unpaid interest on, this Note immediately due and payable, foreclose all liens and security interests securing payment of this Note, pursue any and all other rights and remedies available to Lender or pursue any combination of the foregoing. All remedies under this Note, the Loan Documents, and at law or in equity shall be cumulative.
- c. **Waiver.** Except as specifically provided in the Loan Documents, Borrower, any endorsers of this Note, any guarantors of this Note, and all persons and entities liable or to become liable on this Note severally waive presentment and demand for payment, notice of intent to accelerate maturity, notice of acceleration of maturity, protest and notice of protest and non-payment, bringing of suit and diligence in taking any action to collect any sums owing under this Note or in proceeding against any of the rights and collateral securing payment of this Note. Borrower, any endorsers of this Note, any guarantors of this Note, and all persons and entities liable or to become liable on this Note agree (i) that the time for any payments on this Note may be extended from time to time without notice and consent, (ii) to the acceptance of further collateral, and/or (iii) to the release of any existing collateral for the payment of this Note, all without in any manner affecting their liability under this Note. No extension of time for the payment of this Note or any installment of it shall affect the liability of Borrower, any endorser, any guarantor, or any person or entity liable or to become liable on this Note, under this Note even though Borrower, such endorser, such guarantor, or such other person or entity is not a party to such agreement.
- d. **No Waiver.** Failure of Lender to exercise any of the options granted to Lender under this Note upon the happening of one or more of the events giving rise to such options shall not constitute a waiver of the right to exercise the same or any other option at any subsequent time with respect to the same or any other event. The acceptance by Lender of any payment under this Note that is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the options granted in this Note to Lender at that time or at any subsequent time or nullify any prior exercise of any such option without the express written acknowledgment of the Lender.
- e. **Collection Costs.** Borrower agrees to pay all costs of collection of this Note when incurred, including attorneys' fees, whether or not any legal action is instituted to enforce this Note.
- 6. **Miscellaneous.**
 - a. **Notices.** All notices or other communications required or permitted to be given pursuant to this instrument must be in writing and will be deemed properly given if (i) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, or (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee. Notice so mailed is effective upon its deposit with the United States Postal Service or any successor to it; notice sent by a commercial delivery service is effective upon delivery to such commercial delivery service; notice given by personal delivery is effective only if and when received by the addressee; and notice given by other means is effective only if and when received at the designated address of the intended addressee. Either party may change its address for notice under this instrument to any other location within the

continental United States by giving thirty (30) days' notice to the other party in the manner described in this paragraph. For purposes of such notices, the addresses of the parties are as follows:

Lender: **Lender One**
 2310 Interstate 20 W
 Arlington, TX 76017

Borrower: **ABC Builders, LP**
 123 Nowhere Street
 Arlington, TX 76012

- b. **Governing Law.** THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. Any action or proceeding under or in connection with this Note against Borrower or any other party ever liable for payment of any sums of money payable on this Note may be brought in any state or federal court in Tarrant County, Texas. Borrower and each such other party irrevocably (i) submits to the nonexclusive jurisdiction of such courts, and (ii) waives any objection they may now or hereafter have as to the venue of any such action or proceeding brought in such court or that such court is an inconvenient forum.
- c. **Interest Limitation.** It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with the applicable Texas law governing the maximum rate or amount of interest payable on this Note or the indebtedness evidenced by it and the other Loan Documents (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, reserve, or receive a greater amount of interest than under Texas law). If (i) the applicable law is ever judicially interpreted so as to render usurious any amount called for under this Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the indebtedness evidenced by this Note and the other Loan Documents, or (ii) Lender's exercise of the option to accelerate the maturity of this Note, or (iii) any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable law, then it is Borrower's and Lender's express intent that (a) all excess amounts previously collected by Lender be credited on the principal balance of this Note (or, if this Note has been or would thereby be paid in full, refunded to Borrower), and (b) the provisions of this Note and the other Loan Documents immediately be deemed reformed and the amounts subsequently collectible under this Note and the other Loan Documents reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for under this Note and the other Loan Documents. All sums paid or agreed to be paid to Lender for the use, forbearance, and detention of the indebtedness evidenced by this Note and the other Loan Documents shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full term of such indebtedness until payment in full, so that the rate or amount of interest on account of such indebtedness does not exceed the usury ceiling from time to time in effect and applicable to such indebtedness for so long as the debt is outstanding. To the extent that Lender is relying on Chapter 303 of the Texas Finance Code, as amended and or succeeded, to determine the Maximum Lawful Rate payable on such indebtedness, Lender will utilize the "weekly ceiling" rate from time to time in effect as provided in Chapter 303 of the Texas Finance Code, as amended and/or succeeded. To the extent United States federal law permits Lender to contract

Promissory Note

for, charge, or receive a greater amount of interest than Texas law, Lender will rely on United States federal law instead of Chapter 303 of the Texas Finance Code, as amended and/or succeeded, for the purpose of determining the Maximum Lawful Rate. Additionally, to the extent permitted by applicable law now or hereafter in effect, Lender may, at its option and from time to time, implement any other method of computing the Maximum Lawful Rate under Chapter 303 of the Texas Finance Code, as amended and/or succeeded, or under other applicable law by giving notice, if required, to Borrower as provided by applicable law now or hereafter in effect. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to the indebtedness evidenced by this Note. Notwithstanding anything to the contrary contained in this Note or any of the other Loan Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

- d. **Joint and Several Liability.** If there is more than one Borrower of this Note, each such Borrower is jointly and severally liable for the obligations of Borrower under this Note. If Borrower is a partnership, each general partner of Borrower is jointly and severally liable for the obligations of Borrower under this Note, and each general partner waives any requirement of law that Lender exhaust any assets of Borrower before proceeding against the assets of such general partner.
- e. **Security.** This Note is secured, among other things, by one or more Deeds of Trust, a master form of which has been or will be recorded in various counties within the State of Texas pursuant to the Texas Property Code with the intention that such master forms be supplemented by Short Form Deeds of Trust in the future.

Mark with "x" if applicable:

☐ Purpose. This Note is executed in renewal of, substitution and replacement for, a note in the original face amount of \$ 0.00 dated October 1, 2007 executed by Borrower payable to _____.

Other: N/A

EXECUTED to be effective as of **October 23, 2012**.

