

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

(Mark One)

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended June 30, 2011**

or

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934
For the transition period from _____ to _____
Commission File Number: 0-19989**



Stratus Properties Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

72-1211572

(I.R.S. Employer Identification No.)

212 Lavaca St., Suite 300

Austin, Texas

(Address of principal executive offices)

78701

(Zip Code)

(512) 478-5788

(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. R Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).
 Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company R

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes R No

On July 29, 2011, there were issued and outstanding 7,494,086 shares of the registrant's common stock, par value \$0.01 per share.

STRATUS PROPERTIES INC.
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STRATUS PROPERTIES INC.

PART I. FINANCIAL INFORMATION

Item 1. Financial Statements.STRATUS PROPERTIES INC.
CONSOLIDATED BALANCE SHEETS (Unaudited)
(In Thousands)

	June 30, 2011	December 31, 2010
ASSETS		
Cash and cash equivalents	\$ 6,736	\$ 11,730
Real estate held for sale	26,477	27,312
Real estate under development	129,919	189,057
Land held for future development	57,965	57,822
Real estate held for investment	189,989	143,049
Investment in unconsolidated affiliate	3,419	3,084
Other assets	16,638	23,132
Total assets	<u>\$ 431,143</u>	<u>\$ 455,186</u>
LIABILITIES AND EQUITY		
Accounts payable	\$ 13,421	\$ 19,397
Accrued liabilities	8,040	8,580
Deposits	3,679	9,296
Debt	180,369	201,523
Other liabilities	3,166	3,590
Total liabilities	<u>208,675</u>	<u>242,386</u>
Commitments and contingencies		
Equity:		
Stratus stockholders' equity:		
Preferred stock	—	—
Common stock	84	84
Capital in excess of par value of common stock	197,966	197,773
Accumulated deficit	(53,868)	(51,335)
Common stock held in treasury	(18,028)	(17,972)
Total Stratus stockholders' equity	126,154	128,550
Noncontrolling interest in subsidiaries	96,314	84,250
Total equity	<u>222,468</u>	<u>212,800</u>
Total liabilities and equity	<u>\$ 431,143</u>	<u>\$ 455,186</u>

The accompanying Notes to Consolidated Financial Statements are an integral part of these consolidated financial statements.

STRATUS PROPERTIES INC.
CONSOLIDATED STATEMENTS OF OPERATIONS (Unaudited)
(In Thousands, Except Per Share Amounts)

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2011	2010	2011	2010
Revenues:				
Real estate	\$ 33,274	\$ 633	\$ 64,849	\$ 1,636
Hotel	7,060	—	14,331	—
Entertainment venue	2,553	—	3,910	—
Rental	1,373	1,132	2,773	2,429
Total revenues	<u>44,260</u>	<u>1,765</u>	<u>85,863</u>	<u>4,065</u>
Cost of sales:				
Real estate	27,582	1,831	53,013	3,937
Hotel	6,189	—	12,438	—
Entertainment venue	2,578	—	4,118	—
Rental	739	666	1,468	1,411
Depreciation	2,109	409	3,924	829
Total cost of sales	<u>39,197</u>	<u>2,906</u>	<u>74,961</u>	<u>6,177</u>
General and administrative expenses	1,671	1,571	3,638	3,403
Total costs and expenses	<u>40,868</u>	<u>4,477</u>	<u>78,599</u>	<u>9,580</u>
Operating income (loss)	3,392	(2,712)	7,264	(5,515)
Interest expense, net	(1,461)	—	(2,295)	—
Other income, net	197	9	466	227
Income (loss) before income taxes and equity in unconsolidated affiliate's loss	2,128	(2,703)	5,435	(5,288)
Equity in unconsolidated affiliate's loss	(89)	(73)	(165)	(149)
Provision for income taxes	(165)	(8,876)	(341)	(7,995)
Net income (loss)	1,874	(11,652)	4,929	(13,432)
Net (income) loss attributable to noncontrolling interest in subsidiaries	(3,526)	118	(7,462)	189
Net loss attributable to Stratus common stock	<u>\$ (1,652)</u>	<u>\$ (11,534)</u>	<u>\$ (2,533)</u>	<u>\$ (13,243)</u>
Net loss per share attributable to Stratus common stock:				
Basic and diluted	<u>\$ (0.22)</u>	<u>\$ (1.55)</u>	<u>\$ (0.34)</u>	<u>\$ (1.78)</u>
Weighted average shares of common stock outstanding:				
Basic and diluted	<u>7,494</u>	<u>7,465</u>	<u>7,489</u>	<u>7,461</u>

The accompanying Notes to Consolidated Financial Statements are an integral part of these consolidated financial statements.

