

EXHIBIT A

	Total	2009		2010			Notes
		Nov	Dec	Jan	Feb	Mar	
GOLF OPERATIONS							
Rounds							
Paid	8,450	2,000	1,800	1,400	1,250	2,000	
Member	1,475	300	275	260	300	350	
Total	9,925	2,300	2,075	1,650	1,550	2,350	
Revenue							
Dues	\$ 87,500	\$ 17,500	\$ 17,500	\$ 17,500	\$ 17,500	\$ 17,500	
Green Fees	\$ 867,550	\$ 168,000	\$ 142,200	\$ 110,800	\$ 98,750	\$ 158,000	
Cart Fees	\$ 1,000	\$ 200	\$ 200	\$ 200	\$ 200	\$ 200	
Merchandise	\$ 48,531	\$ 10,925	\$ 9,856	\$ 8,260	\$ 7,750	\$ 11,750	
Other Pro Shop	\$ 13,000	\$ 2,750	\$ 2,750	\$ 2,500	\$ 2,500	\$ 2,500	
Food & Beverage	\$ 100,000	\$ 30,000	\$ 20,000	\$ 15,000	\$ 15,000	\$ 20,000	
Total	\$ 917,581	\$ 219,375	\$ 192,506	\$ 154,050	\$ 141,700	\$ 209,950	
Cost of Goods Sold							
Merchandise	\$ 33,001	\$ 7,429	\$ 6,702	\$ 5,610	\$ 5,270	\$ 7,990	
Food & Beverage	\$ 43,000	\$ 12,900	\$ 8,600	\$ 6,450	\$ 6,450	\$ 8,600	
Total	\$ 76,001	\$ 20,329	\$ 15,302	\$ 12,060	\$ 11,720	\$ 16,590	
Labor Expense							
Pro Shop	\$ 78,137	\$ 15,722	\$ 16,163	\$ 15,922	\$ 14,408	\$ 15,622	
Food & Beverage	\$ 72,230	\$ 15,212	\$ 15,640	\$ 14,243	\$ 12,892	\$ 14,243	
Course Maintenance	\$ 163,986	\$ 34,703	\$ 35,830	\$ 32,256	\$ 29,140	\$ 32,256	
Marketing	\$ 3,320	\$ 1,636	\$ 1,684	\$ -	\$ -	\$ -	
Administrative	\$ 88,430	\$ 17,473	\$ 17,883	\$ 18,246	\$ 16,483	\$ 18,245	
Total	\$ 406,103	\$ 84,746	\$ 87,101	\$ 80,667	\$ 72,923	\$ 80,687	
Other Expenses							
Pro Shop	\$ 31,864	\$ 3,652	\$ 3,652	\$ 11,860	\$ 6,600	\$ 6,000	
Food & Beverage	\$ 26,726	\$ 6,054	\$ 6,054	\$ 4,439	\$ 4,539	\$ 4,639	
Course Maintenance	\$ 150,300	\$ 46,360	\$ 24,600	\$ 29,200	\$ 23,950	\$ 36,200	
Marketing	\$ 100	\$ 50	\$ 50	\$ -	\$ -	\$ -	
Management Fee (Manager, MGC)	\$ 50,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	Monthly fee is 20k\$, 10k\$ paid current with balance accrued
Administrative	\$ 186,033	\$ 40,779	\$ 40,479	\$ 35,575	\$ 34,775	\$ 34,425	
Total	\$ 452,822	\$ 105,885	\$ 84,835	\$ 91,074	\$ 79,764	\$ 91,264	
Total Expenses	\$ 934,926	\$ 210,960	\$ 187,238	\$ 183,801	\$ 164,407	\$ 188,521	
EBITDA	\$ (17,345)	\$ 8,415	\$ 5,268	\$ (29,751)	\$ (22,707)	\$ 21,429	
TOTAL CASH FLOW							
Cash Flow							
Beginning Balance	\$ -	\$ -	\$ 26,415	\$ 31,684	\$ 1,933	\$ -	
Beginning Balance - MGC Cash	\$ 18,000	\$ 18,000	\$ -	\$ -	\$ -	\$ -	
Golf Operations NOI	\$ (17,345)	\$ 8,415	\$ 5,268	\$ (29,751)	\$ (22,707)	\$ 21,429	
Equity to fund shortfalls	\$ 20,774	\$ -	\$ -	\$ -	\$ 20,774	\$ -	
Ending Balance	\$ 21,429	\$ 26,415	\$ 31,684	\$ 1,933	\$ -	\$ 21,429	

EXHIBIT B

LOAN AGREEMENT

BY AND BETWEEN

MALIBU ASSOCIATES, LLC, a California limited liability company

and

CALIFORNIA NATIONAL BANK, a national banking association

Dated: March 28, 2006

Loan No.: 7600004084

Loan Agreement

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Loan No.: 7600004084

LOAN AGREEMENT

THIS LOAN AGREEMENT ("Agreement") is entered into as of March 28, 2006, by and between MALIBU ASSOCIATES, LLC, a California limited liability company ("Owner"), and CALIFORNIA NATIONAL BANK, a national banking association ("Lender").

RECITALS

This Agreement is executed by Owner for the purpose of obtaining a loan from Lender, to be evidenced by a Deed of Trust Note made by Owner in favor of Lender and secured by, among other things, a Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing affecting approximately 648.5 acres of real property located approximately 7 miles east of the City of Malibu, in the unincorporated area of Los Angeles County, California, described on Exhibit "A" attached to and made a part of this Agreement and all improvements now or in the future erected on such real property (such real property and improvements now or in the future erected on such real property are collectively hereinafter referred to as the "Property"). The loan is to aid Owner in the acquisition of the Property, which currently includes, among other improvements, an 18 hole golf course, an approximate 10,000 sq. ft. clubhouse, and an approximate 4,000 sq. ft. maintenance facility. Owner anticipates entitling the Property such that the Property can be redeveloped. Beyond the subject loan to aid in acquisition, Lender has not approved any further loans for such purposes, including entitlement, development or construction, and Owner understands and acknowledges that no loans except the subject loan have been approved by Lender.

NOW, THEREFORE, in consideration of the foregoing recitals, the making of the loan and of the mutual promises contained in this Agreement, and of other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I

LOAN ACCOMMODATION

1.01 The Loan. Owner agrees to take, and Lender agrees to make, upon the terms and conditions contained in this Agreement, a loan in the principal sum of Twenty-Eight Million Five Hundred Thousand Dollars (\$28,500,000) (the "Loan").

1.02 Documents. In order to consummate the Loan, Owner will hand Lender the following documents, fully executed, in the form prescribed by Lender, together with any additional documents, items and funds as Lender may require in connection with this Agreement:

(a) Deed of Trust Note ("Note") in the principal amount set forth above and bearing interest at the rate set forth in the Note.

- (b) Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing ("Deed of Trust").
- (c) Assignment of Rights under Permits and Development Documents.
- (d) Guaranty Agreement.
- (e) Environmental Indemnity Agreement.
- (f) Limited Liability Company Certification from Owner.
- (g) Limited Liability Company Certification from MPK Development, LLC.
- (h) Corporate Resolutions (from Hix/Rubenstein Companies and Pacific Capital Holdings, Inc.).
- (i) Opinion Letter from Owner's counsel as to due formation and organization of Owner and its Executive Committee (Hix/Rubenstein Companies, Pacific Capital Holdings, Inc., and MPK Development, LLC), and due authorization and execution and delivery of the Loan Documents executed by Owner.
- (j) Subordination Acknowledgement by Hix/Rubenstein Companies, Pacific Capital Holdings, Inc., and MPK Development, LLC (collectively "Development Manager"), under that certain Development Management Agreement dated March 2006, entered into by Development Manager and Owner.
- (k) Lender's form Disbursement Request and Authorization, Agreement to Provide Insurance, and such other form acknowledgements and authorizations as Lender may require.
- (l) Such other items as Lender may reasonably require.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Owner represents and warrants to Lender that as of the date of recording the Deed of Trust:

2.01 **Legal Status.** Owner is a limited liability company which is duly organized and validly existing under the laws of the State of California, and is qualified and licensed to do business in all jurisdictions in which such qualification or licensing is required.

2.02 **Authorization and Validation.** The execution, delivery and performance by Owner of this Agreement, the Note, and all documents securing the repayment of the indebtedness evidenced by the Note, including, without limitation, the Deed of Trust and other documents described above (all documents securing such repayment being collectively called the

"Security Documents"), and the borrowings evidenced by the Note (a) are within the powers of Owner, (b) have received the approval of Owner's principals, if any, (c) have received all necessary governmental approvals, and (d) will not violate any provisions of law, any order of any court or other agency of government, or any indenture, agreement or any other instrument to which Owner is a party or by which Owner, or any of its property, is bound, or be in conflict with, result in any breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of its property or assets, except as contemplated by the provisions of this Agreement. This Agreement, the Note and each of the Security Documents, when executed and delivered to Lender, will constitute legal, valid and binding obligations of Owner enforceable in accordance with their terms.

2.03 **Financial Information.** All financial data that has been given to Lender with respect to Owner and the Property (a) is complete and correct in all material respects, (b) accurately represents the financial condition of Owner and the Property as of the date on which, and the results of Owner's or the Property's operations for the period for which, the same have been furnished, and (c) has been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods covered. All balance sheets disclose all known liabilities, direct and contingent, as of their respective dates. There has been no adverse change in the financial condition of Owner since the date of the most recent of such financial statements given to Lender other than changes in the ordinary course of business, none of which changes has been materially adverse.

2.04 **No Defaults.** To Owner's knowledge, Owner is a party to no agreement or instrument that will materially interfere with its performance under this Agreement or the Security Documents; and is not in default in the performance, observance or fulfillment of any of the material obligations, covenants or conditions set forth in any agreement or instrument to which it is a party, which default would have a material and adverse effect upon its ability to perform under this Agreement or the Security Documents.

2.05 **Correct Information.** All reports, papers, data and information given to Lender with respect to Owner, any guarantor or the Property are accurate and correct in all material respects and complete insofar as completeness may be necessary to give Lender a true and accurate knowledge of the subject matters thereof.

2.06 **Title.** Owner has, or will have at the time of recordation of the Deed of Trust, good and marketable title in fee simple to the Property and good and marketable title to all fixtures and personalty now located on the Property, free and clear of any liens, charges, encumbrances, security interests and adverse claims whatsoever except for those fixtures and personalty which are leased and except as approved by Lender as exceptions to title in its Title Policy (hereinafter defined).

2.07 **Permits, Franchises.** To its knowledge, Owner possesses all permits, memberships, franchises, contracts, and licenses required and all trademark rights, trade names, trade name rights, patents, patent rights and fictitious name rights necessary to enable it to conduct the business in which it is now engaged without conflict with the rights of others.

2.08 **Access; Utilities.** There is adequate ingress to and egress from the Property, public water service, sanitary sewer service, electricity, gas, telephone and all other utility services sufficient for the uses of the Property; the Property is zoned for its present uses; and all such uses substantially comply with any and all laws, statutes, ordinances, rules regulations, covenants, conditions and restrictions applicable to said uses or which relate to or affect the Property.

2.09 **Taxes.** Owner has filed all federal, state, county and municipal income tax returns required to have been filed by it, and, to its knowledge, has paid all taxes which have become due pursuant to such returns or pursuant to any assessments received by it, and Owner does not know of any basis for additional assessment in respect of any such taxes. Owner has no knowledge of any pending assessments or adjustments of its taxes payable with respect to any year.

2.10 **Pending Litigation.** To Owner's knowledge, there is not now pending against or affecting Owner or the Property, nor, to the knowledge of Owner is there threatened any claim, investigation, action, suit or proceeding at law, or in equity, or before any court or administrative agency which, if adversely determined, would materially impair or affect the Property or the financial condition or business operations of Owner.

2.11 **Unpaid Materialmen.** To Owner's knowledge, no person, firm or corporation has performed any construction work or furnished services in connection with any construction carried on or to be carried on at the Property who or which remains unpaid at the time of execution of this Agreement.

2.12 **Agreements and Deposits.** Excluding golf memberships and agreements relative to future tournaments, Owner has not received any payment, deposit, rental or other amounts of any nature from any occupant or prospective occupant, nor executed any lease or purchase agreement with any such occupant or prospective occupant, of the Property or any part thereof except pursuant to leases, true and correct copies of which have been furnished to Lender. In connection with any such leases, Owner has not received any prepayment of rental more than one month in advance, except as disclosed in a separate writing to Lender.

2.13 **Encumbrances.** No other encumbrance on the Property exists or is contemplated which shall be subordinate to the Deed of Trust, and Owner agrees that no junior lien of any nature against all or any portion of the Property shall be given, permitted or suffered by Owner without Lender's written consent. Said consent shall be at Lender's sole option and discretion.

2.14 **Principal Place of Business.** Owner's principal place of business is at the address set forth in this Agreement as the address for notices to Owner. Owner shall promptly notify Lender of any change in Owner's principal place of business at any time prior to repayment in full to Lender of the indebtedness secured by the Security Documents.

2.15 **Compliance.** Owner has examined and is familiar with all conditions, restrictions, reservations and zoning ordinances affecting the Property. The Property in all

material respects conforms to and substantially complies with all of the requirements of said conditions, restrictions, reservations and zoning ordinances.

ARTICLE III

CONDITIONS PRECEDENT

As a condition to Lender's obligation to make the Loan and of Owner's right to receive any of the proceeds of the Loan, the following conditions precedent and other requirements shall have been satisfied:

3.01 **Title Policy.** Owner shall furnish to Lender an ALTA Lender's Policy of Title Insurance with such endorsements as Lender may reasonably require, which shall insure that the Deed of Trust is a first lien on the Property, free and clear of all liens, encumbrances and restrictions or other matters except those, if any, to which Lender may agree to take subject to in writing. Said Policy of Title Insurance shall be in the principal amount of the Loan.

3.02 **Reports and Other Documents.** Owner shall furnish to Lender, at Owner's sole cost and expense, (a) a report prepared by a licensed environmental consultant acceptable to Lender indicating to Lender's satisfaction that no "Hazardous Substances" (as that term is defined in the Environmental Indemnity Agreement referred in Section 1.02 above) are present in, on, under or about the Property, (b) a soils report relating to the Property by a licensed registered soils engineer acceptable to Lender indicating to Lender's satisfaction that no unusual or hazardous soils conditions exist in, on, under or about the Property, (c) all documents required under Section 1.02 above, (d) any other documents or funds required by this Agreement, and (e) an appraisal of the Property by or on behalf of Lender utilizing Lender's required appraiser, in form and content acceptable to Lender.