ABC Builders, LP, a Texas corporation

By: _____

[Sign Originals Only]

Promissory Note

After recording return to:
Lender One
2310 W Interstate 20, 100
Arlington, TX 76017
Ambra Costner

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

Short Form Deed of Trust, Security Instrument and Financing Statement

Loan #

This Short Form Deed of Trust, Security Agreement, and Financing Statement ("Deed of Trust") is entered into by **ABC Builders, LP Type: corporation Jurisdiction: Texas Charter # 12345** (Grantor, whether one or more) whose address is **123 Nowhere Street, Arlington, TX 76012** for the benefit of **Lender One** ("Lender").

ARTICLE I – DEFINITIONS

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

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

Loan No. 111111

Amount: \$124,548.00

1234 Investment Ct., Plano, TX 75024

Lot A, Block 11, Country Club Creek Estates, 1 & 2, Collin County, Texas

Loan No. 222222

Amount: \$112,094.00

1111 Investment Ct., Plano, TX 75024

Lot B, Block 11, Country Club Creek Estates, 1 & 2, Collin County, Texas

Loan No. 333333

Amount: \$124,548.00

2222 Investment Ct., Plano, TX 75024

Lot C, Block 11, Country Club Creek Estates, 1 & 2, Collin County, Texas

Loan No. 444444

Amount: \$107,725.00

3333 Investment Ct., Plano, TX 75024

Lot D, Block 11, Country Club Creek Estates, 1 & 2, Collin County, Texas

Loan No. 555555

Amount: \$107,725.00

4444 Investment Ct., Plano, TX 75024

Lot E, Block 11, Country Club Creek Estates, 1 & 2, Collin County, Texas

Loan No. 666666

Short Form Deed of Trust, Security Instrument and Financing Statement

Amount: \$107,725.00
5555 Investment Ct., Plano, TX 75024
Lot F, Block 11, Country Club Creek Estates, 1 & 2, Collin County, Texas

Loan No. 777777
Amount: \$107,725.00
6666 Investment Ct., Plano, TX 75024
Lot G, Block 11, Country Club Creek Estates, 1 & 2, Collin County, Texas

Loan No. 888888
Amount: \$124,548.00
7777 Investment Ct., Plano, TX 75024
Lot H, Block 11, Country Club Creek Estates, 1 & 2, Collin County, Texas

Land: The real property described as:

Being Lots A, B, C, D, E, F, G, H, in Block 11, of COUNTRY CLUB ESTATES, PHASE 1 & 2, an Addition to the City of Plano, Collin County, Texas, according to the Plat recorded in Cabinet 1234, Page 123, of the Plat Records, Collin County, Texas.

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

Lender: Lender One whose address is **2310 Interstate 20 W, Arlington, TX 76017**, its successors and assigns, and the subsequent holder or holders, from time to time, of the Note.

Loan Agreement: A Master Loan Agreement dated **October 1, 2007** executed by Lender and **ABC Builders, LP** ("Borrower", whether one or more) in connection with the Note as it may have been or may be from time to time amended, restated, modified, or supplemented.

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

<u>County</u>	<u>Filing Date</u>	<u>Instrument</u>	<u>Volume</u>	<u>Book</u>	<u>Page</u>	<u>Film Code</u>
Collin	12/20/2005	2012-55555	1111		3100	

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

Note: Promissory Notes evidencing lines of credit extended by Lender to Borrower, dated **October 23, 2012** in the amount indicated in Section 1.1 herein executed by Borrower and payable to the order of Lender, together with any and all renewals, modifications, rearrangements, reinstatements, enlargements, or extensions of such Promissory Notes and any promissory note or notes given in renewal, substitution, or replacement therefore. The term "Note" and "Notes" as used in this Deed of Trust also has the meaning ascribed to it in the Master Deed of Trust.

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

Trustee: **Michael H. Patterson**, whose address is **2310 Interstate 20 W, Suite 100, Arlington, TX 76017**.

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

ARTICLE II – GRANT

2.1 Grant. To secure the full and timely payment of the Indebtedness (including without limitation, the Note) and

Short Form Deed of Trust, Security Instrument and Financing Statement

the full and timely performance and discharge of the Obligations, Grantor has GRANTED, BARGAINED, SOLD, and CONVEYED, and by these presents does GRANT, BARGAIN, SELL, and CONVEY, unto Trustee, in trust, the Mortgaged Property, subject to the Permitted Exceptions, TO HAVE AND TO HOLD the Mortgaged Property unto Trustee forever and Grantor binds itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Trustee against every person whomsoever lawfully claiming or to claim the same or any part thereof; provided however, that if (a) the Indebtedness is paid as and when it becomes due and payable, (b) the Obligations are fully performed and discharged on or before the date same are to be performed and discharged, and (c) all rights or options to request or obtain additional Advances under the Loan Agreement shall have terminated, then the liens, security interests, estates, and rights granted by the Loan Documents will terminate, otherwise they will remain in full force and effect. A certificate or other written statement executed on behalf of Trustee or Lender confirming that the Indebtedness has not been fully paid or that the Obligations have not been fully performed or discharged or that all rights or options to request or obtain additional Advances under the Loan Agreement has not terminated will be sufficient evidence thereof for the purpose of reliance by third parties on such fact.

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

ARTICLE III - TERMS AND PROVISIONS

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

3.2 No Work. If this Deed of Trust secures future advances to be used for construction of improvements on the Land pursuant to the Loan Agreement no development, construction, or other work whatsoever has commenced on site at the Land and Grantor shall not allow anyone to commence any such development, construction, or other work until the next business day after this Deed of Trust is recorded in the county where the Land is located.

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

ARTICLE IV - SECURITY AGREEMENT AND FINANCING STATEMENT

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

4.2 Construction Mortgage and Fixture Filing. If this Deed of Trust secures future advances to be used for construction of improvements on the Land pursuant to the Loan Agreement. This Deed of Trust is a "construction mortgage" under the Code this Deed of Trust shall also constitute a "fixture filing" for the purposes of the Code and other applicable law

and part of the Mortgaged Property is or will become fixtures. Information concerning the security interest granted by this Deed of Trust may be obtained from Grantor or Lender at the addresses set forth in this Deed of Trust.

4.3 **Borrower Required Entity Information.** Pursuant to Texas Business and Commerce Code §9.516(b) requiring certain borrowing entity identification, Borrower represents that borrower is an organization and not an individual, is a **corporation**, the jurisdiction for the organization is **Texas**, and the organization number for Borrower is: **12345**.

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

THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

EXECUTED to be effective as of **October 23, 2012**.