STRATUS PROPERTIES INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS (Unaudited)
(In Thousands)

	Six Months Ended	
	June 30,	
	2011	2010
Cash flow from operating activities:		
Net income (loss)	\$ 4,929	\$ (13,432)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:		
Depreciation	3,924	829
Cost of real estate sold	43,300	1,122
Deferred income taxes	—	7,973
Stock-based compensation	213	289
Equity in unconsolidated affiliate's loss	165	149
Deposits	139	(2,169)
Purchases and development of real estate properties	(26,393)	(25,083)
Decrease in other assets	27	495
Decrease in accounts payable, accrued liabilities and other	(547)	(1,001)
Net cash provided by (used in) operating activities	<u>25,757</u>	<u>(30,828)</u>
Cash flow from investing activities:		
Development of commercial leasing properties	(2,904)	(2,718)
Development of hotel	(5,365)	(16,709)
Development of entertainment venue	(5,092)	(7,297)
Investment in unconsolidated affiliate	(500)	(15)
Net cash used in investing activities	<u>(13,861)</u>	<u>(26,739)</u>
Cash flow from financing activities:		
Borrowings from credit facility	13,000	15,359
Payments on credit facility	(1,626)	(1,333)
Borrowings from project and term loans	25,780	34,500
Payments on project and term loans	(58,308)	(4,208)
Noncontrolling interest contributions	4,602	12,190
Net payments for stock-based awards	(75)	(7)
Financing costs	(263)	(1,105)
Net cash (used in) provided by financing activities	<u>(16,890)</u>	<u>55,396</u>
Net decrease in cash and cash equivalents	(4,994)	(2,171)
Cash and cash equivalents at beginning of year	11,730	15,398
Cash and cash equivalents at end of period	<u>\$ 6,736</u>	<u>\$ 13,227</u>

The accompanying Notes to Consolidated Financial Statements, which include information regarding noncash transactions, are an integral part of these consolidated financial statements.

STRATUS PROPERTIES INC.
CONSOLIDATED STATEMENTS OF EQUITY (Unaudited)
(In Thousands)

	Stratus Stockholders' Equity								
	Common Stock		Capital in Excess of Par Value	Accum- ulated Deficit	Common Stock Held in Treasury		Total Stratus Stockholders' Equity	Noncontrolling Interest in Subsidiaries	Total Equity
	Number of Shares	At Par Value			Number of Shares	At Cost			
Balance at December 31, 2010	8,354	\$ 84	\$197,773	\$(51,335)	879	\$(17,972)	\$ 128,550	\$ 84,250	\$ 212,800
Exercised and issued stock-based awards and other	26	—	(20)	—	—	—	(20)	—	(20)
Stock-based compensation	—	—	213	—	—	—	213	—	213
Tender of shares for stock-based awards	—	—	—	—	7	(56)	(56)	—	(56)
Noncontrolling interest contributions	—	—	—	—	—	—	—	4,602	4,602
Comprehensive income (loss):									
Net income (loss)	—	—	—	(2,533)	—	—	(2,533)	7,462	4,929
Other comprehensive income	—	—	—	—	—	—	—	—	—
Total comprehensive income (loss)	—	—	—	(2,533)	—	—	(2,533)	7,462	4,929
Balance at June 30, 2011	<u>8,380</u>	<u>\$ 84</u>	<u>\$197,966</u>	<u>\$(53,868)</u>	<u>886</u>	<u>\$(18,028)</u>	<u>\$ 126,154</u>	<u>\$ 96,314</u>	<u>\$ 222,468</u>
Balance at December 31, 2009	8,315	\$ 83	\$197,333	\$(35,999)	873	\$(17,941)	\$ 143,476	\$ 74,437	\$ 217,913
Exercised and issued stock-based awards and other	32	—	(129)	—	—	—	(129)	—	(129)
Stock-based compensation	—	—	289	—	—	—	289	—	289
Tender of shares for stock-based awards	—	—	—	—	4	(31)	(31)	—	(31)
Noncontrolling interest contributions	—	—	—	—	—	—	—	12,190	12,190
Comprehensive loss:									
Net loss	—	—	—	(13,243)	—	—	(13,243)	(189)	(13,432)
Other comprehensive income	—	—	—	—	—	—	—	—	—
Total comprehensive loss	—	—	—	(13,243)	—	—	(13,243)	(189)	(13,432)
Balance at June 30, 2010	<u>8,347</u>	<u>\$ 83</u>	<u>\$197,493</u>	<u>\$(49,242)</u>	<u>877</u>	<u>\$(17,972)</u>	<u>\$ 130,362</u>	<u>\$ 86,438</u>	<u>\$ 216,800</u>