3.03 **Insurance.** Owner shall furnish to Lender, at Owner's sole cost and expense, such policies of insurance in such amounts and in accordance with the standards set forth on Exhibit "B" attached hereto and incorporated herein, with standard mortgagee's endorsements naming Lender as first mortgagee and as additional insured, and shall also deliver to Lender such other insurance as Lender, from time to time, may require upon notice to Owner in writing. The all risk/special form property insurance shall provide for the loss proceeds to be payable to Lender or its assigns as mortgagee. Certifications evidencing the originals of all such policies in form and content acceptable to Lender shall be deposited with Lender. It is understood and agreed that the approval of any insurer by Lender shall not be deemed or construed to be any representation, warranty or determination by Lender as to the form or legal sufficiency of any insurance contract, or the solvency of any insurance company, or the sufficiency of the amounts carried for the protection of Owner or any other person, and Owner assumes the full risk, responsibility and liability, if any, with respect to such matters. If Owner fails to secure and maintain insurance as required hereunder, Lender shall have the immediate right (without waiver of any other rights Lender may have upon an Event of Default under this Agreement) to secure same in the name and for the account of Owner, in which event Owner shall pay the costs thereof upon demand by Lender with interest thereon at the default rate as set forth in the Note from the

date of disbursement by Lender until paid in full, and all such amounts shall be deemed secured by the Security Documents.

3.04 Correctness of Representations; No Defaults. The representations and warranties of Owner contained in Article II hereof shall be true and correct on and as of the date of Lender's advancing any of the proceeds of the Loan, with the same effect as though such representations and warranties had been made on and as of such date, and on such date no Event of Default as defined in Article IX hereof shall have occurred and no condition, event or act which with the giving of notice or the passage of time or both would constitute such an Event of Default shall have occurred and be continuing or shall exist.

3.05 Legal Review. All legal matters incidental to the granting of the Loan shall be satisfactory to counsel of Lender.

3.06 Owner's Equity. Prior to the funding of the Loan, Owner shall deposit with Lender, or into escrow, (a) funds in an amount which, together with the Loan funds described in Section 4.03 below, will satisfy in full the acquisition costs of the Property described in Section 4.03 below, and (b) evidence satisfactory to Lender that Owner has cash equity in the Property in an amount not less than Nine Million Dollars (\$9,000,000). Lender shall also have been provided an appraisal prepared in accordance with Section 3.02 (e) hereof and acceptable to Lender showing the Property having a total appraised value of not less than Forty-Four Million Dollars (\$44,000,000).

ARTICLE IV

DISBURSEMENT PROCEDURE

Upon recording of the Deed of Trust, Loan funds of up to \$28,500,000 plus, if applicable, cash deposited by Owner with Lender under Section 3.06 hereof, shall be disbursed as follows:

4.01 Loan Fee; Capital Placement Fee. The sum of \$427,500 (1.50%) shall be disbursed as a non-refundable Loan fee to Lender. The sum of \$285,000 (1.00%) shall be disbursed to David B. Norton Inc., as a capital placement fee.

4.02 Costs and Expenses. The sum of approximately \$220,000 shall be disbursed for reasonable miscellaneous appraisal, inspection, consultant, legal, title, closing and other costs of Lender, and for such other third party costs and expenses as approved by Owner and Lender. Said sum shall include payment to Backus, Bland, Navarro & Weber LLP for Lender's legal fees incurred through the date of recordation of the Deed of Trust, pursuant to invoices therefor submitted by such law firm to Lender. If Loan funds allocated for all such costs and expenses are insufficient to satisfy all such costs and expenses in full, Owner agrees to immediately pay to Lender the additional sums required to satisfy all such costs and expenses in full. Should the Loan funds allocated for such costs and expenses be in excess of such costs and expenses, the excess shall be reallocated and added to interest reserve.

4.03 **Interest Reserve.** The sum of \$2,067,500 shall be held by Lender for interest reserve.

4.04 **Acquisition of Property.** The balance of the Loan funds in the sum of approximately \$25,500,000, together with all funds deposited by Owner as necessary and/or as directed by Lender, shall be paid to Stewart Title Escrow, Escrow No. E50052357 to satisfy the purchase price and Owner's closing costs and prorations for the acquisition of the Property.

4.05 **Non-Liability of Lender.** Lender shall not be liable for any error, omission, irregularity, or action taken in good faith with respect to the disbursement of the Loan funds. Owner acknowledges that it has no right to the Loan funds other than to have them disbursed by Lender in accordance with this Agreement.

ARTICLE V

AFFIRMATIVE COVENANTS

Owner covenants that so long as the Loan remains outstanding or any liabilities (whether direct or contingent, liquidated or unliquidated) of Owner to Lender hereunder or under any contracts or instruments executed in connection herewith remain outstanding, and until payment in full of the Note, Owner shall:

5.01 **Punctual Payments.** Punctually pay: The interest and principal of the Note at the times and place and in the manner specified in the Note; and any fees or other liabilities due hereunder and under the Note and any of the Security Documents at the times and place and in the manner specified in this Agreement, the Note or the Security Documents, as appropriate.

5.02 **Existence, Compliance with Law.** Preserve and maintain its existence and all of its licenses, permits, governmental approvals, rights, privileges and franchises; conduct its business in an orderly, efficient and regular manner; comply with the provisions of all documents pursuant to which Owner is organized and/or which govern Owner's continued existence; and comply with the requirements of all applicable laws, rules, regulations, orders of any governmental authority and requirements for the maintenance of Owner's insurance, licenses, permits, governmental approvals, rights, privileges and franchises. In connection with the continued entitlement of the Property, Owner shall concurrently therewith take the necessary steps to bring the Property into compliance with the Subdivision Map Act.

5.03 **Insurance.** Maintain and keep in force insurance of the types, in the amounts, in the form and with the carriers required under this Agreement and under any and all of the Security Documents.

5.04 **Facilities.** Keep all of Owner's properties useful or necessary to Owner's business, including without limitation the Property, in good repair and condition, and from time to time make necessary repairs, renewals and replacements thereto so that Owner's properties, and the Property, shall be fully and efficiently preserved and maintained.

5.05 **Taxes and Other Liabilities.** Pay and discharge prior to delinquency any and all indebtedness, obligations, assessments and taxes, both real or personal and including without limitation federal and state income taxes.

5.06 **Litigation.** Promptly give notice in writing to Lender of any litigation pending or threatened against Owner or the Property having a potential or claimed liability in excess of One Hundred Thousand Dollars (\$100,000.00), irrespective of whether there is insurance coverage for such claimed liability.

5.07 **Other Notifications.** Promptly (but in no event more than ten (10) business days after the occurrence of each such event or matter) give notice in writing to Lender of: (a) the occurrence of any event of default, or any condition, event or act which with the giving of notice or the passage of time or both would constitute such an event of default, under this Agreement or under the Note or any of the Security Documents; (b) any default by either Owner or the lessee under any lease of all or any portion of the Property; (c) any termination or cancellation of any insurance policy which Owner is required to maintain; (d) any uninsured or partially uninsured loss through liability or property damage, or through fire, theft or any other cause affecting any of Owner's property, or the Property, in excess of Twenty-Five Thousand Dollars (\$25,000.00) in the aggregate; (e) the change in the name or the organizational structure, dissolution or adverse change in financial condition of Owner; (f) the death, disability or legal incapacity of Thomas C. Hix, Jeffrey S. Klein, Mark D. Kvamme or Richard S. Fuld, Jr.

ARTICLE VI

NEGATIVE COVENANTS

Owner further covenants that so long as the Loan remains outstanding or any liabilities (whether direct or contingent, liquidated or unliquidated) of Owner to Lender hereunder or under any contracts or instruments executed in connection herewith remain outstanding, and until payment in full of the Note, Owner will not without prior written consent of Lender.

6.01 **Use of Funds.** Use any of the proceeds of the Loan for any purposes other than as stated in Article IV hereof.

6.02 **Removal of Personalty.** Owner will not at any time remove or permit the removal of any of the fixtures or personalty, having a value of more than \$50,000, located on or used in connection with the Property from the Property without the prior written consent of Lender unless actually replaced by an article of equal suitability and value, owned by Owner, free and clear of any lien or security interest.

6.03 **Assessment Districts.** Join, participate in or consent to the formation of any special assessment or other assessment district which will result in any lien being placed on all or any portion of the Property to secure the payment thereof without the prior written approval of Lender.

6.04 **Liens.** Create, suffer or permit to exist any security interest, liens, claims or encumbrances on any assets pledged to Lender, other than disclosed to Lender in writing prior to the date hereof. The foregoing notwithstanding, Owner may, without the consent of Lender, enter into capital or operating leases, so long as the aggregate annual rental thereunder does not exceed \$300,000.

6.05 **No Termination of Development Management Agreement.** Terminate or cancel the Development Management Agreement or replace the Development Manager without the prior written consent of Lender, not to be unreasonably withheld, delayed or conditioned.

6.06 **Leases.** Enter into any new real property leases of all or any portion of the Property, or amend, modify or cancel any leases of all or any portion of the Property, without the prior written approval of Lender, which shall not be unreasonably withheld, conditioned or delayed.

ARTICLE VII

EXCULPATORY PROVISIONS

Owner acknowledges, understands and agrees as follows:

7.01 **Status as Lender.** The relationship between Owner and Lender is and shall at all times remain, solely that of borrower and lender.

7.02 **Defective Construction.** Lender owes no duty of care to protect Owner against negligent, faulty, inadequate or defective building or construction at the Property. Lender shall in no way be liable for any acts or omissions of Owner, or any agent, contractor or other person furnishing labor and/or materials used in relation to any construction at the Property.

7.03 **Non-Liability.** Lender shall not be responsible or liable to Owner for any loss, damage or expense of any kind to person or property caused by Lender's activities taken in accordance with this Agreement whether as to Owner or as to any other persons or group of persons or for negligent, faulty, inadequate or defective building or construction and Owner shall protect, indemnify, defend and hold Lender free and harmless from any such liability, loss, damage or expense, including any attorneys' fees incurred. The consent or approval by Lender shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

7.04 **No Representation.** By accepting or approving anything required to be observed, performed or fulfilled, or to be given to Lender pursuant hereto or pursuant to the Security Documents, including, but not limited to, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal or insurance policy, Lender shall not be deemed to have warranted or represented 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 representation to anyone with respect thereto by Lender.

7.05 **Brokers' Fees.** Owner agrees to protect, indemnify, defend (with counsel acceptable to Lender) and hold Lender free and harmless from any responsibility, cost and/or liability, including, without limitation, any attorneys' fees and costs incurred, for the payment of any commission, charge or brokerage fees which may be payable in connection with this Loan, it being understood that, except as otherwise provided herein, any such commission, charge or brokerage fees will be paid directly by Owner to the party(ies) entitled thereto.

7.06 **Indemnity.** Owner agrees to and shall protect, indemnify, defend (with counsel acceptable to Lender) and hold Lender, its affiliates, and their directors, officers, agents, employees, successors and assigns free and harmless from and against any and all claims, actions, damages, demands, liabilities, losses, costs and expenses (including without limitation, attorneys' fees) directly or indirectly arising out of or in any way attributable to (a) all actual or alleged damage or injury of whatsoever nature arising out of or in any way connected with the Property (unless arising out of Lender's gross negligence), (b) Lender's performance of any act permitted under this Agreement, the Note or any of the Security Documents (unless arising out of Lender's willful misconduct), (c) breach of any representation or warranty made by Owner or any obligation of Owner contained in this Agreement, and (d) any allegation that Lender is liable for any act or omission committed by or on behalf of Owner in connection with the ownership, operation or development of the Property (unless such act or omission was so committed by Lender). Upon demand by Lender, Owner shall defend any action or proceeding brought against Lender covered by this indemnity, at Owner's sole cost and expense, unless Lender elects to conduct its own defense at the expense of Owner, in which event all fees and costs of such defense shall be paid by Owner upon demand and shall bear interest at the default rate set forth in the Note from the date of demand until paid.

ARTICLE VIII

BOOKS AND RECORDS

8.01 **Books of Account.** Owner shall maintain or cause to be maintained full and complete books of account and other records reflecting the results of its operations (in conjunction with its other operations as well as specifically its operation of the Property), in accordance with generally accepted accounting principles consistently applied, and in addition to the reports and data specifically requested by Lender pursuant to this Agreement, shall furnish or cause to be furnished to Lender, at any time and from time to time, such financial data as Lender shall reasonably request relating to the ownership or operation of the Property.

8.02 **Financial Information.** Owner understands, acknowledges and agrees that Lender requires, as a part of Lender's standard procedures and practices, updated financial information regarding borrowers, principals of borrowers, guarantors, and such other parties as Lender relies upon in its underwritings of its loans. Accordingly, Owner hereby agrees to provide the following updated financial information to Lender for all parties and at the times herein specified:

(a) Within sixty (60) days following the end of each corresponding fiscal year end period, internally prepared, unaudited financial statements (including without limitation financial statements, asset and liability statements, income and expense statements, cash flow statements, balance sheets, and such other financial information as was previously provided to Lender or as Lender may reasonably request), all of which data to be certified as true and accurate and as having been prepared in accordance with generally accepted accounting or tax based accounting principles consistently applied, with respect to Owner, the principals of Owner, any principals of the principals of Owner, any guarantors, and such other parties as Lender obtained financial information from in its original underwriting of the Loan (hereinafter collectively the "Updating Parties"); and

(b) Within thirty (30) days after its filing with the Internal Revenue Service by each of the Updating Parties, a copy of the most current federal tax return for each such party.

Owner further agrees that the failure of Owner to comply or to cause compliance with the foregoing requirements within the time and in the manner set forth herein shall constitute a default under this Agreement.

8.03 Property Information. Owner shall submit to Lender quarterly financial and operating statements of the Property, setting out in reasonable detail income and expenditures from the ownership and operation of the Property, depreciation charges, and net income before and after federal income taxes, all to be received by Lender within thirty (30) days from the end of each quarterly period. Such statements are to be certified as true and accurate by Owner, Owner's accountant or Owner's chief financial officer, and as having been prepared in accordance with generally accepted accounting principles consistently applied. Owner shall also submit to Lender within fifteen (15) days of their generation, the Annual Operating Plan which is to be prepared by Developer under the Development Management Agreement, and all deviations therefrom and revisions thereto, also as provided in the Development Management Agreement. Lender reserves the right to require such other reports and information regarding the Property that a prudent lender under similar circumstances would require.

8.04 Appraisals. Upon receipt of written notice from Lender that either Lender or any federal or state regulatory agencies having jurisdiction over Lender reasonably believe that the fair market value of the Property may have declined since the date of Lender's last appraisal of the Property, Owner shall obtain, as promptly as commercially practicable and at Owner's expense, an updated appraisal of the Property in form and substance reasonable satisfactory to Lender and such regulatory agencies from an appraiser satisfactory to Lender in its reasonable discretion.

8.05 Lender Audit Rights. Lender and its agents and representatives shall have the right to inspect and audit all books and records of Owner pertaining to the statements, reports and information required under this Article VIII in order to obtain and verify such information as Lender deems reasonably necessary or appropriate. The reasonable cost of any and all such inspections and audits shall be paid by Owner. Provided no Event of Default has occurred and is

continuing under this Agreement, Lender shall give Owner reasonable notice prior to exercising its rights hereunder.