ABC Builders, LP, a Texas corporation

By: _____

[Sign Originals Only]

STATE OF TEXAS

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ by _____ of **ABC Builders, LP, on behalf of said corporation.**

Notary Public

Printed Name: _____

My commission expires: _____

Lender: **Lender One**
Borrower: **ABC Builders, LP**
Property: **Multiple Properties. See attached property schedule, , Texas**

Future Flood Insurance Authorization by Borrower(s)

Loan #

The above-referenced Borrower(s) hereby authorize(s) Lender, and its assigns, to purchase flood insurance on the above-described Property if a determination is made subsequent to closing that flood insurance is necessary, and then only for the purchase of sufficient flood insurance necessary to market the loan and/or to comply with any and all Federal, State, County and Municipal regulations and/or regulations of the Office of Thrift Supervision, Federal Reserve Board, institutional investors, etc.

At any time during the life of the loan covering the above-described Property, such flood insurance policy may be purchased from the agent designated by Borrower(s) and subsequently furnished to Lender. The premium may be paid from the escrow funds on hand and the proper adjustment made to the monthly payment.

Lender, where time and the applicable regulations allow, shall provide Borrower(s) with 10 day written notice that flood insurance must be purchased, the amount necessary, and an estimate of the cost. If a response is not received from the Borrower(s) within 45 days of such notice, Lender is hereby authorized to obtain insurance from whatever source advisable under the circumstances and provide the Borrower(s) with a copy of the policy.

ABC Builders, LP, a Texas corporation

By: _____

[Sign Originals Only]

Non-Flood Certification by Seller(s)

This is to certify that none of the improvements located on the above-referenced Property which I/we are selling are now (or to the best of my/our knowledge ever been) located in a flood prone or flood hazard area.

Lender: **Lender One**
Borrower: **ABC Builders, LP**
Property: **Multiple Properties. See attached property schedule, , Texas**

Flood Insurance Coverage Subject to Possible Change

Loan #

If your property is or becomes zoned for required flood insurance and we assign, sell or transfer the servicing of your mortgage loan, your new lender/servicer may require more flood insurance coverage than the minimum amount that has been identified in your Notice of Special Flood Hazards (NSFH). The new lender/servicer may require coverage in an amount greater than the minimum, and has the right to require flood coverage at least equal to 100% of the insurable value (also known as replacement cost value) of the building(s) used as collateral to secure the loan or the maximum available under the National Flood Insurance Program (NFIP) for the particular type of building. You should review your exposure to flood damage with your insurance provider, as you may wish to increase your coverage above the minimum amount required at the time of closing your loan versus what subsequently the new lender/servicer may require.

Acknowledged by Borrower(s) this **Twenty-third** day of **October, 2012**.

ABC Builders, LP, a Texas corporation

By: _____

[Sign Originals Only]

Lender: **Lender One**
Borrower: **ABC Builders, LP**
Property: **Multiple Properties. See attached property schedule, , Texas**

Attorney Representation Notice

Loan #

This Attorney Representation Notice ("Notice") is entered into between PeirsonPatterson, LLP ("We", "our" or "us") and ABC Builders, LP ("you" or "your" whether one or more), herein referred to as "Borrower".

LOAN DOCUMENTATION. PeirsonPatterson, LLP (We", "us" or "our") has prepared the legal instruments involved in this loan using information supplied by the Lender and other third parties. We have acted only on behalf of the Lender. We and the Lender have not assisted or rendered legal advice to Borrower with respect to the loan or the Property securing it or the documents executed in connection with it. If Borrower has any questions about the meaning of any document or Borrower's legal rights, Borrower should retain personal legal counsel for advice in this transaction.

DESCRIPTION OF LEGAL SERVICES PERFORMED. We may have prepared all or part of the following legal instruments affecting title to the Property: Deed (if a purchase transaction), Note, Security Instrument and Assignment of Lien (if requested).

DISCLAIMER OF REPRESENTATION OR WARRANTY. We have not conducted a title search on the Property, and make no representation or warranty about condition of the title, access to the Property or any other matters that might be revealed from Borrower's examination of a survey, title information, or the Property itself. **Borrower is cautioned to make sure the Deed delivered to Borrower conveys what Borrower has contracted to purchase.**

DATA SUPPLIED BY LENDER. The disclosure calculations and fee data have been supplied by the Lender. We make no representations regarding the value of the Property, conformance with any limitations on fees, waiting periods or any other matters outside our control.

RESPONSIBILITY FOR PAYMENT OF FEES. As part of Borrower's obligation to pay the expenses of the Lender in connection with the preparation of the legal documentation, Borrower agrees to pay directly to us at loan closing, the amount indicated on the Attorney Invoice, unless Lender has noted otherwise in their closing instructions.

BASIS FOR FEE. The document preparation fee charged by us is based on a per transaction charge rather than an hourly fee. This fee is intended to provide fair compensation for our services, taking into consideration the time and labor required, the complexities of the questions involved, and the skill required to perform the services. Other considerations include our expertise in the complexities of the real estate practice, the necessary overhead associated with the rendering of the services and our assumption of risk in the rendering of the services. There has been no charge made for any disclosures or information required by the Real Estate Settlement and Procedures Act, the Truth-in-Lending Act or the Homeowners' Protection Act.

NOTICE TO BORROWER REGARDING DEED PREPARATION. We represent Lender and only Lender in this transaction. If we have prepared a draft deed, it has been at the request of Lender. Borrower is advised to consult its legal counsel with any questions before signing the draft deed. We have provided the draft deed as a convenience. **IF THE DRAFT DEED WE PREPARED IS USED, BORROWER (OR ITS ATTORNEY) SHOULD REVIEW AND AMEND IT, IF NECESSARY, TO MAKE CERTAIN THAT IT IS CONSISTENT**

Attorney Representation Notice

WITH THE SALES CONTRACT AND CORRECTLY REFLECTS THE CONDITION OF TITLE FOR THE PROPERTY AND THE OBLIGATIONS OF THE PARTIES TRANSFERRING RIGHTS TO REAL PROPERTY, AND IF APPLICABLE RESERVING CERTAIN RIGHTS, FOR EXAMPLE MINERAL INTEREST, IS AN INHERENTLY COMPLEX MATTER AND CONTEMPLATES THE INVOLVEMENT OF ATTORNEYS. IF APPLICABLE, THE DEED SHOULD BE AMENDED TO REFLECT ANY MINERAL OR OTHER RESERVATION. BE CERTAIN THAT THE DEED EXPRESSES THE INTENT OF SELLER AND BORROWER. Another deed, or amendments to the draft deed, must be reviewed and approved by us prior to its execution.

Borrower hereby acknowledges receiving and reading a copy of this Notice and affirms the accuracy of the statements contained herein.