The accompanying Notes to Consolidated Financial Statements are an integral part of these consolidated financial statements.

STRATUS PROPERTIES INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)

1. GENERAL

The accompanying unaudited consolidated financial statements should be read in conjunction with the consolidated financial statements and notes thereto for the year ended December 31, 2010, included in Stratus Properties Inc.'s (Stratus) Annual Report on Form 10-K (Stratus 2010 Form 10-K) filed with the Securities and Exchange Commission (SEC). In the opinion of management, the accompanying consolidated financial statements reflect all adjustments (consisting only of normal recurring items) considered necessary for a fair statement of the financial position of Stratus at June 30, 2011, and the results of operations for the three-month and six-month periods ended June 30, 2011 and 2010, and cash flows for the six-month periods ended June 30, 2011 and 2010. Operating results for the three-month and six-month periods ended June 30, 2011, are not necessarily indicative of the results that may be expected for the year ending December 31, 2011.

2. EARNINGS PER SHARE

Stratus' basic and diluted net loss per share of common stock was calculated by dividing the loss by the weighted average number of common shares outstanding during the period.

Stock options and restricted stock units representing approximately 91,300 shares for second-quarter 2011, approximately 130,300 shares for second-quarter 2010, approximately 115,000 shares for the first six months of 2011 and approximately 131,900 shares for the first six months of 2010 were excluded from weighted average common shares outstanding for purposes of calculating diluted net loss per share because they were anti-dilutive.

3. JOINT VENTURE WITH CANYON-JOHNSON URBAN FUND II, L.P.

Stratus and Canyon-Johnson Urban Fund II, L.P. (Canyon-Johnson) are participants in a joint venture for the development of a 36-story mixed-use development in downtown Austin, Texas, anchored by a W Hotel & Residences (the W Austin Hotel & Residences project). Stratus is the manager of, and has an approximate 40 percent interest in, the joint venture, and Canyon-Johnson has an approximate 60 percent interest in the joint venture. As of June 30, 2011, capital contributions totaled \$67.9 million for Stratus and \$89.9 million for Canyon-Johnson. The joint venture is consolidated in Stratus' financial statements based on its assessment that the joint venture is a variable interest entity and that Stratus is the primary beneficiary. Stratus will continue to evaluate the primary beneficiary of this joint venture in accordance with applicable accounting guidance. See Note 2 of the Stratus 2010 Form 10-K for further discussion.

In June 2011, there were a series of incidents in which glass attached to the railings on the balconies of the condominium units at the W Austin Hotel & Residences project broke and fell to the surrounding areas, including adjoining streets and the pool deck at the W Austin Hotel. These incidents resulted in the hotel being closed for 11 days during June and July 2011. Stratus investigated these matters and has taken precautionary measures to prevent further incidents. The engineering and redesign of replacement railings is in process and Stratus expects to substantially complete installation of the replacement railing system by year-end 2011. Stratus recorded a \$0.7 million charge to cost of sales in second-quarter 2011 for the estimated repair costs.