8.06 Further Assurances. Owner, upon the request of Lender, will at its expense, execute, acknowledge and deliver such further documents and perform such further acts as may be reasonably necessary, desirable or proper to carry out more effectively the purposes hereof and of the Security Documents, and/or subject to the liens thereof any portion of the Property or any interest relating thereto concerning which Lender may have any doubt as to its being subject to the lien or charge of the Security Documents.

ARTICLE IX

EVENTS OF DEFAULT

9.01 Events of Default. The occurrence of any of the following shall constitute an "Event of Default" under this Agreement:

- (a) Owner shall fail to pay within five (5) days of when due any principal or interest under the Note, or shall fail to pay when due any fees, costs, charges, or other amounts payable under this Agreement, the Note or any of the Security Documents;
- (b) Any covenant, representation or warranty made by Owner hereunder or in the Note, Security Documents or any other documents executed by Owner in connection with the Loan is or becomes false or misleading in any material respect;
- (c) Owner shall fail to observe or perform any non-monetary term, obligation, agreement or other provision contained herein or in the Note, the Security Documents or in any other contract or instrument executed in connection herewith;
- (d) Any default or defined event of default under the Note, any of the Security Documents or any other documents executed in connection with the Loan;
- (e) Owner shall become insolvent, or shall suffer or consent to or apply for the appointment of a receiver, trustee, custodian or liquidator of itself or any of its property, or shall generally fail to pay its debts as they become due, or shall make a general assignment for the benefit of creditors;
- (f) Owner shall file a voluntary petition in bankruptcy, or seek reorganization, in order to effect a plan or other arrangement with creditors or any other relief under the Bankruptcy Reform Act, Title 11 of the United States Code, as amended or decodified from time to time ("Bankruptcy Code"), or under any state or federal law granting relief to debtors, whether now or hereafter in effect, or any involuntary petition or proceeding pursuant to said Bankruptcy Code or any other applicable state or federal law relating to bankruptcy, reorganization or other relief for debtors is filed or commenced against Owner, or Owner shall file an answer admitting the jurisdiction of the court and the material allegations of any involuntary petition, or Owner shall be adjudicated a

bankrupt, or an order for relief shall be entered by any court of competent jurisdiction under said Bankruptcy Code or any other applicable state or federal law relating to bankruptcy, reorganization or other relief for debtors;

(g) The filing of a notice of judgment lien against Owner, or the recording of any abstract of judgment against Owner, or the service of a notice of levy and/or of a writ of attachment or execution, or other like process, against the assets of Owner, or the entry of a judgment, order or decree against Owner, any or all of which would have a material and adverse effect upon Owner's ability to perform under this Agreement or the Security Documents;

(h) The Deed of Trust shall cease to be a legal, valid, binding and enforceable lien or security interest on all or any portion of the property encumbered thereby with not less than the same priority as on the date of recordation of the Deed of Trust;

(i) The dissolution or liquidation of Owner or any of its members, or Owner, or its members, shall take action seeking to effect the dissolution or liquidation of Owner or any of its members; or

(j) Except as otherwise specifically provided in this Agreement or the Security Documents, if Owner shall convey title to, or any interest in, any of the Property.

Notwithstanding anything to the contrary set forth hereinabove or elsewhere in this Agreement or in any other document entered into in connection with the Loan, except for the provision in the Note requiring installments to be paid within five (5) days of when due, without notice, no Event of Default shall be deemed to have occurred in connection with any failure to pay a monetary sum, if Owner shall cure same within ten (10) days of written notice from Lender, and, in connection with any failure to comply with any non-monetary covenant or agreement (so long as such failure or non-compliance is susceptible to cure), if Owner shall cure same within thirty (30) days written notice from Lender of same. Provided further, if such non-monetary failure or non-compliance is of a nature requiring more than thirty (30) days to cure, there shall be no Event of Default so long as Trustor or the party obligated commences such cure within thirty (30) days of such notice and thereafter diligently pursues such cure, but in no event more than ninety (90) days. Provided further that no such cure period shall in any event extend the Maturity Date under the Note.

ARTICLE X

REMEDIES

10.01 Remedies. Upon or at any time after the happening of any Event of Default hereunder, Lender, in addition to any and all rights and remedies otherwise available to it by law or in equity, shall have the following rights and remedies:

(a) Declare all Loan funds disbursed hereunder to be due and payable and terminate any obligation of Lender to disburse any of the funds hereunder to Owner and proceed as authorized by law to satisfy the indebtedness of Owner to Lender, and, in that regard, Lender shall be entitled to all of the rights, privileges and benefits contained in the Security Documents or any other instrument relating to the hypothecation of the Property as such collateral security for the performance by Owner of the obligations evidenced by said Note and by this Agreement.

(b) Take possession of the Property and let contracts for or otherwise proceed to operate and maintain the same, and all net costs of operating and maintaining the Property shall be considered and be an additional loan to the Owner and the repayment thereof, together with interest thereon at the default interest rate set forth in the Note, shall be secured by the Security Documents and shall be repaid within thirty (30) days after demand therefor, and Owner agrees to pay the same.

(c) Upon the happening of any Event of Default which may be cured by payment of money, Lender shall have the right (but not the obligation) to make such payment from its own funds. The making by Lender of such payment out of the Lender's own funds shall not, however, be deemed to cure such default by Owner, and the same shall not be so cured unless and until Owner shall have reimbursed Lender for such payment. If Lender advances its own funds for such purposes, such funds shall be considered advances under the Note and shall be secured by the Security Documents, notwithstanding that such advances may cause the total amount advanced hereunder to exceed the face amount of the Note or the amount committed to be advanced pursuant to this Agreement, and Owner shall immediately upon demand reimburse Lender with interest at the default interest rate provided for in the Note from the date of such advance until the date of reimbursement.

10.02 Application of Other Funds. Upon acceleration of the due date of the Note, Lender's obligations to disburse funds under any other loans from Lender to Owner, and any other funds held on account of Owner, shall forthwith terminate; and Lender may, at its option, apply all or any part of such funds as it deems appropriate in its sole discretion, provided that such application shall not operate to waive or cure any default existing hereunder or under the Note or Security Documents, nor to invalidate any Notice of Default or any act done pursuant to such notice and shall not prejudice any rights of the Beneficiary or Trustee under the Deed of Trust.

10.03 Remedies Cumulative. All remedies of Lender provided for herein are cumulative and shall be in addition to any and all other rights and remedies provided in the Note or Security Documents, or provided by law. The exercise of any right or remedy by Lender hereunder shall not in any way constitute a cure or waiver of default hereunder or under the Note or Security Documents, or invalidate any act done pursuant to any notice of default, or prejudice Lender in the exercise of any of its rights hereunder or under the Note or Security Documents unless, in the exercise of said rights, Lender realizes all amounts owed to it under the Note, the Security Documents and hereunder.

10.04 Contest of Third Party Claims. Notwithstanding anything to the contrary herein contained, Owner shall have the right to contest in good faith any claim, demand, levy or assessment by any third party, the assertion of which would constitute a default hereunder. Any such contest shall be prosecuted diligently and in a manner not prejudicial to Lender or its rights hereunder. Upon demand by Lender, Owner shall make suitable provision by deposit of funds with Lender, by bond satisfactory to Lender, or by such other device as Lender may approve in writing, for the possibility that the contest will be unsuccessful. Such provision shall be made within ten (10) days after demand therefor and, if made by deposit of funds with Lender, the amount so deposited shall be disbursed in accordance with the resolution of the contest either to Owner or the adverse claimant.

10.05 No Waivers. No waiver by Lender of any default or breach by Owner hereunder shall be implied from any omission by Lender to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default in the waiver and it shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

ARTICLE XI

SURVIVAL OF WARRANTIES AND COVENANTS

The warranties, representations, covenants and agreements set forth herein and in the Security Documents shall survive the making of the Loan and the execution and delivery of the Note, and shall continue in full force and effect until the indebtedness secured by the Security Documents shall have been paid in full.

ARTICLE XII

ASSIGNMENT

12.01 Owner's Assignment. Owner shall not assign this Agreement or any interest it may have in the monies due hereunder, or convey or encumber the Property or any personalty or fixtures now or hereafter located thereon without the prior written consent of Lender.

12.02 Lender's Assignment. Lender may at any time assign this Agreement, the Note and the Security Documents, and upon such assignment, Lender shall have no further obligation or liability of any nature in connection herewith. Upon such assignment, the provisions of this Agreement shall continue to apply to the Loan and such assignee shall be substituted in the place and stead of Lender hereunder with all rights, obligations and remedies of Lender herein provided, including, without limitation, the right to so further assign this Agreement, the Note and the Security Documents.

12.03 Participation. Owner understands that Lender may transfer and assign its interest in the Loan, this Agreement and the Security Documents, pledge its interest in the Loan, this Agreement and the Security Documents or grant or sell participations in some or all of

Owner's indebtedness outstanding under the Loan. In connection with any such transaction, Lender may disclose to each prospective and actual transferee, pledgee, purchaser or participant, any and all documents and information relating to the Loan. Owner shall execute such estoppels and confirmations as Lender may require in order to facilitate such financings or participations.

ARTICLE XIII

ARBITRATION OF DISPUTES

EXCEPT AS SPECIFICALLY PROVIDED HEREIN, ALL DISPUTES, CLAIMS, OR CONTROVERSIES (WHETHER SOUNDING IN TORT OR CONTRACT OR BASED UPON A STATUTE) (HEREINAFTER "CLAIMS") ARISING OUT OF, BASED UPON, OR RELATING TO THIS AGREEMENT SHALL BE SUBMITTED TO BINDING ARBITRATION BEFORE A RETIRED JUDGE OF JAMS/ENDISPUTE IN ORANGE COUNTY, CALIFORNIA, PURSUANT TO THE JAMS/ENDISPUTE COMPREHENSIVE ARBITRATION RULES AND PROCEDURES. JUDGMENT UPON THE ARBITRATION AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF AND SHALL BE FINAL, BINDING, AND NONAPPEALABLE. NOTWITHSTANDING THE FOREGOING, THIS CLAUSE SHALL NOT:

(A) LIMIT OR PROHIBIT LENDER FROM BRINGING ANY ACTION IN ANY COURT OF COMPETENT JURISDICTION FOR INJUNCTIVE RELIEF (OWNER SHALL ALSO HAVE THE RIGHT TO APPLY FOR INJUNCTIVE RELIEF); FOR APPOINTMENT OF A RECEIVER; FOR PROVISIONAL REMEDIES, INCLUDING TEMPORARY PROTECTIVE ORDERS AND WRITS OF ATTACHMENT; OR FOR JUDICIAL FORECLOSURE; AND THE FILING OF SUCH ACTIONS BY LENDER (OR FOR INJUNCTIVE RELIEF BY TRUSTOR) SHALL NOT:

- (I) CONSTITUTE A WAIVER OF THIS ARBITRATION PROVISION; OR
- (II) LIMIT THE COURT FROM REFERRING AS MUCH OF THE CLAIMS IN THE ACTION TO ARBITRATION AS POSSIBLE;

(B) LIMIT OR PROHIBIT LENDER FROM EXERCISING ANY OF ITS RIGHTS AS A LENDER UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE INVOCATION OF THE POWER OF SALE UNDER ANY DEED OF TRUST, EXERCISING ANY RIGHTS RELATING TO PERSONAL PROPERTY, INCLUDING TAKING OR DISPOSING OF SUCH PROPERTY WITH OR WITHOUT JUDICIAL PROCESS UNDER ARTICLE 9 OF THE CALIFORNIA COMMERCIAL CODE, OR THE USE OF ANY SET-OFF OR LIEN RIGHTS;

(C) APPLY TO CLAIMS UNDER THE ENVIRONMENTAL INDEMNITY AGREEMENT GIVEN IN CONNECTION WITH THE LOAN, WHICH CLAIMS MAY BE FILED IN ANY COURT OF COMPETENT JURISDICTION.

THE ARBITRATOR SHALL HAVE NO RIGHT OR POWER TO ENJOIN OR RESTRAIN ANY ACT OF ANY PARTY.

THIS ARBITRATION PROVISION SHALL BE DEEMED TO BE SELF-EXECUTING AND IN THE EVENT THAT OWNER FAILS TO APPEAR AT ANY PROPERLY NOTICED ARBITRATION PROCEEDING, AN AWARD MAY BE ENTERED AGAINST OWNER NOTWITHSTANDING OWNER'S FAILURE TO APPEAR.

THE ARBITRATOR IS SPECIFICALLY AUTHORIZED TO, AND AS APPROPRIATE, SHALL, RECOMMEND OR AWARD TO THE PREVAILING PARTY IN THE ARBITRATION PROCEEDINGS ITS REASONABLE ATTORNEYS' FEES AND COSTS, INCLUDING, WITHOUT LIMITATION, JAMS/ENDISPUTE ADMINISTRATION FEES AND THE ARBITRATOR'S FEES. THE PREVAILING PARTY SHALL ALSO BE ENTITLED TO RECOVER THE REASONABLE ATTORNEYS' FEES AND COSTS IT INCURS IN CONNECTION WITH THE CONFIRMATION OF THE AWARD AND ANY PROCEEDINGS REQUIRED TO ENFORCE A JUDGMENT BASED ON THE AWARD.

BY EXECUTING THIS ARBITRATION AGREEMENT, OWNER DOES HEREBY WAIVE TO THE FULLEST EXTENT POSSIBLE, OWNER'S RIGHT TO JURY TRIAL UNDER THE UNITED STATES CONSTITUTION, THE CONSTITUTION OF THE STATE OF CALIFORNIA AND ALL APPLICABLE STATUTES, AND SUCH WAIVER SHALL EXTEND TO ANY AND ALL CLAIMS, REGARDLESS OF WHETHER SUCH CLAIMS ARE ULTIMATELY ARBITRATED PURSUANT TO THIS PROVISION OR DECIDED THROUGH JUDICIAL PROCEEDINGS.


Owner's Initials


Lender's Initials

ARTICLE XIV

MISCELLANEOUS

14.01 **Amendment.** This Agreement, the Security Documents and the Note, and the terms of each and all of them, may not be changed, waived, discharged or terminated, except by an instrument or instruments in writing signed by the party against which enforcement of the change, waiver, discharge or termination is asserted.

14.02 **Additional Fees.** In the event, and if for any reason, the Loan is not paid in full on or before the Maturity Date of the Note, and Lender elects not to immediately proceed with foreclosure proceedings, whether by formal or informal agreement, Owner shall pay to Lender a fee which is to be established at the Maturity Date, for each consecutive thirty (30) day period or

any portion thereof after the Maturity Date, in addition to the interest provided, which fee shall not be less than the proportionate amount of the fee for the initial period of the Loan.