BORROWER(S):

ABC Builders, LP, a Texas corporation

By: _____

[Sign Originals Only]

Lender: **Lender One**
Borrower: **ABC Builders, LP**
Property: **Multiple Properties. See attached property schedule, , Texas**

Disclosure of Right to Receive a Copy of an Appraisal

Loan #

Applicant(s) name(s) / Address(es) ("You", "Your") ABC Builders, LP 123 Nowhere Street Arlington, TX 76012	Lenders name / Address ("We", "Us") Southwest Bank PO Box 962020 Fort Worth, Texas 76162-2020 Attn: Compliance Dept.
--	--

DATE:

Under the Equal Credit Opportunity Act (ECOA) you have the right to receive a copy of the appraisal report used in connection with your application for credit. If you wish to receive a copy, please follow the instructions provided below.

We must hear from you no later than 90 days after we notify you about the action taken on your loan application (the credit decision). If you withdraw your application before we take action, we must hear from you no later than 90 days after you withdraw your application.

To request a copy of the appraisal report, you must contact us by writing to us at the address provided above. Please provide us with the following information at the time you make your request:

- The names of the applicant(s)
- The date of your application
- The address of the appraised property
- The address to which we should send the copy of the report

The ECOA requires that we mail or deliver a copy of the appraisal report promptly (generally within 30 days) after we receive your request, receive the appraisal report, or receive reimbursement from you for the report, whichever occurs last.

ABC Builders, LP, a Texas corporation

By: _____

[Sign Originals Only]

Disclosure of Right to Receive a Copy of an Appraisal

Lender: **Lender One**
Borrower: **ABC Builders, LP**
Property: **Multiple Properties. See attached property schedule, TX**

Mineral Rights Acknowledgment

Loan #

Words used in this Acknowledgment are defined below. Words in the singular mean and include the plural and vice versa.

“Borrower” is **ABC Builders, LP**

“Lender” is **Lender One**, and its successors or assigns.

“Loan” means the debt evidenced by the Note and all sums due under the Security Instrument.

“Note” means the promissory note(s) dated **October 23, 2012**, signed by Borrower in favor of Lender.

“Property” means the property commonly known as **Multiple Properties. See attached property schedule, , Texas**.

“Security Instrument” means the deed of trust/mortgage/security deed/security instrument signed by Borrower in favor of Lender, securing payment of the Note.

Borrower understands that the Property may be subject to mineral development rights held by others and the exercise of those rights could result in a taking of or damage to some or all of the Property. Borrower further understands that the party desiring to exercise its mineral development rights may be liable to Borrower and Lender for reimbursement for exercising such mineral development rights.

The Reimbursement may be considered “Miscellaneous Proceeds” under the Security Instrument.

Borrower hereby acknowledges that Borrower has read this Acknowledgment and fully understands its terms and implications and Borrower is executing it the same day as the Note and Security Instrument, as a material inducement to Lender to make this Loan.

ABC Builders, LP, a Texas corporation

By: _____

[Sign Originals Only]

MORTGAGE FRAUD IS INVESTIGATED BY THE FBI



Mortgage Fraud is investigated by the Federal Bureau of Investigation and is punishable by up to 30 years in federal prison or \$1,000,000 fine, or both. It is illegal for a person to make any false statement regarding income, assets, debt, or matters of identification, or to willfully overvalue any land or property, in a loan and credit application for the purpose of influencing in any way the action of a financial institution.

Some of the applicable Federal criminal statutes which may be charged in connection with Mortgage Fraud include:

- 18 U.S.C. § 1001 - Statements or entries generally
- 18 U.S.C. § 1010 - HUD and Federal Housing Administration Transactions
- 18 U.S.C. § 1014 - Loan and credit applications generally
- 18 U.S.C. § 1028 - Fraud and related activity in connection with identification documents
- 18 U.S.C. § 1341 - Frauds and swindles by Mail
- 18 U.S.C. § 1342 - Fictitious name or address
- 18 U.S.C. § 1343 - Fraud by wire
- 18 U.S.C. § 1344 - Bank Fraud
- 42 U.S.C. § 408(a) - False Social Security Number

Unauthorized use of the FBI seal, name, and initials is subject to prosecution under Sections 701, 709, and 712 of Title 18 of the United States Code. This advisement may not be changed or altered without the specific written consent of the Federal Bureau of Investigation, and is not an endorsement of any product or service.

ABC Builders, LP, a Texas corporation

By: _____

[Sign Originals Only]

Mortgage Fraud Warning

Property Schedule

Loan No. 111111

1234 Investment Ct., Plano, TX 75024

Lot A, Block 11, Country Club Creek Estates, 1 & 2, Collin County, Texas

Loan No. 222222

1111 Investment Ct., Plano, TX 75024

Lot B, Block 11, Country Club Creek Estates, 1 & 2, Collin County, Texas

Loan No. 333333

2222 Investment Ct., Plano, TX 75024

Lot C, Block 11, Country Club Creek Estates, 1 & 2, Collin County, Texas

Loan No. 444444

3333 Investment Ct., Plano, TX 75024

Lot D, Block 11, Country Club Creek Estates, 1 & 2, Collin County, Texas

Loan No. 555555

4444 Investment Ct., Plano, TX 75024

Lot E, Block 11, Country Club Creek Estates, 1 & 2, Collin County, Texas

Loan No. 666666

5555 Investment Ct., Plano, TX 75024

Lot F, Block 11, Country Club Creek Estates, 1 & 2, Collin County, Texas

Loan No. 777777

6666 Investment Ct., Plano, TX 75024

Lot G, Block 11, Country Club Creek Estates, 1 & 2, Collin County, Texas

Loan No. 888888

7777 Investment Ct., Plano, TX 75024

Lot H, Block 11, Country Club Creek Estates, 1 & 2, Collin County, Texas

After recording return to:

Collin County, Texas

Peirson Patterson, LLP, Attorneys
% Michael H. Patterson
2310 West Interstate 20, Suite 100
Arlington, Texas 76017-1668

06069 03100

Master form recorded by Michael H. Patterson, Attorney
(Name of person causing the recording)

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

MASTER DEED OF TRUST

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

WITNESSETH

ARTICLE I

DEFINITIONS

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

Lender: 1) The party identified as Lender in any and all subsequently recorded deeds of trust which incorporate therein by reference all or any part of the terms and provisions of this Master Deed of Trust, and whose address for notice is defined in said deeds of trust, and 2) the subsequent holder or holders, from time to time, of the Note.