At June 30, 2011, Stratus' consolidated balance sheet includes \$275.6 million in total assets and \$101.9 million in total liabilities associated with the W Austin Hotel & Residences project. The assets associated with the W Austin Hotel & Residences project can only be used to settle obligations of the joint venture. The \$275.6 million of total assets included \$3.9 million of cash and cash equivalents, \$98.5 million of real estate under development, \$162.3 million of real estate held for investment and \$10.9 million of other assets. During the first six months of 2011, \$39.7 million of assets related to Austin City Limits Live at the Moody Theater (ACL Live) and office space at the W Austin Hotel & Residences project were reclassified from real estate under development to real estate held for investment. The \$101.9 million of total liabilities associated with the project included \$12.3 million of accounts payable, \$6.1 million of accrued liabilities, \$3.1 million of deposits, \$78.5 million of debt and \$1.9 million of other liabilities. Stratus guarantees the construction debt associated with the W Austin Hotel & Residences project.

Profits and losses between partners in a real estate venture should be allocated based on how changes in net assets of the venture would affect cash payments to the investors over the life of the venture and on its liquidation. The amount of the ultimate profits earned by the W Austin Hotel & Residences project will affect the ultimate profit sharing ratios because of provisions in the joint venture agreement, which would require Stratus to return certain previously received distributions to Canyon-Johnson under certain circumstances. Because of the uncertainty of the ultimate profits and, therefore, profit-sharing ratios, the W Austin Hotel & Residences project's cumulative profits or losses are allocated based on a hypothetical liquidation of the venture's net assets as of each balance sheet date. At June 30, 2011, the cumulative earnings for the W Austin Hotel & Residences project were allocated based on 44 percent for Stratus and 56 percent for Canyon-Johnson.

4. JOINT VENTURE WITH MOFFETT HOLDINGS, LLC

On February 28, 2011, Stratus entered into a joint venture with Moffett Holdings, LLC (Moffett) for the development of Parkside Village, a 92,473-square-foot retail project in the Circle C community. The project consists of a 33,650-square-foot full-service movie theater and restaurant, a 13,890-square-foot medical clinic and five other retail buildings, including a 14,933-square-foot building, a 10,000-square-foot building, two 7,500-square-foot buildings and a stand-alone 5,000-square-foot building.

Stratus' initial capital contributions to the joint venture totaled \$3.1 million, which consisted of a 23.03 acre tract of land located in Austin, Texas, the related property and development agreements for the land and other project costs incurred by Stratus before February 28, 2011. Moffett made initial capital contributions to the joint venture totaling \$1.0 million and will make additional capital contributions, as necessary, to fund the development of the project up to \$2.8 million. Capital contributions are expected to total \$6.9 million, with Stratus contributing 45 percent and Moffett contributing 55 percent. As of June 30, 2011, capital contributions totaled \$3.1 million for Stratus and \$2.0 million for Moffett.

On May 17, 2011, the joint venture entered into a Construction Loan Agreement and Promissory Note with Comerica Bank to finance the development of Parkside Village. Pursuant to the loan agreement, the joint venture may borrow up to an aggregate of \$13.7 million to fund the construction and development costs of Parkside Village. At Stratus' option, amounts borrowed will bear interest at a per annum rate equal to the base rate as defined in the loan agreement plus one percent or the London Interbank Offered Rate plus three percent. The loan agreement contains customary financial covenants and other restrictions. The outstanding principal balance of the note, together with all accrued and unpaid interest is due and payable on May 31, 2013. The loan may be prepaid in whole or in part at any time prior to maturity without penalty or premium. The loan may be extended for an additional one-year term upon its maturity. The loan is secured by a lien on the assets of the Parkside Village project. The full payment and performance of the loan agreement is guaranteed by Stratus.