14.03 Return of Documents. If the Loan is not consummated within thirty (30) days after the date hereof, Owner shall return all documents and instruments to Lender upon demand.

14.04 Regulatory Restrictions. It is understood and agreed by Owner that Lender shall not be obligated to disburse any proceeds of the Loan, notwithstanding any language herein or in any other document or instrument executed in connection with the Loan, if and so long as the making of such disbursement would cause the Loan to be in violation of any law or regulation applicable to Lender, including, but not limited to, legal lending requirements.

14.05 Notices. All notices required or permitted by this Agreement shall be in writing and may be delivered in person to either party or may be sent by registered or certified mail, with postage prepaid, return receipt requested, or delivered by Federal Express or any other courier service guaranteeing overnight delivery, charges prepaid, or may be transmitted by facsimile with a hard copy to follow via overnight courier and addressed:

If to Owner: MALIBU ASSOCIATES, LLC
851 Fremont Avenue, Suite 103
Los Altos, CA 94024-5602

w/copy to: Scott S. Pollard, Esq.
4041 MacArthur Blvd., Suite 140
Newport Beach, CA 92660

If to Lender: CALIFORNIA NATIONAL BANK
1301 Dove Street, Suite 101
Newport Beach, CA 92660-2458
Attn: Real Estate Group

or such other address as shall, from time to time, be supplied in writing by any party to the others. If any notice or other document is sent by registered or certified mail, postage prepaid, with return receipt requested, addressed as above provided, the same shall be deemed served or delivered within forty-eight (48) hours after deposit in the United States mail. Notices delivered by overnight service shall be deemed to have been given twenty-four (24) hours after delivery of the same, charges prepaid, to the U.S. Postal Service or private courier. If any notice is sent by facsimile transmission the same shall be deemed served or delivered upon receipt if followed by overnight courier. Any notice or other document sent or delivered in any other manner shall be effective only if and when received.

14.06 Time of Essence. Time is of the essence of this Agreement, and of each and every provision hereof. The waiver by Lender of any breach or breaches hereof shall not be deemed, nor shall the same constitute, a waiver of any subsequent breach or breaches.

14.07 No Third Parties Benefited. This Agreement is made for the sole benefit and protection of Owner and Lender, and Lender's agents, successors and assigns, and no other person shall have any right of action or right to rely thereon and the parties hereto hereby agree that nothing contained in this Agreement shall be construed to vest in any contractor or the successors or assigns of any contractor, or any materialman or laborer, any interest in or claim upon the funds so set aside by this Agreement or any rights under this Agreement.

14.08 Actions. Lender shall have the right to commence, appear in, or to defend any action or proceeding purporting to affect the rights or duties of the parties hereunder or the payment of any undisbursed Loan funds, and in connection therewith Lender may pay necessary expenses, employ counsel and pay its reasonable fees. All sums paid or expended by Lender under the terms of this Agreement in excess of the Loan amount shall be considered and be a part of the Loan and the repayment thereof, together with interest thereon at the rate specified herein, shall be secured by the Security Documents and shall be immediately due and payable upon demand, and Owner agrees to pay the same.

14.09 Reliance on Representations. Lender may conclusively assume that the statements, acts, information and representations made by Owner or its agents contained in any affidavits, orders, receipts or other written instruments which were filed with Lender or exhibited to it are true and correct and may rely thereon without any investigation or inquiry, and any payment made by Lender in reliance thereon shall completely release Lender from liability with respect to all sums so paid.

14.10 Relationship. Nothing contained herein shall be deemed or construed by the parties hereto or any third person to create a partnership or joint venture or any association between the parties other than the relationship of lender and borrower.

14.11 Headings. The headings of the paragraphs hereof are for convenience only and shall not be deemed to be a part of or in any way modify the terms hereof.

14.12 Governing Law. This Agreement, as well as the Note and the Security Documents, and each and every provision hereof and thereof, shall be governed by and construed in accordance with the laws of the State of California.

14.13 Attorneys' Fees and Costs. If a dispute arises with regard to any of the terms, conditions or provisions of this Agreement, the prevailing party in such dispute shall be entitled to recover from the other party, in addition to any and all other rights, remedies and damages available to the prevailing party, its reasonable attorneys' fees and costs incurred in connection with such dispute.

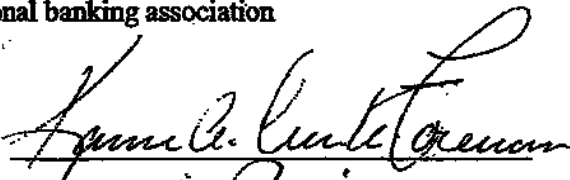
14.14 Nondiscrimination. During the term of this Agreement, neither Owner, its respective partners, nor any of their affiliates, employees or agents shall unlawfully discriminate against any employee or applicant for employment, or any purchaser or lessee or prospective purchaser or lessee of all or any portion of the Property, because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. Without limiting the generality of the foregoing, all such parties shall comply with the provisions

of the California Fair Employment and Housing Act (Section 12900, *et seq.*, of the California Government Code) and the applicable regulations promulgated thereunder (California Administrative Code, Title 2, Section 7285.0, *et seq.*), the Unruh Civil Rights Act and the rules and regulations promulgated therein, and Title VI of the Civil Rights Act of 1964 and the rules and regulations promulgated therein.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

LENDER:

CALIFORNIA NATIONAL BANK,
a national banking association

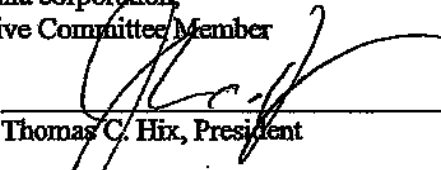
By: 
Its: Vice President

OWNER:

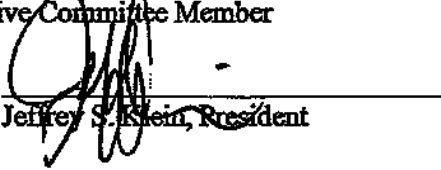
MALIBU ASSOCIATES, LLC, a California
limited liability company

By its Executive Committee, serving as its
Managing Member

By Hix/Rubenstein Companies, a
California corporation,
Executive Committee Member

By: 
Thomas C. Hix, President

By Pacific Capital Holdings, Inc., a
Nevada corporation,
Executive Committee Member

By: 
Jeffrey S. Klein, President

By MPK Development, LLC, a
California limited liability company,
Executive Committee Member

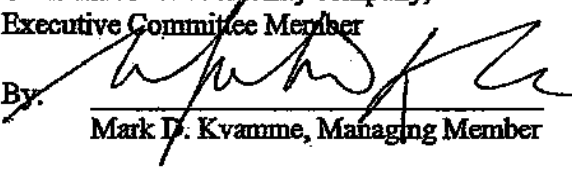
By: 
Mark D. Kvamme, Managing Member

EXHIBIT "A"

PARCEL 1:

THAT PORTION OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 1 SOUTH, RANGE 19 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, LYING SOUTHERLY AND EASTERLY OF THE CENTER LINE OF DECKER ROAD, AS DESCRIBED IN THE DEED RECORDED IN BOOK 2544 PAGE 277, OFFICIAL RECORDS OF SAID LOS ANGELES COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH IS THE MOST SOUTHEASTERLY CORNER OF THE LANDS CONVEYED TO MABLE STRASZACKER, A MARRIED WOMAN, TO RALPH M. SWITZKY, A SINGLE MAN, BY DEED RECORDED IN BOOK 15134 PAGE 285, OFFICIAL RECORDS OF LOS ANGELES COUNTY; THENCE EASTERLY ALONG THE SOUTHERLY LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 1 SOUTH, RANGE 19 WEST, SAN BERNARDINO MERIDIAN, 200 FEET TO A POINT; THENCE NORTHERLY ALONG A LINE PARALLEL TO THE EASTERLY LINE OF SAID NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 3, TO A POINT IN THE CENTER LINE OF DECKER ROAD, (AS DESCRIBED IN THE DEED RECORDED IN BOOK 2544 PAGE 277, OFFICIAL RECORDS OF LOS ANGELES COUNTY); THENCE WESTERLY ALONG THE CENTER LINE OF DECKER ROAD TO THE MOST NORTHEASTERLY CORNER OF SAID LANDS DESCRIBED IN SAID DEED RECORDED IN BOOK 15134 PAGE 285 OF SAID OFFICIAL RECORDS; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF THE PROPERTIES CONVEYED BY SAID DEED, RECORDED IN BOOK 15134 PAGE 285, OFFICIAL RECORDS OF LOS ANGELES COUNTY, TO THE POINT OF BEGINNING.

PARCEL 2:

THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 1 SOUTH, RANGE 19 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, LYING SOUTH AND EAST OF THE CENTER LINE OF DECKER COUNTY ROAD, AS DESCRIBED IN DEED RECORDED IN BOOK 2544 PAGE 277, OFFICIAL RECORDS.

EXCEPTING THEREFROM A PORTION SECTION 3, TOWNSHIP 1 SOUTH RANGE 19 WEST IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, COMMENCING AT THE SOUTH ONE QUARTER (1/4) SECTION CORNER OF SAID SECTION 3, THENCE ALONG THE SOUTH LINE OF SAID SECTION 3, SOUTH 89° 25' 34" EAST 207.80 FEET TO A POINT HEREBINAFTER REFERRED TO AS POINT A; THENCE NORTH 27° 39' 39" EAST 302.67

Continued on next page

FEET, MORE OR LESS, TO THE NORTH RIGHT OF WAY MULHOLLAND HIGHWAY, 100.00 FEET WIDE, AS SHOWN ON COUNTY SURVEYORS MAP CS 8824 SHEET 9, AND THE POINT OF BEGINNING; THENCE,

1. NORTH 27° 39' 39" EAST 93.01 FEET, MORE OR LESS, TO A POINT THAT BEARS NORTH 27° 39' 39" EAST 395.68 FEET FROM BEFORE MENTIONED POINT A; THENCE

2. NORTH 22° 28' 25" WEST 187.64 FEET; THENCE,

3. NORTH 87° 48' 05" WEST 135.69 FEET MORE OR LESS TO THE EASTERLY RIGHT OF WAY WESTLAKE BOULEVARD, FORMERLY DECKER ROAD, 40.00 FEET WIDE AS SHOWN ON COUNTY SURVEYORS MAP CS 8093; THENCE, ALONG SAID RIGHT OF WAY THE FOLLOWING THREE COURSES,

4. SOUTH 01° 53' 38" WEST 111.14 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE WEST, HAVING A RADIUS OF 220.00 FEET; THENCE SOUTHERLY AND SOUTHWESTERLY ALONG SAID CURVE

5. 123.94 FEET THROUGH A CENTRAL ANGLE OF 32° 16' 40"; THENCE

6. SOUTH 34° 10' 18" WEST 2.05 FEET, MORE OR LESS, TO SAID NORTH RIGHT OF WAY MULHOLLAND HIGHWAY, BEING A POINT OF CUSP ON A CURVE CONCAVE SOUTH HAVING A RADIUS OF 350.00 FEET, A RADIAL LINE BEARS NORTH 8° 36' 53" WEST, THENCE, EASTERLY AND SOUTHEASTERLY ALONG SAID NORTH RIGHT OF WAY

7. 212.43 FEET THROUGH A CENTRAL ANGLE OF 34° 46' 28" TO THE POINT OF BEGINNING.

PARCEL 3:

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 1 SOUTH, RANGE 19 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPT THE EASTERLY 998.71 FEET (MEASURED ALONG THE SOUTHERLY LINE) OF SAID LAND.

ALSO EXCEPT THEREFROM THAT PORTION OF SAID LAND LYING NORTHERLY OF THE SOUTHERLY LINE OF THE 100 FOOT STRIP OF LAND, DESCRIBED IN DEED TO THE COUNTY OF LOS ANGELES, (FOR PUBLIC ROAD AND HIGHWAY PURPOSES), RECORDED IN BOOK 11862 PAGE 146, OFFICIAL RECORDS.

PARCEL 4:

THE WESTERLY 333.15 FEET OF THE EASTERLY 998.71 FEET (MEASURED ALONG THE SOUTHERLY LINE) OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 1 SOUTH, RANGE 19

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WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF LYING SOUTHERLY OF A STRIP OF LAND 100.00 FEET WIDE, THE CENTER LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE WESTERLY TERMINUS OF THAT CERTAIN COURSE HAVING A BEARING AND LENGTH OF NORTH 84° 27' 05" EAST 561.42 FEET IN THE CENTER LINE OF MULHOLLAND HIGHWAY, AS DESCRIBED IN DEED RECORDED IN BOOK 10710 PAGE 291, OFFICIAL RECORDS, OF THE COUNTY OF LOS ANGELES, THENCE SOUTH 84° 27' 05" WEST 244.12 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTH, AND HAVING A RADIUS OF 2000 FEET; THENCE WESTERLY ALONG SAID CURVE, 642.52 FEET; THENCE NORTH 77° 08' 30" WEST 185.62 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTH AND HAVING A RADIUS OF 900 FEET; THENCE WESTERLY ALONG SAID LAST MENTIONED CURVE, 921.53 FEET; THENCE SOUTH 44° 11' 30" WEST 101.76 FEET.

ALL CURVES ARE TANGENT TO THE STRAIGHT LINES WHICH THEY JOIN, TO BE KNOWN AS MULHOLLAND HIGHWAY, REFERENCE IS MADE TO COUNTY SURVEYOR'S MAP NO. 8824, ON FILE IN THE OFFICE OF THE SURVEYOR OF THE COUNTY OF LOS ANGELES.

PARCEL 5:

THE EASTERLY 332.64 FEET (MEASURED ALONG THE SOUTHERLY LINE) OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 1 SOUTH, RANGE 19 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, LYING SOUTHERLY OF A STRIP OF LAND 100.00 FEET WIDE, THE CENTER LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE WESTERLY TERMINUS OF THAT CERTAIN COURSE HAVING A BEARING AND LENGTH OF NORTH 84° 27' 05" EAST 561.42 FEET IN THE CENTER LINE OF MULHOLLAND HIGHWAY, AS DESCRIBED IN DEED RECORDED IN BOOK 1071 PAGE 291, OFFICIAL RECORDS OF THE COUNTY OF LOS ANGELES; THENCE SOUTH 84° 27' 05" WEST 244.12 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTH, AND HAVING A RADIUS OF 200 FEET; THENCE WESTERLY ALONG SAID CURVE, 642.52 FEET; THENCE NORTH 77° 00' 03" WEST 185.62 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTH AND HAVING A RADIUS OF 900 FEET; THENCE WESTERLY ALONG SAID LAST MENTIONED CURVE, 921.53 FEET; THENCE SOUTH 44° 11' 30" WEST 101.76 FEET.