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

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

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

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

MASTER DEED OF TRUST

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

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

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

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

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

Environmental Law: Any federal, state, or local law, statute, ordinance, or regulation pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Mortgaged Property, including without limitation, the Comprehensive Environment Response, Compensation, and Liability Act of 1980 ("CERCLA") as amended, 42 U.S.C. §9601 et seq. ("RCRA"), the Texas Water Code ("TWC"), and the Texas Solid Waste Disposal Act, Tex. Rev. Civ. Stat. Ann. art. 4477-7, and regulations, rules, guidelines, and standards are amended from time to time.

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

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

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

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

described as Guarantor in the Guaranty.

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

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

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

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

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

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

Leases: Any and all leases, master leases, subleases, licenses, concessions, or other agreements (written or oral, now or hereafter in effect) which grant to third parties a possessory interest in and to, or the right to use, all or any part of the Mortgaged Property, together with all security and other deposits or payments made in connection therewith.

Legal Requirements: (i) Any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates, or ordinances of any Governmental Authority in any way applicable to Grantor, any Guarantor or the Mortgaged Property, including, without limiting the generality of the foregoing, the ownership, use, occupancy, possession, operation, maintenance, alteration, repair, or reconstruction thereof, (ii) any and all covenants, conditions, and restrictions contained in any deeds, other forms of conveyance, or in any other instruments of any nature that relate in any way or are applicable to the Mortgaged Property or the ownership, use, or occupancy thereof, (iii) Grantor's or any Guarantor's presently or subsequently effective bylaws and articles of incorporation or partnership, limited partnership, joint venture, trust, or other form of business association agreement, (iv) any and all Leases, (v) all material obligations under any and all Contracts, and (vi) any and all leases,

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

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

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

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

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

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

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

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

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

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

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

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

8.11 hereof.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II

GRANT

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

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

ARTICLE III

WARRANTIES AND REPRESENTATIONS

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

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

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

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

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

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

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

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

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

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

3.10 Environmental and Hazardous Substances.

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

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

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

3.11 No Litigation. Except as disclosed in writing to Lender, there are no (i) actions, suits, or proceedings, at law or

in equity, before any Governmental Authority or arbitrator pending or threatened against or affecting Grantor, Guarantor, or any Constituent Party which might cause a Material Adverse Effect or which involve the Mortgaged Property, (ii) outstanding or unpaid judgment against the Grantor, any guarantor, any Constituent Party which might cause a Material Adverse Effect, or against the Mortgaged Property; or (iii) defaults by Grantor with respect to any order, writ, injunction, decree, or demand of any Governmental Authority or arbitrator which might cause a Material Adverse Effect.

ARTICLE IV.

AFFIRMATIVE COVENANTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.16 Environment and Hazardous Substances. Grantor will:

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

(d) permit Lender to join and participate in, as a party if it so elects, any legal proceedings or actions initiated with respect to the Mortgaged Property in connection with any Environmental Law or Hazardous Substance, and Grantor shall pay all attorneys' fees incurred by Lender in connection therewith;

(e) protect, indemnify, and hold harmless Trustee and Lender, their parents, subsidiaries, directors, officers, employees, representatives, agents, successors, and assigns from and against any and all loss, damage, costs, expense, action, causes of action, or liability (including attorney's fees and costs) directly or indirectly arising from or attributable to the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under or about the Mortgaged Property, whether known or unknown at the time of the execution hereof, including without limitation (i) all foreseeable consequential damages of any such use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence, and (ii) the costs of any required or necessary environmental investigation or monitoring, any repair, cleanup, or detoxification of the Mortgaged Property, and the preparation and implementation of any closure, remedial, or other required plans. This covenant and the indemnity contained herein shall survive the release of the lien of the Short Form Deed of Trust or the extinguishment of the lien by foreclosure or action in lieu thereof, and

(f) in the event that any Remedial Work is reasonably necessary or desirable, Grantor shall commence and thereafter diligently prosecute to completion of such Remedial Work within thirty (30) days after written demand by Lender for performance interest (or such shorter period of time as may be required under any Legal Requirement). All Remedial Work shall be performed by contractors approved in advance by Lender, and under the supervision of a consulting engineer approved by Lender. All costs and expenses of such Remedial Work shall be paid by Grantor including, without limitation, Lender's reasonable attorneys' fees and costs incurred in connection with monitoring or review of such Remedial Work. In the event Grantor shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Lender may, but shall not be required to cause such Remedial Work to be performed, and all costs and expenses thereof, or incurred in connection therewith, shall become part of the Indebtedness.

ARTICLE V

NEGATIVE COVENANTS

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

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

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

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

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

5.5 No Drilling. Grantor will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any Minerals from the surface or the Land regardless of the depth thereof or the method of mining or extraction thereof. Grantor, to the extent it has the authority to do so, shall further not permit any drilling or

exploration for or extraction, removal or production of, any Minerals from the subsurface of the Land to the extent such extraction, removal or production has the effect of being disruptive to service operations and development or potential dangerous to the structural integrity of the surface of the Land and/or the Improvements.

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

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

ARTICLE VI

EVENTS OF DEFAULT

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

6.1 Payment of Indebtedness. If Grantor shall fail, refuse, or neglect, to pay, in full, any installment or portion of the Indebtedness as and when the same shall become due and payable, whether at the due date thereof stipulated in the Loan Documents, upon acceleration or otherwise.

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

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

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

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

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

6.7 No Further Encumbrances. If Grantor creates, places, or permits to be created or placed, or through any act or

failure to act, acquiesces in the placing on or allows to remain, any Subordinate Mortgage, regardless of whether such Subordinate Mortgage is expressly subordinate to the liens or security interests of the Loan Documents, with respect to the Mortgaged Property, other than the Permitted Exceptions.

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

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

6.10 Destruction of Improvements. If the Mortgaged Property is demolished, destroyed, or substantially damaged so that, in Lender's judgment, it cannot be restored or rebuilt with available funds to the condition existing immediately prior to such demolition, destruction, or damage within a reasonable period of time. Notwithstanding the foregoing, such demolition, destruction, or damage shall not constitute as Event of Default to the extent Grantor, within thirty (30) days of such occurrence, satisfying each and all of the requirements of Section 8.11 hereof (including, without limitation, the payment of the Partial Release Price to Lender) so as to effectuate a Partial Release of that portion of the Mortgaged Property which is subject to such demolition, destruction or damage.