ALL CURVES ARE TANGENT TO THE STRAIGHT LINES WHICH THEY JOIN TO BE KNOWN AS MULHOLLAND HIGHWAY. REFERENCE IS MADE TO COUNTY SURVEYOR'S MAP NO. 8824, ON FILE IN THE OFFICE OF THE SURVEYOR OF THE COUNTY OF LOS ANGELES.

PARCEL 6:

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THAT PORTION OF THE WESTERLY 332.92 FEET OF THE EASTERLY 665.56 FEET (MEASURED ALONG THE SOUTHERLY LINE) OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 1 SOUTH, RANGE 19 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, LYING SOUTHERLY OF THE SOUTHERLY LINE OF MULHOLLAND HIGHWAY, 100.00 FEET WIDE, AS DESCRIBED IN THE DEED TO THE COUNTY OF LOS ANGELES, RECORDED OCTOBER 25, 1932 IN BOOK 11862 PAGE 146, OFFICIAL RECORDS OF SAID COUNTY.

PARCEL 7:

THAT PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 1 SOUTH, RANGE 19 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, LYING SOUTHERLY AND EASTERLY OF THE CENTER LINE OF DECKER COUNTY ROAD, AS DESCRIBED IN DEED RECORDED IN BOOK 2544 PAGE 277, OFFICIAL RECORDS OF SAID COUNTY.

PARCEL 8:

THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER AND THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 10, TOWNSHIP 1 SOUTH, RANGE 19 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPT THAT PORTION OF SAID LAND IN THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER DESCRIBED IN THE DEED TO BOYD A. DAVIS, RECORDED DECEMBER 29, 1961 IN BOOK D-1463 PAGE 954, OFFICIAL RECORDS, AS INSTRUMENT NO. 1741, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 9:

THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 10, TOWNSHIP 1 SOUTH, RANGE 19 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPT THEREFROM THAT PORTION OF SAID LAND LYING SOUTHERLY OF A STRAIGHT LINE EXTENDING NORTHWESTERLY FROM THE SOUTHEASTERLY CORNER OF THE SOUTH HALF OF SAID NORTHEAST QUARTER OF SAID SECTION 10, TO THE NORTHWESTERLY CORNER OF SAID SOUTH HALF OF THE NORTHEAST QUARTER OF SAID SECTION 10.

PARCEL 10:

THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 10, TOWNSHIP 1 SOUTH, RANGE 19 WEST, SAN BERNARDINO MERIDIAN, IN

Continued on next page

THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPT THEREFROM THAT PORTION OF SAID LAND LYING SOUTHERLY OF A STRAIGHT LINE EXTENDING NORTHWESTERLY FROM THE SOUTHEASTERLY CORNER OF THE SOUTH HALF OF SAID NORTHEAST QUARTER OF SAID SECTION 10, TO THE NORTHWESTERLY CORNER OF SAID SOUTH HALF OF THE NORTHEAST QUARTER OF SAID SECTION 10.

ALSO EXCEPT THEREFROM THAT PORTION OF SAID LAND LYING EASTERLY OF A LINE THAT IS PARALLEL WITH THE EASTERLY LINE OF SAID SECTION, AND WHICH PASSES THROUGH A POINT IN THE NORTHERLY LINE OF SAID NORTHEAST QUARTER (DISTANT WESTERLY THEREON) 500.00 FEET FROM SAID EASTERLY LINE.

ALSO EXCEPT THEREFROM THAT PORTION OF SAID LAND, INCLUDED WITHIN THE FOLLOWING DESCRIBED LINES:

BEGINNING AT THE INTERSECTION OF THE WESTERLY LINE OF THE EASTERLY 500.00 FEET, MEASURED ALONG THE NORTHERLY LINE OF THE NORTHEAST QUARTER OF SECTION 10, WITH A STRAIGHT LINE EXTENDING NORTHWESTERLY FROM THE SOUTHEASTERLY CORNER OF THE NORTHEAST QUARTER OF SECTION 10, TO THE NORTHWESTERLY CORNER OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 10; THENCE NORTHWESTERLY ALONG SAID STRAIGHT LINE TO ITS INTERSECTION WITH THE WESTERLY LINE OF SAID SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 10; THENCE NORTHERLY ALONG SAID WESTERLY LINE TO A POINT DISTANT SOUTHERLY THEREON 50.00 FEET FROM THE NORTHWESTERLY CORNER OF SAID SOUTHEAST QUARTER OF THE NORTHEAST QUARTER; THENCE SOUTHEASTERLY IN A DIRECT LINE TO A POINT IN SAID WESTERLY LINE OF THE EASTERLY 500.00 FEET OF SAID NORTHEAST QUARTER OF SECTION 10 DISTANT SOUTHERLY THEREON 300.00 FEET FROM ITS INTERSECTION WITH THE NORTHERLY LINE OF SAID SOUTHEAST QUARTER OF THE NORTHEAST QUARTER; THENCE SOUTHERLY ALONG SAID WESTERLY LINE TO THE POINT OF BEGINNING.

TOGETHER WITH THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 10, TOWNSHIP 1 SOUTH, RANGE 19 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF. EXCEPT THEREFROM THE EASTERLY 500.00 FEET, MEASURED ALONG THE NORTHERLY LINE OF SAID NORTHEAST QUARTER.

PARCEL 11:

THE EASTERLY 500.00 FEET, MEASURED ALONG THE NORTHERLY LINE OF THE NORTHEAST QUARTER OF SECTION 10, TOWNSHIP 1 SOUTH, RANGE 19 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPT THEREFROM THAT PORTION OF SAID LAND LYING SOUTHERLY OF A
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STRAIGHT LINE EXTENDING NORTHWESTERLY FROM THE SOUTHEASTERLY CORNER OF THE SOUTH HALF OF SAID NORTHEAST QUARTER OF SECTION 10, TO THE NORTHWESTERLY CORNER OF SAID SOUTH HALF, OF THE NORTHEAST QUARTER OF SECTION 10.

ALSO EXCEPT THEREFROM THAT PORTION OF SAID LAND INCLUDED WITHIN THE FOLLOWING DESCRIBED LINES:

BEGINNING AT A POINT IN THE EASTERLY LINE OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 10, SAID POINT BEING SOUTH 01° 31' 53" WEST 314.12 FEET, MEASURED ALONG SAID EASTERLY LINE FROM A COUNTY SURVEYOR'S BRASS CAP MONUMENT SET AT THE NORTHEAST CORNER OF SAID SECTION 10; THENCE SOUTH 01° 31' 53" WEST 2300.71 FEET, MORE OR LESS, MEASURED ALONG SAID EASTERLY LINE TO THE EAST ONE-QUARTER CORNER OF SAID SECTION 10, SAID EAST ONE-QUARTER CORNER BEING A COUNTY SURVEYOR'S BRASS CAP MONUMENT; THENCE NORTH 11° 00' 53" WEST 703.36 FEET, MORE LESS, TO A POINT, SAID LAST MENTIONED POINT BEARS SOUTH 88° 31' 03" WEST 153.00 FEET, FROM A POINT IN THE EASTERLY LINE OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 10. SAID LAST MENTIONED POINT BEING NORTH 01° 31' 53" EAST 694.59 FEET, MEASURED ALONG SAID EASTERLY LINE, FROM A COUNTY SURVEYOR'S BRASS CAP MONUMENT SET AT THE EAST ONE-QUARTER CORNER OF SAID SECTION 10; THENCE NORTH 06° 56' 20" EAST 1621.36 FEET; MORE OR LESS, TO THE POINT OF BEGINNING.

PARCEL 12:

THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 10, TOWNSHIP 1 SOUTH; RANGE 19 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE WESTERLY LINE OF THE EASTERLY 500.00 FEET, MEASURED ALONG THE NORTHERLY LINE OF THE NORTHEAST QUARTER OF SECTION 10, WITH A STRAIGHT LINE EXTENDING NORTHWESTERLY FROM THE SOUTHEASTERLY CORNER OF THE NORTHEAST QUARTER OF SECTION 10, TO THE NORTHWESTERLY CORNER OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 10; THENCE NORTHWESTERLY ALONG SAID STRAIGHT LINE TO ITS INTERSECTION WITH THE WESTERLY LINE OF SAID SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 10; THENCE NORTHERLY ALONG SAID WESTERLY LINE TO A POINT DISTANT SOUTHERLY THEREON 50.00 FEET FROM THE NORTHWESTERLY CORNER OF SAID SOUTHEAST QUARTER OF THE NORTHEAST QUARTER; THENCE SOUTHEASTERLY IN A DIRECT LINE TO A POINT IN SAID WESTERLY LINE OF THE EASTERLY 500.00 FEET OF SAID NORTHEAST QUARTER OF SECTION 10, DISTANT SOUTHERLY THEREON 300.00 FEET FROM ITS INTERSECTION WITH THE NORTHERLY LINE OF SAID SOUTHEAST QUARTER OF THE NORTHEAST QUARTER; THENCE SOUTHERLY ALONG SAID WESTERLY LINE TO THE POINT OF BEGINNING.

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PARCEL 13:

THE SOUTHEAST QUARTER OF SECTION 10 AND THAT PORTION OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SAID SECTION 10, ALL IN TOWNSHIP 1 SOUTH, RANGE 19 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, LYING SOUTHERLY OF A STRAIGHT LINE DRAWN FROM THE SOUTHEASTERLY CORNER OF SAID SOUTH HALF TO THE NORTHWESTERLY CORNER OF SAID SOUTH HALF.

PARCEL 14:

THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 10, AND THOSE PORTIONS OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER AND THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 10, ALL IN TOWNSHIP 1 SOUTH RANGE 19 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, LYING NORTHEASTERLY, EASTERLY AND SOUTHEASTERLY OF THE SOUTHEASTERLY LINE OF DECKER CANYON ROAD, AS DESCRIBED IN THE DEED TO THE COUNTY OF LOS ANGELES, RECORDED APRIL 29, 1918 IN BOOK 6682 PAGE 1 OF DEEDS, RECORDS OF SAID COUNTY.

EXCEPT THAT PORTION OF SAID LAND, IF ANY, AS DESCRIBED IN THE DEED TO THE COUNTY OF LOS ANGELES, RECORDED IN BOOK 1962 PAGE 258, OFFICIAL RECORDS OF SAID COUNTY.

ALSO EXCEPT THAT PORTION OF SAID LAND, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF DECKER CANYON ROAD, AS DESCRIBED IN THE DEED TO THE COUNTY OF LOS ANGELES, RECORDED MARCH 22, 1923 IN BOOK 1962 PAGE 258, OFFICIAL RECORDS, WITH THE SOUTH LINE OF SECTION 9; THENCE ALONG SAID CENTER LINE AS FOLLOWS:

NORTH 81° 58' 30" EAST 133.84 FEET; THENCE NORTH 59° 30' 30" EAST 73.97 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 100 FEET; THENCE NORTHEASTERLY 51.02 FEET ALONG THE ARC OF THE ABOVE MENTIONED CURVE; THENCE TANGENT TO SAID CURVE, NORTH 88° 44' 30" EAST 21.82 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 40 FEET; THENCE NORTHEASTERLY 69.67 FEET ALONG THE ARC OF THE ABOVE MENTIONED CURVE; THENCE TANGENT TO SAID CURVE, NORTH 8° 54' 20" EAST 105.59 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 100 FEET; THENCE NORTHERLY 76.26 FEET ALONG THE ARC OF THE ABOVE MENTIONED 100 FOOT RADIUS CURVE; THENCE TANGENT TO SAID CURVE, NORTH 34° 47' 20" WEST 4.44 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 70 FEET; THENCE NORTHERLY 50.43 FEET ALONG THE ARC OF THE ABOVE MENTIONED 70 FOOT RADIUS CURVE; THENCE TANGENT TO SAID CURVE, NORTH 6° 29' 20" EAST 17.26

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FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 100 FEET; THENCE NORTHEASTERLY 59.99 FEET ALONG THE ARC OF THE ABOVE MENTIONED 100 FOOT RADIUS CURVE; THENCE TANGENT TO SAID CURVE, NORTH 40° 51' 40" EAST 83.35 FEET; THENCE NORTH 48° 18' 00" EAST 185 FEET; THENCE NORTH 20° 59' 10" EAST 81.84 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 10 FEET; THENCE NORTHEASTERLY 84.53 FEET ALONG THE ARC OF THE ABOVE MENTIONED 100 FOOT RADIUS CURVE; THENCE TANGENT TO SAID CURVE, NORTH 69° 25' 10" EAST 194.19 FEET;

THENCE SOUTH 85° 43' 30" EAST 153.24 FEET; THENCE NORTH 78° 27' 20" EAST 211.90 FEET; THENCE NORTH 71° 43' 30" EAST 304.16 FEET; THENCE NORTH 87° 45' 30" EAST 432.70 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 100 FEET; THENCE NORTHEASTERLY 107.03 FEET ALONG THE ARC OF THE ABOVE MENTIONED 100 FOOT RADIUS CURVE; THENCE TANGENT TO SAID CURVE, NORTH 26° 26' EAST 64.69 FEET; THENCE LEAVING SAID ROAD, SOUTH 8° 54' EAST 95.5 FEET; THENCE SOUTH 18° 44' EAST 57.5 FEET; THENCE SOUTH 46° 04' EAST 69.3 FEET; THENCE SOUTH 12° 56' EAST 99.6 FEET; THENCE SOUTH 77° 10' EAST 170.8 FEET; THENCE SOUTH 38° 34' EAST 66.00 FEET; THENCE NORTH 78° 32' EAST 45.6 FEET; THENCE SOUTH 54° 26' EAST 96.3 FEET; THENCE SOUTH 39° 11' 10" EAST 262.37 FEET; THENCE SOUTH 62° 20' EAST 173.7 FEET; THENCE SOUTH 5° 28' EAST 86.8 FEET; THENCE SOUTH 35° 06' EAST 50.4 FEET; THENCE SOUTH 5° 00' EAST 54.3 FEET; THENCE SOUTH 47° 00' EAST 221.2 FEET; THENCE SOUTH 54° 34' WEST 20.2 FEET TO THE INTERSECTION OF THE SOUTH LINE OF SAID SECTION 10; THENCE NORTH 89° 51' WEST 1620.82 FEET TO THE COMMON CORNER OF SECTION 9, 10, 15 AND 16, SAID TOWNSHIP AND RANGE; THENCE SOUTH 89° 51' 50" WEST 1305.95 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

PARCEL 15:

THE EASTERLY 300.00 FEET OF THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 1 SOUTH, RANGE 19 WEST, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, LYING NORTHERLY OF A STRIP OF LAND 60.00 FEET WIDE, KNOWN AS ENCINAL CANYON ROAD, AS DESCRIBED IN DEED GRANTED TO SAID COUNTY, RECORDED MARCH 29, 1955 IN BOOK 47324 PAGE 226, OFFICIAL RECORDS OF SAID COUNTY.

PARCEL 16:

THAT PORTION OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 1 SOUTH, RANGE 19 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID QUARTER QUARTER;

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TENCE ALONG THE NORTHERLY LINE OF SAID QUARTER QUARTER, NORTH 89° 49' 35" EAST 225 FEET; THENCE SOUTH 0° 18' 53" WEST ALONG A LINE PARALLEL WITH THE WESTERLY LINE OF SAID QUARTER QUARTER TO THE NORTHERLY LINE OF ENCINAL CANYON ROAD, (60 FEET WIDE), DESCRIBED AS PARCEL "A" IN DEED RECORDED APRIL 27, 1955 IN BOOK 47605 PAGE 380, OFFICIAL RECORDS, AS INSTRUMENT NO. 2850 OF SAID COUNTY; THENCE ALONG SAID ENCINAL CANYON ROAD, SOUTH 89° 36' WEST 224.99 FEET TO SAID WESTERLY LINE; THENCE NORTH 0° 18' 53" EAST ALONG SAID WESTERLY LINE TO THE POINT OF BEGINNING.

EXCEPT THEREFROM ALL OIL, GAS AND MINERALS IN, ON OR UNDER SAID LAND, BUT WITHOUT ANY RIGHT OF SURFACE ENTRY TO A DEPTH OF 500 FEET BELOW THE SURFACE OF SAID LAND, AS RESERVED BY FRANK BIASTRE AND CLAUDINE BIASTRE, HIS WIFE, IN DEED RECORDED SEPTEMBER 18, 1972 AS INSTRUMENT NO. 488.

PARCEL 17:

THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 1 SOUTH, RANGE 19 WEST, SAN BERNARDINO MERIDIAN, COUNTY OF LOS ANGELES, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPT THEREFROM THAT PORTION OF SAID LAND, LYING EASTERLY AND NORTHEASTERLY OF A LINE, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF SAID SECTION 11, WITH THE CENTER LINE OF MULHOLLAND HIGHWAY, (100 FEET WIDE), AS DESCRIBED IN RESOLUTION APPROVED ON APRIL 2, 1934 BY THE BOARD OF SUPERVISORS OF LOS ANGELES COUNTY, RECORDED APRIL 10, 1934 IN BOOK 12707 PAGE 152, OFFICIAL RECORDS, AS INSTRUMENT NO. 943 OF SAID COUNTY; THENCE SOUTHERLY AND SOUTHEASTERLY, ALONG SAID CENTER LINE TO ITS FIRST INTERSECTION THEREOF WITH THE SOUTHERLY LINE OF THE NORTH HALF OF THE NORTHWEST QUARTER OF SAID SECTION 11.

PARCEL 18:

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 11, TOWNSHIP 1 SOUTH, RANGE 19 WEST, SAN BERNARDINO MERIDIAN IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, LYING SOUTHWESTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE NORTHWESTERLY CORNER OF SAID SOUTHWEST QUARTER; THENCE SOUTH 71° 57' 58" EAST 2825.01 FEET TO A POINT IN THE EASTERLY LINE OF SAID SOUTHWEST QUARTER, DISTANT THEREON NORTH 00° 47' 04" EAST 1766.75 FEET FROM THE SOUTHEAST CORNER OF SAID SOUTHWEST QUARTER.

PARCEL 19:

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THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 15,
TOWNSHIP 1 SOUTH, RANGE 19 WEST, SAN BERNARDINO BASE AND
MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA,
ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPT THAT PORTION AS FOLLOWS:

BEGINNING AT THE NORTHWEST QUARTER OF SAID NORTHEAST QUARTER OF
THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER; THENCE EASTERLY
ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER A DISTANCE OF
225 FEET; THENCE SOUTHERLY PARALLEL WITH THE WEST LINE OF SAID
QUARTER SECTION, A DISTANCE OF 950 FEET; THENCE SOUTHWESTERLY
IN A DIRECT LINE TO A POINT IN SAID WEST LINE DISTANT SOUTHERLY
1000 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPT THAT PORTION LYING SOUTHERLY AND SOUTHWESTERLY OF
THE CENTERLINE OF THAT CERTAIN 60 FEET EASEMENT FOR PUBLIC ROAD
AND HIGHWAY PURPOSES AS DESCRIBED IN THE DEED TO THE COUNTY OF
LOS ANGELES RECORDED JUNE 6, 1955 AS INSTRUMENT NO. 3763, IN
THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

ALSO EXCEPT THE SOUTH HALF OF THE SOUTHEAST QUARTER OF THE
NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION.

APN NOS. 2058-015-003, 2058-015-012, 2058-015-037,
2058-015-013, 4471-001-005, 4471-001-028, 4471-001-029,
4471-001-019, 4471-001-024, 4471-001-027, 4471-001-018,
4471-002-010, 4471-002-011, 4471-002-007, 4471-021-034,
4471-021-033, 4471-003-010, 4471-003-011, 4471-003-014,
4471-021-028

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EXHIBIT "B"

INSURANCE REQUIREMENTS

A. Owner's Broad Form Comprehensive General Liability or Commercial General Liability:

The limits of liability shall not be less than:

1. Broad Form Comprehensive General Liability:

\$2,000,000	Combined Single limit
\$1,000,000	Bodily/Property Damage per Occurrence

Or,

2. Commercial General Liability:

The limits of liability shall not be less than:

Each Occurrence Limit	\$1,000,000
Personal Advertising Injury Limit	\$1,000,000
Products Completed Operations	
Aggregate Limit	\$1,000,000
General Aggregate Limit	\$2,000,000

Additionally, a \$5,000,000 umbrella or excess liability coverage is required.

(Other than Products-completed
Operations)

Both policy forms must include:

- a. Premises and operations with no X, C, or U exclusions.
- b. Products and completed operations coverage. (This coverage to be maintained for a minimum of ten (10) years following completion of work and to continue to name Owner as named insured and Lender as additional insured, for the entire ten (10) year period).



- c. **Blanket contractual coverage with Employee Exclusion deleted.**
 - d. **Broad Form Property Damage including completed operations or its equivalent.**
 - e. **An endorsement naming Lender and any other required interests as additional insured(s).**
 - f. **An endorsement stating: "Such coverage as is afforded by this policy for the benefit of the additional insured(s) is primary and any other coverage maintained by such additional insured(s) shall be non-contributing with the coverage provided under this policy."**
 - g. **Cross Liability and Severability of Interest Clause.**
 - h. **Limited Independent Contractors language should be included.**
 - i. **Subsidence coverage, if available, at commercially reasonable rates.**
- B. All Risk/Special Form Property Insurance – Full Replacement Cost (Real and Personal Property), Course of Construction, Secured Collapse, if available at commercially reasonable rates, Business Interruption and Loss of Profits for a minimum one (1) year term. Such insurance shall also contain an agreed value clause or other provision sufficient to eliminate any risk of co-insurance.**
- C. Other Requirements:**
- 1. **Lender must be named as an additional insured on all liability policies and as the mortgagee and certificate holder (with lender's loss payable endorsement) on all property insurance coverage. Property insurance coverage must include standard 438 BFU language and cover all property described in the Security Documents. The endorsement must contain the following wording: "With respect to a loss payee designated in this policy, this insurance will continue in force throughout the loan term as to only the interest of the loss payee until (a) issuance of a Notice of Cancellation, (b) issuance of a Notice of Intent Not to Renew, of (c) issuance of a Notice of Reduction Coverage."**
 - 2. **All policies must provide that the named insured correspond with the named borrower on the loan documents; that Lender's Loan Number be shown on all policies, certificates and correspondence; and that the complete property address be shown on the declaration page of the policy or certificate evidencing such insurance.**
 - 3. **The deductible under any policies required hereunder shall be no more than \$5,000.00.**

4. An authorization signed by the Owner must accompany all mid-term and anniversary date changes in the agent or broker of record shown in Lender's files.
5. All policies must contain an endorsement affording an unqualified thirty (30) days' notice of cancellation to the additional insured(s) in the event of cancellation, non-renewal or material reduction in coverage.
6. All policies must be written by insurance companies acceptable to Lender whose rating in the most recent Best's rating guide is not less than A:IX. All policies shall be written for not less than a one (1) year term (or annual continuous) with one year's premiums prepaid.
7. Certificates of insurance, with the endorsements evidencing the required coverage, and copies of the policies, must be delivered to Lender prior to funding and each year thereafter until the indebtedness evidenced by the Note and Security Documents is paid in full.

A circular stamp with the text "SIGNATURE HERE" is present. A handwritten signature is written over the stamp.

EXHIBIT C

DEED OF TRUST NOTE

\$28,500,000
Loan No.: 7600004084

March 28, 2006
Newport Beach, California

FOR VALUE RECEIVED, MALIBU ASSOCIATES, LLC, a California limited liability company ("Borrower"), promises to pay to CALIFORNIA NATIONAL BANK, a national banking association, at 1301 Dove Street, Suite 101, Newport Beach, California 92660-2458, or at such other place as Lender may designate in writing, the principal sum of Twenty-Eight Million Five Hundred Thousand Dollars (\$28,500,000), with interest thereon as set forth below, in accordance with the terms, conditions and provisions as hereinafter set forth in this Deed of Trust Note (the "Note"). Interest, as hereinafter provided, shall be computed on the basis of a 360-day year for actual days elapsed.

1. **DEFINITIONS:**

- 1.1 "Basis Point" shall mean one-one hundredth (1/100) of one percent (1%) and therefore one hundred (100) basis points shall be equal to one percent (1%).
- 1.2 "Deed of Trust" shall mean that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, of even date herewith, given by Borrower to Lender, as may be amended from time to time.
- 1.3 "Guaranty" shall mean that certain Guaranty Agreement, of even date herewith, executed by Thomas C. Hix, Jeffrey S. Klein, Mark D. Kvamme and Richard S. Fuld, Jr., jointly and severally, and collectively herein referred to as "Guarantor," in favor of Lender.
- 1.4 "Lender" shall mean California National Bank, a national banking association.
- 1.5 "Libor Business Day" shall mean any day on which Lender is open for business in Los Angeles, California and any business day on which commercial banks in the City of London, England, are open for dealings in dollar deposits in the London Interbank Market.
- 1.6 "Libor Interest Period" shall mean a 30, 60 or 90 day period of time, and only in those increments, commencing on the date specified in Borrower's Libor Notice to Lender to commence a Libor Interest Period and ending on the same numerical day of the last month of the Libor Interest Period that corresponds to the numerical day of the month that the Libor Interest Period commences provided that:
 - (a) whenever the last day of a Libor Interest Period would otherwise occur on a day other than a Libor Business Day, the last day of such Libor Interest Period

shall be extended to occur on the next succeeding Libor Business Day; provided, however, that, if such extension would cause the last day of such Libor Interest Period to occur in the next following calendar month, the last day of such Libor Interest Period shall occur on the next preceding Libor Business Day; and

- (b) whenever the first day of a Libor Interest Period occurs on a day of an initial calendar month for which there is no numerically corresponding day in the calendar month that succeeds such initial calendar month by the number of months equal to the number of months in such Libor Interest Period, such Libor Interest Period shall end on the last Libor Business Day of such succeeding calendar month; and
 - (c) notwithstanding the foregoing in no event shall any Libor Interest Period be extended beyond the Maturity Date.
- 1.7 "Libor Notice" shall have the meaning as set forth in Section 3.1 hereof and shall be in the form attached as Exhibit A.
- 1.8 "Libor Rate" shall mean the per annum rate equal to three hundred (300) basis points (3.00%) plus Reserves, in excess of the following:
- (a) the rate at which dollar deposits in immediately available funds are contracted for by Lender in the London Interbank Market for a term comparable to the Libor Interest Period set forth in the Libor Notice to the Lender two (2) Libor Business Days prior to commencement of the applicable Libor Interest Period in an amount approximately equal to the portion of the Principal Balance to which the Libor Rate is to apply for a term comparable to the Libor Interest Period set forth in the Libor Notice to the Lender two (2) Libor Business Days prior to commencement of the applicable Libor Interest Period; or
 - (b) in the event that Lender does not specifically contract for dollar deposits, as set forth above, then Lender shall determine the Libor Rate using the indication Telerate quotes (Page 3750) from the London Interbank Market received at the London, England office of Lender at 11:00 a.m., London time, two (2) Libor Business Days prior to the commencement of a Libor Interest Period, as being offered for dollar deposits in an amount approximately equal to the portion of the Principal Balance to which the Libor Rate is to apply for a term comparable to the Libor Interest Period set forth in the Libor Notice to Lender two (2) Libor Business Days prior to commencement of the applicable Libor Interest Period.

In computing the Libor Rate, the rates set forth in (a) and (b), above, shall be rounded upward to the nearest one-sixteenth (1/16) of one percent (1.00%). This determination of the Libor Rate by Lender shall be binding and conclusive upon Borrower.

- 1.9 "Libor Rate Option" shall have the meaning set forth in Section 3 hereof.
- 1.10 "Loan Agreement" shall mean that certain Loan Agreement (Loan Agreement") entered into by and between Borrower and Lender, of even date herewith, as it may be amended from time to time, and is subject to all of the terms and conditions thereof. All terms not defined herein shall have the same meaning as in the Loan Agreement. In the event of a conflict between the terms of this Note and the Loan Agreement, the terms of this Note shall prevail.
- 1.11 "Loan Documents" shall mean any instruments, guaranties, agreements and/or documents executed in connection with or otherwise pertaining to this Note, collectively referred to herein as the Loan Documents.
- 1.12 "Maturity Date" shall mean the date which is twenty-four (24) months following the date of recordation of the Deed of Trust.
- 1.13 "Other Security Documents" shall mean any and all of the documents (other than this Note, the Guaranty, the Deed of Trust and the Loan Agreement) now or hereafter executed by Borrower or any guarantor of the indebtedness evidenced hereby or others in favor of Lender which wholly or partially secure or guarantee payment of this Note.
- 1.14 "Referenced-Based Rate" shall mean fifty (50) basis points (0.50%) over the Reference Rate.
- 1.15 "Reference Rate" shall mean the variable rate of interest per annum based on changes in an independent index which is the Wall Street Journal Prime Rate (the "Reference"). Any change in the Reference shall result in a change in the rate of interest payable under this Note, effective on the date of each such change, without notice to Borrower. If the Reference becomes unavailable during the term of this loan, Lender may designate a comparable substitute reference after notice to Borrower. The Reference Rate is utilized by Lender from time to time as a means of pricing credit extensions to some customers and is not necessarily the lowest rate of interest charged by Lender at any given time for any particular class of customers or credit extensions.
- 1.16 "Principal Balance" shall mean the outstanding principal balance of this Note from time to time.
- 1.17 "Reserves" shall mean Lender's determination of Lender's cost of reserves required by, arising out of, and/or pursuant to any laws, rules and/or regulations established by or promulgated by any authority and/or agency having jurisdiction over Lender, including but not limited to the Board of Governors of the Federal Reserve System of the United States, and by reason of example such Reserves may include, but are not limited to, any reserve on Eurocurrency Liabilities as defined and set forth in

Regulation D at the ratios provided in such Regulation, from time to time in effect, it being agreed that any portion of the Principal Balance bearing interest at a Libor Rate shall be deemed to constitute Eurocurrency Liabilities, as defined by such regulation, and it being further agreed that such Eurocurrency Liabilities shall be deemed to be subject to such Reserve requirements without benefit of or credit for proratations, exceptions and/or offsets that may be available to Lender from time to time, under such Regulation upon imposition of any such Reserve requirements. The cost and actual amount of such Reserves shall be determined by Lender, and such determination of such costs and Reserves shall be binding and conclusive upon Borrower, and all such costs and Reserves shall be rounded up to the nearest one-eighth (1/8) of one percent (1%).