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

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

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

ARTICLE VII

REMEDIES

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

(a) Right to Perform Grantor's Covenants. If Grantor has failed to keep or perform any covenant whatsoever contained in the Short Form Deed of Trust or the other Loan Documents, Lender may, but shall not be obligated to any person to do so, perform or attempt to perform said covenant, and any payment made or expense incurred in the performance or attempted performance of any such covenant shall be and become a part of the Indebtedness, and Grantor promises, upon demand to pay to Lender, at the place where the Note is payable, all sums so advanced or paid by Lender, with interest from the date when paid or incurred by Lender at the Default Rate. No such payment by Lender shall constitute a waiver of any Event of Default. In addition to the liens and security interests hereof, Lender shall be subrogated to all rights, titles, liens, and security interests securing the payment of any debt, claim, tax, or assessment for the payment of which Lender may make an advance, or which Lender may pay.

(b) Right of Entry. Lender may, prior or subsequent to the institution of any foreclosure proceedings, enter upon the Mortgaged Property, or any part thereof, and take exclusive possession of the Mortgaged Property and of all books, records, and accounts relating thereto and to exercise without interference from Grantor any and all rights which Grantor has with respect to the development, construction, management, possession, operation, protection, or preservation of the Mortgaged Property, including without limitation the right to complete such development and/or construction as may be underway or not yet begun and otherwise manage, operate, maintain, protect, or preserve the Mortgaged Property to the extent Lender, in its sole discretion, deems desirable. All such costs, expenses, and liabilities incurred by the Lender in effectuating such construction or in managing, operating, maintaining, protecting, or preserving the Mortgage Property, shall constitute a demand obligation owing by Grantor and shall bear interest from the date of expenditure until paid at

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

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

(c) Right to Accelerate. Lender may, without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action, all of which are hereby waived by Grantor and all other parties obligated in any manner whatsoever on the Indebtedness, declare the entire unpaid balance of the indebtedness immediately due and payable, and upon such declaration, the entire unpaid balance of the Indebtedness shall be immediately due and payable. The failure to exercise any remedy available to the Lender shall not be deemed to be a waiver of any rights or remedies of the Lender under the Loan Documents, at law or in equity.

(d) Foreclosure-Power of Sale. Lender may request Trustee to proceed with foreclosure under the power of sale which is hereby conferred, such foreclosure to be accomplished in accordance with the following provisions:

(i) Public Sale. Trustee is hereby authorized and empowered, and it shall be Trustee's special duty, upon such request of Lender, to sell the Mortgaged Property, or any part thereof, at public action to the highest bidder for cash, with or without having taken possession of same. Any such sale (including notice thereof) shall comply with the applicable requirements, at the time of the sale, of Section 51.802 of the Texas Property Code or, if and to the extent such statute is not then in force, with the applicable requirements, at the time of the sale, of the successor statute or statutes, if any, governing sales of Texas real property under power of sale conferred by deeds of trust. If there is no statute in force at the time of the sale governing sales of Texas real property under powers of sale conferred by deeds of trust, such sale shall comply with applicable law, at the time of the sale, governing sales of Texas real property under power of sale conferred by deeds of trust.

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

(e) Lender's Judicial Remedies. Lender, or Trustee, upon written request of Lender, may proceed by suit or suits, at law or in equity, to enforce the payment of the Indebtedness and the performance and discharge of the obligations in accordance with the terms hereof, of the Note, and the other Loan Documents, to foreclose the liens and security interests of the Short Form Deed of Trust as against, all or any part of the Mortgaged Property, and to have all or any part of the Mortgaged Property sold under the judgment or decree of a court of competent jurisdiction. This remedy shall be cumulative of any other nonjudicial remedies available to the Lender with respect to the Loan Documents. Proceeding with a request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available nonjudicial remedy of the Lender.

(f) Lender's Right to Appointment of Receiver. Lender, as a matter of right and without regard to the sufficiency of the security for repayment of the Indebtedness and performance and discharge of the Obligations, without notice to Grantor and without any showing of insolvency, fraud, or mismanagement on the part of Grantor, and without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, shall be entitled to the appointment of a receiver or receivers of the Mortgaged Property or any part thereof, and of the Rents and Grantor hereby irrevocably consents to the appointment of a receiver or receivers. Any receiver appointed pursuant to the provisions of this subsection shall have the usual powers and duties of receivers in such matters.

(g) Lender's Uniform Commercial Code Remedies. The Lender may exercise its rights of enforcement with respect to Fixtures and Personalty under the Code, and in conjunction with, in addition to or in substitution for the rights and remedies under the Code the Lender may:

- (i) without demand or notice to Grantor, enter upon the Mortgaged Property to take possession of, assemble, receive, and collect the Personalty, or any part thereof, or to render it unusable, and
- (ii) The Lender may require Grantor to assemble the Personalty and make it available at a place the Lender designates which is mutually convenient to allow the Lender to take possession or dispose of the Personalty, and
- (iii) written notice mailed to Grantor as provided herein at least ten (10) days prior to the date of public sale of the Personalty or prior to the date after which private sale of the Personalty will be made shall constitute reasonable notice; and
- (iv) any sale made pursuant to the provisions of this subsection shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of the other Mortgaged Property under power of sale as provided herein upon giving the same notice with respect to the sale of the Personalty hereunder as is required for such sale of the other Mortgaged Property under power of sale, and such sale shall be deemed to be pursuant to a security agreement covering both real and personal property under 9.501(d) of the Code, and
- (v) in the event of & foreclosure sale, whether made by the Trustee under the terms hereof, or under judgment of a court, the Personalty and the other Mortgaged Property may, at the option of the Lender, be sold as a whole; and
- (vi) it shall not be necessary that the Lender take possession of the Personalty, or any part thereof, prior to the time that any sale pursuant to the provisions of this subsection is conducted, and it shall not be necessary that the Personalty or any part thereof be present at the location of such sale; and
- (vii) prior to application of proceeds of disposition of the Personalty to the Indebtedness, such proceeds shall be applied to the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like, and the reasonable attorneys' fees and legal expenses incurred by the Lender; and
- (viii) after notification, if any, hereafter provided in this subsection, Lender may sell, lease, or otherwise dispose of the Personalty, or any part thereof, in one or more parcels at public or private sale or sales, at Lender's offices or elsewhere, for cash, on credit, or for future delivery. Upon the request of Lender, Grantor shall assemble the Personalty and make it available to Lender at any place designated by Lender that is reasonably convenient to Grantor and Lender. Grantor agrees that Lender shall not be obligated to give more than the (10) days' written notice of the time and place of any public sale or of the time after which any private sale may take place and

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

- (ix) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder, the nonpayment of the Indebtedness, the occurrence of any Event of Default, the Lender having declared all or a portion of such Indebtedness to be due and payable, the notice of time, place, and terms of sale and of the properties to be sold having been duly given, or any other act or thing having been duly done by the Lender, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and
- (x) the Lender may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by the Lender, including the sending of notices and the conduct of the sale, but in the name and on behalf of the Lender.