1.18 "Roll Over Date" shall mean the last day of the Libor Interest Period.

2. **INTEREST AND PRINCIPAL PAYMENTS.** Interest and principal shall be payable as follows:

2.1 Interest shall be due and payable monthly, in arrears, based upon the actual number of days elapsed for that monthly period, commencing on the first day of the first calendar month following recordation of the Deed of Trust and shall continue to be due and payable, in arrears, on the same day of each calendar month thereafter until the Maturity Date as set forth herein.

2.2 The entire amount of the Principal Balance remaining unpaid, shall be due and payable in full on the Maturity Date together with all accrued and unpaid interest and other sums due on this Note, the Loan Agreement and/or secured by the Deed of Trust.

2.3 All portions of the Principal Balance not designated by Borrower as bearing interest at the Libor Rate shall bear interest at the Reference-Based Rate.

3. **LIBOR OPTION AND NOTICE.** Borrower shall have the right and/or option, from time to time, to elect to have all or portions of the Principal Balance bear interest at the Libor Rate (herein "Libor Rate Option"), provided such election of rights and/or options is made in the manner hereinafter set forth. Any election of Borrower of the Libor Rate Option must be made in accordance with the following:

3.1 For each and every election of the Libor Rate Option, Borrower shall deliver to Lender a written notification or facsimile of Borrower's election of such Libor Rate Option at least three (3) Libor Business Days prior to the date of commencement of the Libor Interest Period (herein "Libor Notice"). Each and every Notice must specify the following:

(a) Amount of Principal Balance to bear interest at the Libor Rate. Borrower must specify a minimum principal amount of no less than \$500,000, and in increments of \$50,000.

- (b) The date the Libor Interest Period is to commence.
 - (c) The term of the Libor Interest Period, which must be a 30, 60 or 90 day period of time.
- 3.2 Lender shall, as soon as practicable after 3:00 p.m. Los Angeles time three (3) Libor Business Days prior to the commencement of the Libor Interest Period, determine the Libor Rate applicable to that portion of the Principal Balance specified in such Libor Notice. Interest shall accrue at the Libor Rate determined by Lender for the Libor Interest Period commencing on the date specified in the Libor Notice. The interest rate applicable to any portion of the Principal Balance, with respect to which Borrower has elected a Libor Rate, shall revert from the Libor Rate applicable thereto to the Reference-Based Rate on the Roll Over Date applicable thereto, unless Borrower timely exercises the Libor Rate Option with respect thereto within the time periods provided herein. Lender shall be under no duty or obligation to notify Borrower that the interest rate on any portion of the Principal Balance is about to revert from a Libor Rate to the Reference-Based Rate.
- 3.3 Borrower's right to exercise the Libor Rate shall be conditioned upon there not being an uncured default under this Note, the Deed of Trust, the Loan Agreement, the Guaranty, or the Other Security Documents.
- 3.4 The Libor Interest Period in any Libor Notice shall not extend beyond the Maturity Date.
- 3.5 Borrower shall not be permitted to have more than four (4) Libor Rate contracts in effect at any one time. Once Borrower has four (4) portions of the Principal Balance subject to Libor Rates, irrespective of the amount of the Principal Balance not covered by a Libor Rate Option, Borrower shall not be entitled to any further Libor Rate Option elections, until at least one of the four (4) Libor Interest Periods has terminated.
- 3.6 In the event, and on each occasion, that on the day two (2) Libor Business Days prior to the commencement of a Libor Interest Period, Lender shall determine (which determination shall be conclusive and binding upon Borrower) that dollar deposits in an amount approximately equal to the portion of the Principal Balance, with respect to which Borrower has delivered the Libor Notice of its intent to exercise the Libor Rate Option:
- (a) are not generally available at such time in the London Interbank Market; or
 - (b) the rate and/or terms at which such dollar deposits is being offered will not adequately and fairly reflect the cost to Lender of making or maintaining a Libor Rate on the Principal Balance, and/or of funding the same in the London Interbank Market during such Interest period; or

- (c) reasonable means do not exist for ascertaining a Libor Rate; or
- (d) a Libor Rate on the Principal Balance would be in excess of the maximum interest rate which Borrower may by law pay,

then Lender shall so notify Borrower and the Principal Balance shall continue to bear interest at the Reference-Based Rate.

- 3.7 If any change in any law or regulation or in the interpretation thereof by any governmental authority charged with the administration or interpretation thereof shall make it unlawful for Lender to make and/or maintain Libor Rates with respect to the Principal Balance or to give effect to its obligations as contemplated hereby then the Libor Rate shall immediately terminate. Lender shall notify Borrower of such termination and after such notification any Libor Rate applicable to the Principal Balance shall be automatically converted to the Reference-Based Rate, and any such notice given by Lender to Borrower pursuant to this paragraph shall, if lawful, be effective on the last day of any existing Libor Interest Period.
4. Borrower recognizes and acknowledges that the cost to Lender of making or maintaining Libor Rates with respect to the Principal Balance may fluctuate and Borrower agrees to pay to Lender, in addition to Reserves, such additional amounts that will compensate Lender, in Lender's sole determination, for any additional costs and/or expenses of maintaining any such Libor Rate as a result or by reason of Reserves. If, after the date of this Note, there is any change, amendment or modification in any applicable rule, law or regulation, or in the interpretation and/or administration thereof by any governmental authority of the United States of America charged with the interpretation and/or administration thereof (whether or not having the force and/or effect of law) and/or by any court changing the basis of taxation of payments to Lender of the Principal Balance and/or interest at a Libor Rate and/or any other fees and amounts payable under this Note, the Deed of Trust, the Loan Agreement, the Guaranty, and/or the Other Security Documents or imposing, modifying or applying any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, credit extended by, and/or any other acquisition of funds for loans by Lender, and/or imposing on Lender or the London Interbank Market any other condition affecting this Note, the Deed of Trust, the Loan Agreement, the Guaranty, and/or the Other Security Documents and/or any portion of the Principal Balance bearing interest at a Libor Rate so as to increase the cost to Lender of making or maintaining a Libor Rate with respect to any portion of the Principal Balance and/or to reduce the amount of any sum received and/or receivable by Lender under this Note, the Deed of Trust, the Loan Agreement, the Guaranty, or the Other Security Documents (whether of principal, interest and/or otherwise), by an amount deemed by Lender to be material, any such amount shall be paid by Borrower to Lender but without duplication for payments required under Section 1.8, above (providing that Reserves are included in Libor Rate).

Any amounts payable by Borrower to Lender pursuant to this paragraph shall be paid by Borrower to Lender within ten (10) days after Lender sends Borrower written notification setting forth the amount due and the basis for the determination from time to time, of such amounts, which notice shall be conclusive and binding upon Borrower. Failure on the part of Lender to send such notice and/or demand compensation for any increased costs in any Libor Interest Period shall not constitute a waiver of Lender's right to demand compensation for any increased costs incurred during any such Libor Interest Period or in any other subsequent or prior Libor Interest Period.

5. In addition to all other sums due hereunder, Borrower hereby agrees to indemnify and hold Lender against any loss or expense, and to pay Lender upon demand any and all amounts that Lender may sustain or incur as a consequence of any default by Borrower in the payment of any portion of the Principal Balance bearing interest at a Libor Rate, or any part thereof or interest accrued thereon at a Libor Rate, as and when due, and/or the occurrence of any event specified in this Note, the Deed of Trust, the Loan Agreement, the Guaranty, and/or the Other Security Documents including, but not limited to, any loss and/or reasonable expense sustained or incurred in liquidating or re-employing deposits from third parties required to effect or maintain any Libor Rate with respect to any portion of the Principal Balance. Lender shall provide Borrower a statement explaining the amount of any such loss or expense, which statement shall be conclusive and binding upon Borrower.
6. **PREPAYMENT.** Borrower shall have the right at any time to prepay any portion of the Principal Balance bearing interest at the Reference-Based Rate without premium or penalty. Borrower shall have the right at any time following five (5) calendar days prior written notice to Lender, to prepay any portion of the Principal Balance bearing interest at the Libor Rate only in the event that Borrower shall pay to Lender, as and for a prepayment premium, an amount computed pursuant to the following formula:

$$(\text{Amount Being Prepaid}) \times [(a - b) / 360] \times c$$

For the purpose hereof, "a" shall mean the interest rate for this Note on the date of prepayment, "b" shall mean Lender's certificate of deposit rate for certificates of deposit of more than \$100,000 maturing on the maturity date of the applicable Libor Interest Period; and "c" shall mean the actual number of days between the date of prepayment and the maturity of the applicable Libor Interest Period. The deposit rate of "b" shall be determined as of the date of prepayment. In the event "b" is greater than "a" there will be no prepayment premium to be paid to by Borrower to Lender.

Any such prepayment shall not result in a reamortization, deferral, postponement, suspension or waiver of any and all other payments due under this Note. Borrower shall have no right to re-borrow any amount prepaid. Prepayments received by Lender after 11:30 a.m. shall be deemed and treated as received on the next following business day.

7. **SECURITY, ACCELERATION, DUE ON SALE OR TRANSFER.** This Note is secured by, among other things, the Deed of Trust, encumbering, hypothecating, pledging

and securing Borrower's right, title and interest in and to certain personal and real property located in the County of Los Angeles, California, as more particularly described in the Deed of Trust. The Loan Agreement and the Deed of Trust contain, among other provisions, a provision for the immediate acceleration of the Maturity Date of this Note. Borrower agrees that Lender may accept additional or substitute security for this Note, or release any security or any party liable for this Note, or extend or renew this Note, all without notice to Borrower and without affecting the liability of Borrower.

Borrower acknowledges and agrees that the credit worthiness and expertise of Borrower in owning and operating the Property is the basis upon which Lender has determined that it is protected against impairment of the security and risk of default and thereby has agreed to lend Borrower the principal sum set forth above. Therefore, if Borrower, or any successor or assign, unless otherwise provided in the Loan Agreement (i) sells, conveys, alienates, leases (other than to tenants who actually occupy the Property or any portion thereof with no option to purchase), assigns, transfers or encumbers, all or any portion of the Property or any interest in the Property, or (ii) contracts to sell, convey, alienate, lease (other than to tenants who actually occupy the Property or any portion thereof with no option to purchase), assign, transfer or encumber, all or any part of the Property or any interest in the Property (for the purposes of (i) and (ii), the sale of memberships in any golf or country club will not constitute a sale, transfer or conveyance), or (iii) allows, suffers or undergoes a material change in the identity, control or ownership of Borrower, or if there is a change in the management of the Property, in any manner, whether voluntarily, involuntarily or by operation of law, then, and in any such event, the entire unpaid balance of the principal sum and all accrued but unpaid interest thereon shall become immediately due and payable at the election of Lender, without notice. For purposes of this paragraph, a "material" change shall include, but not be limited to: if any of Thomas C. Hix, Jeffrey S. Klein, and Mark D. Kvamme, or companies controlled by them, cease to be Borrower's "Executive Committee" which collectively constitutes Borrower's manager; if such Executive Committee ceases to be the sole manager of and decision-Borrower for Borrower; if any other person or entity is added to the Executive Committee; or if Thomas C. Hix, Jeffrey S. Klein, and Mark D. Kvamme, or companies controlled by them cease to own at least 30% of the membership interests in Borrower.

8. **APPLICATION OF PAYMENTS.** All payments received by Lender from or for the account of Borrower, due hereunder may be applied by Lender, in its sole and absolute discretion, in the following manner, or in any other order or manner as Lender chooses:
- 8.1 First: To pay any and all interest due, owing and/or accrued;
 - 8.2 Second: To pay any and all costs, advances, expenses, fees, late charges, due, owing and/or payable to Lender, or paid or incurred by Lender, arising from or out of this Note, the Deed of Trust, the Loan Agreement, the Guaranty and the Other Security Documents; and
 - 8.3 Third: Payment of the outstanding Principal Balance on this Note.

All records of payments received by Lender shall be maintained at Lender's office, and the records of Lender shall, absent manifest error, be binding and conclusive upon Borrower. The failure of Lender to record any payment or expense shall not limit or otherwise affect the obligations of Borrower under this Note.

9. **UNPAID INTEREST, CHARGES AND COST.** Interest, late charges, costs, or expenses that are not received by Lender within ten (10) calendar days from the date such interest, late charges, costs, or expenses become due, shall, at the sole discretion of Lender, be added to the Principal Balance and shall from the date due bear interest at the Default Rate specified below.
10. **HOLIDAY.** Whenever any payment to be made under this Note shall be due on a day other than a day on which the Lender is open for business ("Business Day"), including Saturdays, Sundays and/or legal holidays generally recognized by banks doing business in California, then the due date for such payment shall be automatically extended to the next succeeding Business Day, and such extension of time shall in such cases be included in the computation of the interest portion of any payment due hereunder.
11. **NO OFFSETS OR DEDUCTIONS.** All payments under the Note shall be made by Borrower without any offset, decrease, reduction or deduction of any kind or nature whatsoever, including, but not limited to, any decrease, reduction or deduction for, or on account of, any offset, withholdings, present or future taxes, present or future reserves, imposts or duties of any kind or nature that are imposed or levied by or on behalf of any government and/or taxing agency, body or authority by or for any municipality, state, or nation. If at any time, present or future, Lender shall be compelled by any law, rule, regulation and/or any other such requirement which on its face or by its application requires and/or establishes reserves, or payment, deduction or withholding of taxes, imposts or duties to act such that it causes or results in a decrease, reduction and/or deduction, in payment received by Lender; then Borrower shall pay to Lender such additional amounts, as Lender shall deem necessary and appropriate, such that every payment received under this Note, after such decrease, reserve, reduction, deduction, payment and/or required withholding, shall not be reduced in any manner whatsoever.
12. **EVENTS OF DEFAULT.** Any one or more of the following events or occurrences shall constitute a default under this Note (hereinafter "Default"):
 - 12.1 Lender does not receive a payment within five (5) days of the due date hereunder in the amount and manner as set forth herein (any payment made out of interest reserve shall be deemed to be made timely); or
 - 12.2 Borrower does not faithfully perform within the applicable grace period each and every term, condition and/or provision contained in the Deed of Trust, the Loan Agreement or Other Security Documents strictly in accordance therewith; or

12.3 Borrower or any other obligor or trustor otherwise commits a default as specified in the Loan Agreement or Other Security Documents which is not cured prior to expiration of any applicable grace period; or

12.4 Borrower or any other obligor or trustor commits a default as specified in any other obligation of Borrower owing to Lender, which is not cured prior to expiration of any applicable grace period.