(h) Rights Relating to Leases and Rents. Grantor has, pursuant to Article IX of this Master Deed of Trust, assigned, as collateral, to Lender all Rents under each of the Leases covering all or any portion of the Mortgaged Property. Lender, or Trustee on Lender's behalf, may at any time, and without notice, either in person, by agent, or by receiver to be appointed by a court, enter and take possession of the Mortgaged Property or any part thereof, and in its own name, sue for or otherwise collect the Rents. Grantor hereby agrees with Lender, upon notice from Trustee or Lender to Grantor of the occurrence of an Event of Default, terminate the limited license granted to Grantor in Section 9.2 hereof, and thereafter direct the lessees under the Leases to pay direct to Lender the Rents due and to become due under the Leases and attorn in respect of all other obligations thereunder direct to Lender, or Trustee on Lender's behalf, without any obligation on their part to determine whether an Event of Default does in fact exist or has in fact occurred. All Rents collected by Lender, or Trustee acting on Lender's behalf, shall be applied as provided for in Section 7.4 of this Master Deed of Trust; provided, however, that if the costs, expenses, and attorneys fees shall exceed the amount of Rents collected, the excess shall be added to the Indebtedness, shall bear interest at the Default Rate, and shall be immediately due and payable. The entering upon and taking possession of the Mortgaged Property, the collection of Rents, and the application thereof as aforesaid shall not cure or waive any Event of Default or notice of default, if any, hereunder nor invalidate any act done pursuant to such notice, except to the extent any such default is fully cured. Failure or discontinuance by Lender, or Trustee on Lender's behalf, at any time or from time to time, to collect said Rents shall not in any manner impair the subsequent enforcement by Lender, or Trustee on Lender's behalf, of the right, power and authority herein conferred upon it. Nothing contained herein, nor the exercise of any right, power or authority herein granted to Lender, or Trustee on Lender's behalf, shall be, or shall be construed to be, an affirmation by it of any tenancy, lease, or option, nor an assumption of liability under, nor the subordination of, the lien or charge of the Short Form Deed of Trust, to any such tenancy, lease, or option, nor an election of judicial relief, if any such relief is requested or obtained as to Leases or Rents, with respect to the Mortgaged Property or any other collateral given by Grantor to Lender. In addition, from time to time Lender may elect, and notice hereby is given to each lessee under any Lease, to subordinate the lien of the Short Form Deed of Trust to any Lease by unilaterally executing and recording an instrument of subordination, and upon such election the lien of the Short Form Deed of Trust shall be subordinate to the Lease identified in such instrument of subordination provided, however, in each instance such subordination will not affect or be applicable to, and expressly excludes any lien, charge, encumbrance, security interest, claim, easement, restriction, option covenant and other rights, titles, interests or estates of the nature whatsoever with respect to all or any portion of the Mortgaged Property to the extent that the same may have arisen or intervened during the period between the recordation of the Short Form Deed of Trust and the execution of the Lease identified in such instrument of subordination.

- (i) Lender as Purchaser. Lender may be the purchaser of the Mortgaged Property or any part thereof, at any sale thereof, whether such sale be under the power of sale herein vested in Trustee or upon any other foreclosure of the liens and security interests hereof, or otherwise, and Lender shall, upon any such purchase, acquire good title to the Mortgaged Property so purchased, free of the liens and security interests hereof, unless the sale was made subject to an unmatured portion of the Indebtedness. The Lender, as purchaser, shall be treated in the same manner as any third party

purchaser and the proceeds of the Lender's purchase shall be applied in accordance with Section 7.4 of this Master Deed of Trust.

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

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

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

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

7.6 Payment of Fees. If the Note or any other part of the Indebtedness shall be collected or if any of the Obligations shall be enforced by legal proceedings, whether through a probate or bankruptcy court or otherwise, or shall be placed in the hands of an attorney for collection after maturity, whether matured by the expiration of time or by an option given to the Lender to mature same, or if Lender becomes a party to any suit where this Master Deed of Trust, the Short Form Deed of Trust or the Mortgaged Property or any part thereof is involved, Grantor agrees to pay Lender's attorneys' fees and expenses incurred, and such fees shall be and become a part of the Indebtedness and shall bear interest from the date such costs are incurred at the Default Rate.

7.7 Miscellaneous

(a) In case Lender shall have proceeded to invoke any right, remedy, or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon same for any reason, Lender shall have the unqualified right so to do and, in such event, Grantor and Lender shall be restored to their former positions with respect to the Indebtedness, the Loan Documents, the Mortgaged Property or otherwise, and the rights, remedies, recourses and powers of Lender shall continue as if same had never been involved.

(b) In addition to the remedies set forth in this Article, upon the occurrence of an Event of Default, the Lender and Trustee shall, in addition, have all other remedies available to them at law or in equity.

(c) All rights, remedies, and recourses of Lender granted in the Note, this Master Deed of Trust, the other Loan Documents, any other pledge of collateral, or otherwise available at law or equity; (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively, or concurrently against Grantor, the Mortgaged Property, or any one or more of them, all the sole discretion of Lender; (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Grantor that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse (iv) shall be nonexclusive; (v) shall not be conditioned upon Lender exercising or pursuing any remedy in relation to the Mortgaged Property prior to Lender bringing suit to recover the Indebtedness or suit on the Obligations; and (vi) in the event Lender elects to bring suit on the Indebtedness and/or the Obligations and obtains a judgment against Grantor prior exercising any remedies in relation to Mortgaged Property, all liens and security interests, including the lien of the Short Form Deed of Trust, shall remain in full force and effect and may be exercised at Lender's option.

(d) Lender may release, regardless of consideration, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating, or releasing the lien or security interests evidenced by the Short Form Deed of Trust or the other Loan Documents or affecting the obligations of Grantor or any other party to pay the Indebtedness or perform and discharge the Obligations. For payment of the Indebtedness, Lender may resort to any of the collateral therefor in such order and manner as Lender may elect. No collateral heretofore, herewith, or hereafter taken by Lender shall in any manner impair or affect the collateral given pursuant to the Loan Documents, and all collateral shall be taken, considered, and held as cumulative.