Upon the occurrence of a Default hereunder, Lender may, in its sole and absolute discretion, declare the entire unpaid Principal Balance, together with all accrued and unpaid interest thereon, and all other amounts and/or payments due hereunder, immediately due and payable, without notice and/or demand.

13. **DEFAULT RATE.** From and after the occurrence of any Default in this Note, whether by non-payment, maturity, acceleration, non-performance or otherwise, and until such Default has been cured, all outstanding amounts under this Note (including, but not limited to, interest, costs and late charges) shall bear interest at a per annum rate (the "Default Rate") equal to eighteen percent (18%).

14. **LATE CHARGES.** Time is of the essence for all payments and other obligations due under this Note. Borrower acknowledges that if any payment required under this Note is not received by Lender within ten (10) days after the same becomes due and payable, Lender will incur extra administrative expenses (i.e., in addition to expenses incident to receipt of timely payment) and the loss of the use of funds in connection with the delinquency in payment. Because, from the nature of the case, the actual damages suffered by Lender by reason of such administrative expenses and loss of use of funds would be impracticable or extremely difficult to ascertain, Borrower agrees that five percent (5%) of the amount of the delinquent payment, together with interest accruing on the entire unpaid Principal Balance of this Note at the Default Rate, as provided above, shall be the amount of damages which Lender is entitled to receive upon such breach, in compensation therefor. Therefore, Borrower shall, in such event, without further demand or notice, pay to Lender, as Lender's monetary recovery for such extra administrative expenses and loss of use of funds, liquidated damages in the amount of five percent (5%) of the amount of the delinquent interest payment (in addition to interest at the Default Rate); provided, the liquidated damages amount shall not apply to the principal payment due on the Maturity Date. The provisions of this paragraph are intended to govern only the determination of damages in the event of a breach in the performance of Borrower to make timely interest payments hereunder. Nothing in this Note shall be construed as in any way giving Borrower the right, express or implied, to fail to make timely payments of interest or principal hereunder, whether upon payment of such damages or otherwise. The right of Lender to receive payment of such liquidated and actual damages, and receipt thereof, are without prejudice to the right of Lender to collect such delinquent payments and any other amounts provided to be paid hereunder or under the Deed of Trust, the Loan Agreement, the Guaranty and/or the Other Security Documents, or to declare a default hereunder or under the Deed of Trust, the Loan Agreement, the Guaranty, and/or the Other Security Documents.

15. **COST AND EXPENSES.** Borrower hereby agrees to pay any and all costs and/or expenses paid or incurred by Lender by reason of, as a result of, or in connection with, this Note, the Deed of Trust, the Loan Agreement and/or the Other Security Documents, including, but not limited to, any and all attorneys' fees and related costs whether such costs and/or expenses are paid or incurred in connection with the enforcement of this Note, the Deed of Trust, the Loan Agreement, the Guaranty and/or the Other Security Documents, or any of them, the protection and/or preservation of the collateral or security for this Note and/or any other rights, remedies and/or interests of Lender, whether or not suit is filed. If Lender shall be made a party to or shall intervene in any action or proceeding affecting the real property encumbered by the Deed of Trust or the collateral described in the Other Security Documents, or affecting Lender's title thereto or interest therein, Lender shall be reimbursed by Borrower immediately upon demand for all costs, expenses and attorneys' fees incurred by Lender in such matter. Borrower's agreement to pay any and all such costs and expenses includes, but is not limited to, costs and expenses incurred in enforcing any judgment obtained by Lender and in connection with any and all appeals therefrom. All such costs and expenses are immediately due and payable to Lender by Borrower whether or not demand therefor is made by Lender.

16. **WAIVERS.** Borrower hereby waives grace, diligence, presentment, demand, notice of demand, dishonor, notice of dishonor, protest, notice of protest, any and all exemption rights against the indebtedness evidenced by this Note and the right to plead any statute of limitations as a defense to the repayment of all or any portion of this Note, and interest thereon, to the fullest extent allowed by law, and all compensation of cross-demands pursuant to California Code of Civil Procedure Section 431.70. No delay, omission and/or failure on the part of Lender in exercising any right and/or remedy hereunder shall operate as a waiver of such right and/or remedy or of any other right and/or remedy of Lender. The acceptance by Lender of any payments under this Note in an amount less than the amount due and owing or after the date that such payment is due shall not constitute a waiver of the right to require prompt and full payment when due of future or succeeding payments or to declare a default as herein provided.

17. **MAXIMUM LEGAL RATE.** This Note is subject to the express condition that at no time shall Borrower be obligated, or required, to pay interest on the Principal Balance at a rate which could subject Lender to either civil or criminal liability as a result of such rate being in excess of the maximum rate which Lender is permitted to charge. If, by the terms of this Note, Borrower is, at any time, required or obligated to pay interest on the Principal Balance at a rate in excess of such maximum rate, then the rate of interest under this Note shall be deemed to be immediately reduced to such maximum rate, and interest payable hereunder shall be computed at such maximum rate, and any portion of all prior interest payments in excess of such maximum rate shall be applied, and/or shall retroactively be deemed to have been payments made, in reduction of the Principal Balance. If any provision of this Note is held to be invalid or unenforceable by a court of competent jurisdiction, the other provisions of this Note shall remain in full force and effect and shall be liberally construed in favor of the Lender in order to effect the provisions of this Note.

18. **AMENDMENT.** This Note may be amended, changed, modified, terminated and/or canceled only by a written agreement signed by the party against whom enforcement is sought for any such action. This Note shall be governed by, and construed under, the laws of the State of California.
19. **AUTHORITY.** Borrower, and each person executing this Note on Borrower's behalf, hereby represents and warrants to Lender that, by its execution below, that Borrower has the full power, authority and legal right to execute and deliver this Note and that the indebtedness evidenced hereby constitutes a valid and binding obligation of Borrower without exception or limitation. In the event that this Note is executed by more than one person or entity, the liability hereunder shall be joint and several. Any married person who is obligated on this Note, directly or indirectly, agrees that recourse may be had to such person's separate property in addition to any and all community property of such person.
20. **ASSIGNMENT.** This Note inures to and binds the heirs, successors and assigns of Borrower and Lender. Borrower understands that Lender may transfer and assign its interest in this Note, pledge its interest in this a Note or grant or sell participations in some or all of Borrower's indebtedness outstanding under this Note. In connection with any such transaction, Lender may disclose to each prospective and actual transferee, pledgee, purchaser or participant, any and all documents and information relating to the loan evidenced by this Note. If Lender so requests, Borrower shall sign and deliver a new note to be issued in exchange for this Note. Borrower may not assign any rights or obligations under this Note without Lender's prior written consent, which consent may be withheld in Lender's sole discretion.
21. **GOVERNING LAW; TIME OF THE ESSENCE.** This Note is to be governed by and construed in accordance with the laws of the State of California. Time is of the essence with regard to each and every term, covenant, provision and condition of this Note.
22. **ARBITRATION.**

EXCEPT AS SPECIFICALLY PROVIDED HEREIN, ALL DISPUTES, CLAIMS, OR CONTROVERSIES (WHETHER SOUNDING IN TORT OR CONTRACT OR BASED UPON A STATUTE) (HEREINAFTER "CLAIMS") ARISING OUT OF, BASED UPON, OR RELATING TO THIS NOTE SHALL BE SUBMITTED TO BINDING ARBITRATION BEFORE A RETIRED JUDGE OF JAMS/ENDISPUTE IN ORANGE COUNTY, CALIFORNIA, PURSUANT TO THE JAMS/ENDISPUTE COMPREHENSIVE ARBITRATION RULES AND PROCEDURES. JUDGMENT UPON THE ARBITRATION AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF AND SHALL BE FINAL, BINDING, AND NON-APPEALABLE. NOTWITHSTANDING THE FOREGOING, THIS CLAUSE SHALL NOT:

(A) LIMIT OR PROHIBIT LENDER FROM BRINGING ANY ACTION IN ANY COURT OF COMPETENT JURISDICTION FOR INJUNCTIVE RELIEF (BORROWER SHALL ALSO HAVE THE RIGHT TO APPLY FOR INJUNCTIVE RELIEF); FOR APPOINTMENT OF A RECEIVER; FOR PROVISIONAL REMEDIES, INCLUDING

TEMPORARY PROTECTIVE ORDERS AND WRITS OF ATTACHMENT; OR FOR JUDICIAL FORECLOSURE; AND THE FILING OF SUCH ACTIONS BY LENDER (OR FOR INJUNCTIVE RELIEF BY BORROWER) SHALL NOT

(I) CONSTITUTE A WAIVER OF THIS ARBITRATION PROVISION; OR

(II) LIMIT THE COURT FROM REFERRING AS MUCH OF THE CLAIMS IN THE ACTION TO ARBITRATION AS POSSIBLE;

(B) LIMIT OR PROHIBIT LENDER FROM EXERCISING ANY OF ITS RIGHTS AS LENDER UNDER THIS NOTE INCLUDING, WITHOUT LIMITATION, THE INVOCATION OF THE POWER OF SALE UNDER ANY DEED OF TRUST SECURING THIS NOTE, EXERCISING ANY RIGHT RELATING TO PERSONAL PROPERTY, INCLUDING TAKING OR DISPOSING OF SUCH PROPERTY WITH OR WITHOUT JUDICIAL PROCESS UNDER ARTICLE 9 OF THE CALIFORNIA COMMERCIAL CODE, OR THE USE OF ANY SET-OFF OR LIEN RIGHTS;

(C) APPLY TO CLAIMS UNDER THE ENVIRONMENTAL INDEMNITY AGREEMENT GIVEN IN CONNECTION WITH THIS NOTE, WHICH CLAIMS MAY BE FILED IN ANY COURT OF COMPETENT JURISDICTION.


THE ARBITRATOR SHALL HAVE NO RIGHT OR POWER TO ENJOIN OR RESTRAIN ANY ACT OF ANY PARTY.

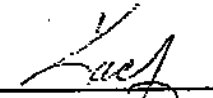
THIS ARBITRATION PROVISION SHALL BE DEEMED TO BE SELF-EXECUTING AND IN THE EVENT THAT BORROWER FAILS TO APPEAR AT ANY PROPERLY NOTICED ARBITRATION PROCEEDING, AN AWARD MAY BE ENTERED AGAINST BORROWER NOTWITHSTANDING ITS FAILURE TO APPEAR.

THE ARBITRATOR IS SPECIFICALLY AUTHORIZED TO, AND AS APPROPRIATE, SHALL, RECOMMEND OR AWARD TO THE PREVAILING PARTY IN THE ARBITRATION PROCEEDINGS ITS REASONABLE ATTORNEYS' FEES AND COSTS, INCLUDING, WITHOUT LIMITATION, JAMS/ENDISPUTE ADMINISTRATION FEES AND THE ARBITRATOR'S FEES. THE PREVAILING PARTY SHALL ALSO BE ENTITLED TO RECOVER THE REASONABLE ATTORNEYS' FEES AND COSTS IT INCURS IN CONNECTION WITH THE CONFIRMATION OF THE AWARD AND ANY PROCEEDINGS REQUIRED TO ENFORCE A JUDGMENT BASED ON THE AWARD.

BY EXECUTING THIS NOTE, BORROWER DOES HEREBY WAIVE TO THE FULLEST EXTENT POSSIBLE, ITS RIGHT TO JURY TRIAL UNDER THE UNITED STATES CONSTITUTION, THE CONSTITUTION OF THE STATE OF CALIFORNIA AND ALL APPLICABLE STATUTES, AND SUCH WAIVER SHALL EXTEND TO ANY AND ALL CLAIMS, REGARDLESS OF WHETHER SUCH CLAIMS ARE ULTIMATELY

ARBITRATED PURSUANT TO THIS PROVISION OR DECIDED THROUGH JUDICIAL PROCEEDINGS.


Borrower's Initials


Lender's Initials

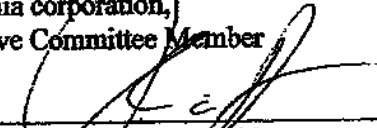
IN WITNESS WHEREOF, Borrower has duly executed this Note the day and year first above written.

BORROWER:

Malibu Associates, LLC, a California limited liability company

By its Executive Committee, serving as its Managing Member

By Hix/Rubenstein Companies, a California corporation,
Executive Committee Member

By: 
Thomas C. Hix, President

By Pacific Capital Holdings, Inc., a Nevada corporation,
Executive Committee Member

By: 
Jeffrey S. Stein, President

By MPK Development, LLC, a California limited liability company,
Executive Committee Member

By: 
Mark D. Kvamme, Managing Member

EXHIBIT A

LIBOR NOTICE

Pursuant to Section 3 of the Deed of Trust Note (the "Note") in the amount of \$28,500,000 dated as of March 28, 2006, made by MALIBU ASSOCIATES, LLC, a California limited liability company ("Borrower") in favor of CALIFORNIA NATIONAL BANK, a national banking association ("Lender"), this represents Borrower's request to elect a Libor Rate with respect to \$ _____ (Minimum Principal Balance of \$2,000,000 is required, and with \$100,000 increments) on the Principal Balance of the Note for the following Libor Interest Period:

1. The date the Libor Interest Period is to commence is _____ (this must be a Libor Business Day).
2. The term of the Libor Interest Period is (Circle Only One Below):

Thirty (30) days

Sixty (60) days

Ninety (90) days.

Capitalized terms used herein without definition shall have the meanings assigned to those terms in the Note.

Borrower certifies that (i) the representations and warranties contained in the Loan Agreement are true, correct and complete in all material respects on and as of the date hereof to the same extent as though made on and as of the date hereof; (ii) no Event of Default has occurred and is continuing under the Loan Agreement; and (iii) Borrower has performed in all material respects

LIBOR NOTICE CONCLUDES ON FOLLOWING PAGE

Conclusion of LIBOR Notice

all agreements and satisfied all conditions under the Loan Agreement provided to be performed by it on or before the date hereof.

Date: _____

BORROWER:

**Malibu Associates, LLC, a California
limited liability company**

**By its Executive Committee, serving as its
Managing Member**

**By Hix/Rubenstein Companies, a
California corporation,
Executive Committee Member**

**By: _____
Thomas C. Hix, President**

**By Pacific Capital Holdings, Inc., a
Nevada corporation,
Executive Committee Member**

**By: _____
Jeffrey S. Klein, President**

**By MPK Development, LLC, a
California limited liability company,
Executive Committee Member**

**By: _____
Mark D. Kvamme, Managing Member**