(e) Grantor hereby irrevocably and unconditionally waives and releases: (i) all benefits that might accrue to Grantor by virtue of any present or future law exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay or execution, exemption from civil process, redemption, or extension of time for payment; (ii) all notices of any Event of Default or of Trustee's exercise of any right, remedy, or recourse provided for under the Loan Documents; and (iii) any right to a marshalling of assets or a sale in inverse order of alienation.

(f) Grantor and Lender mutually agree that there are no, nor shall there be any, implied covenants of good faith and fair dealing or other similar covenants or agreements in this Master Deed of Trust, the Short Form Deeds of Trust and the other Loan Documents. All agreed contractual duties are set forth in this Master Deed of Trust, the Short Form Deeds of Trust, the Note, and the other Loan Documents.

(g) The remedies in this Article VII are available under and governed by the real property laws of Texas and are not governed by the personal property law of Texas, including but not limited to, the power to dispose of personal property in a commercially reasonable manner under Section 9.504 of the Code.

ARTICLE VIII

SPECIAL PROVISIONS

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

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

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

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

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

8.6 Waiver of Setoff. The Indebtedness, or any part thereof, shall be paid by Grantor without notice, demand,

counterclaim, setoff, deduction, or defense and without abatement, suspension, deferment, diminution, or reduction by reason of: (i) any damage to, destruction of, or any condemnation or similar taking of the Mortgaged Property; (ii) any restriction or prevention of or interference with any use of the Mortgaged Property; (iii) any title defect or encumbrance or any eviction from the Mortgaged Property by superior title or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, or other like proceeding relating to Trustee, Lender, or Grantor, or any action taken with respect to the Short Form Deed of Trust by any trustee or receiver of Lender or Grantor, or by any court, in any such proceeding; (v) any claim which Grantor has or might have against Trustee or Lender; (vi) any default or failure on the part of Lender to perform or comply with any of the terms hereof or of any other agreement with Grantor, or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Grantor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Grantor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of the Indebtedness.

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

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

8.9 Consent to Subordinate Mortgage. In the event of consent by Lender to the granting of a Subordinate Mortgage, or in the event the above-described right of Lender to declare the Indebtedness to be immediately due and payable upon the granting of a Subordinate Mortgage without the prior written consent of Lender is determined by a court of competent jurisdiction to be unenforceable under the provisions of any applicable law, Grantor will not execute or deliver any Subordinate Mortgage unless (i) it shall contain express covenants to the effect: (a) that the Subordinate Mortgage is in all respects unconditionally subject and subordinate to the lien and security interest evidenced by the Short Form Deed of Trust and each term and provision hereof; (b) that if any action or proceeding shall be instituted to foreclose the Subordinate Mortgage (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), no tenant of any portion of the Mortgaged Property will be named as a party defendant, nor will any action be taken with respect to the Mortgaged Property which would terminate any occupancy or tenancy of the Mortgaged Property without the prior written consent of Lender; (c) that the rents and profits, if collected through a receiver or by the holder of the Subordinate Mortgage, shall be applied first to the Indebtedness, next to the payment of the Impositions, and then to the performance and discharge of the Obligations; and (d) that if any action or proceeding shall be brought to foreclose the Subordinate Mortgage (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), written notice of the commencement thereof will be given to Lender contemporaneously with the commencement of such action or proceeding; and (ii) a copy thereof shall have been delivered to Lender not less than ten (10) days prior to the date of the execution of such Subordinate Mortgage.

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

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

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

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

ARTICLE IX

ASSIGNMENT OF LEASES AND RENTS

9.1 Assignment. For Ten Dollars (\$10.00) and other good and valuable consideration, including the indebtedness evidenced by the Note, the receipt and sufficiency of which are hereby acknowledged and confessed, Grantor has GRANTED, BARGAINED, SOLD, and CONVEYED, and by these presents does GRANT, BARGAIN, SELL and CONVEY unto Lender, as security for the payment of the Indebtedness and the performance and discharge of the Obligations, the Leases and the Rents subject only to the Permitted Exceptions applicable thereto and the License (herein defined); TO HAVE AND TO HOLD the Leases and the Rents unto Lender, forever, and Grantor does hereby bind itself, its successors, and assigns to warrant and forever defend the title to the Leases and the Rents unto Lender against every person whomsoever lawfully claiming or to claim the same or any part thereof; provided, however, that if Grantor shall pay or cause to be paid the Indebtedness as and when same shall become due and payable and shall perform and discharge or cause to be performed and discharge the Obligations on or before the date same are to be performed and discharged, then this assignment shall terminate and be off no further force and effect, and all

rights, titles, and interests conveyed pursuant to this assignment shall become vested in Grantor without the necessity of any further act or requirement by Grantor, Trustee, or Lender.

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

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

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

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

ARTICLE X

SECURITY AGREEMENT

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

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

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

ARTICLE XI

CONCERNING THE TRUSTEE

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

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

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

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

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

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

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

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

ARTICLE XII

MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

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

fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Indebtedness shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Indebtedness until payment in full so that the rate or amount of interest on account of the Indebtedness does not exceed the Maximum Lawful Rate from time to time in effect and applicable to the Indebtedness for so long as the Indebtedness is outstanding. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Trustee and/or Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

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

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

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

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

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

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

renewal, or rearrangement of the Indebtedness or Obligations, or any part thereof, shall be and remain a first and prior lien, except as otherwise provided herein, on all of the Mortgaged Property not expressly released until the Indebtedness is fully paid and the Obligations are fully performed and discharged.

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

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

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

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

Michael H. Patterson, Attorney

(Name of person causing the recording)

STATE OF TEXAS §
COUNTY OF Tarrant §

This instrument was acknowledged before me on 19 day of Dec, 2005, by Michael H. Patterson, Attorney.



My Commission Expires: 3.2.06

Notary Public, State of Texas

Tina Joslin
Printed Name of Notary Public

0910 2302

06069 03129

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL OR USE OF THE
DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND
UNENFORCEABLE UNDER FEDERAL LAW
(THE STATE OF TEXAS) (COUNTY OF COLLIN)
I hereby certify that this instrument was FILED in the File Number Sequence on the date
and the time stamped hereon by me; and was duly RECORDED in the Official Public
Records of Real Property of Collin County, Texas on

DEC 20 2005

Brenda Taylor



Filed for Record in:
Collin County, McKinney TX
Honorable Brenda Taylor
Collin County Clerk

On Dec 20 2005
At 1:11pm

Doc/Num : 2005- 0178165

Recording/Type:DT 132.00
Receipt #: 50439

**LAST PAGE
OF THE PACKAGE**