Stratus is the manager of the joint venture, and after the partners are repaid their original capital contributions and a preferred return on those contributions, Stratus will receive 80 percent of any distributions and Moffett will receive 20 percent. As the manager of the joint venture with a majority of the voting and profit interest (80 percent), Stratus consolidates this joint venture in its financial statements.

5. FAIR VALUE MEASUREMENTS

Summarized below are the carrying values and estimated fair values of financial assets and liabilities (in thousands).

	June 30, 2011		December 31, 2010	
	Carrying Value	Fair Value	Carrying Value	Fair Value
Cash and cash equivalents ^a	\$ 6,736	\$ 6,736	\$ 11,730	\$ 11,730
Accounts and notes receivable ^a	2,054	2,054	841	841
Accounts payable and accrued liabilities ^a	21,461	21,461	27,977	27,977
Debt ^b	180,369	180,061	201,523	201,136

a. Fair value approximates the carrying amounts because of the short-term nature of these instruments.

b. Debt is recorded at cost. Fair value of substantially all of Stratus' debt is estimated based on discounted future expected cash flows at estimated current interest rates. The fair value of debt does not represent the amounts that will ultimately be paid upon the maturities of the loans.

6. INTEREST CAPITALIZATION

Stratus capitalized interest costs totaling \$3.6 million for second-quarter 2011, \$3.0 million for second-quarter 2010, \$7.9 million for the first six months of 2011 and \$4.6 million for the first six months of 2010, primarily related to the W Austin Hotel & Residences project.

7. INCOME TAXES

Stratus' accounting policy for and other information regarding its income taxes is further described in Notes 1 and 7 of the Stratus 2010 Form 10-K.

Stratus evaluated the recoverability of its deferred tax assets, and considered available positive and negative evidence, giving greater weight to the recent losses, the absence of taxable income in the carry back period and uncertainty regarding projected future financial results. As a result, Stratus concluded that there was not sufficient positive evidence supporting the realizability of its deferred tax assets beyond an amount totaling \$0.2 million at December 31, 2010, and June 30, 2011.

Stratus' future results of operations may be negatively impacted by its inability to realize a tax benefit for future tax losses or

for items that will generate additional deferred tax assets. Stratus' future results of operations may be favorably impacted by reversals of valuation allowances if Stratus is able to demonstrate sufficient positive evidence that its deferred tax assets will be realized.

The difference between Stratus' consolidated effective income tax rate for the first six months of 2011 and 2010, and the U.S. federal statutory tax rate of 35 percent was primarily attributable to additional valuation allowances recorded against deferred tax assets.

Stratus files income tax returns in the U.S. federal jurisdiction and state jurisdictions. Stratus' federal income tax return for the year 2009 is currently under examination by the Internal Revenue Service.

8. BUSINESS SEGMENTS

Stratus currently has four operating segments, Real Estate Operations, Commercial Leasing, Hotel, and, beginning in first-quarter 2011, Entertainment Venue. The Real Estate Operations segment is comprised of all Stratus' residential real estate (developed, under development and undeveloped), which consists of its properties in the Barton Creek community, the Circle C community and Lantana, and the condominium units at the W Austin Hotel & Residences project.

The Commercial Leasing segment includes the two office buildings at 7500 Rialto Boulevard, office and retail space at the W Austin Hotel & Residences project, a retail building and a bank building in Barton Creek Village and two retail buildings, a bank building and the Parkside Village project in the Circle C community.

The Hotel segment includes the W Austin Hotel, which began operations in December 2010.

The Entertainment Venue segment includes ACL Live, a live music and entertainment venue and production studio at the W Austin Hotel & Residences project, which began operations in February 2011. In addition to hosting concerts and private events, this venue is the new home of Austin City Limits, a television program showcasing popular music legends.

Stratus uses operating income or loss to measure the performance of each segment. Stratus allocates general and administrative expenses between the Real Estate Operations and Commercial Leasing segments based on projected annual revenues for each segment (excluding the results of the W Austin Hotel & Residences project). Accordingly, the following segment information reflects management's determinations that may not be indicative of what actual financial performance of each segment would be if it were an independent entity.

Segment data presented below were prepared on the same basis as Stratus' consolidated financial statements (in thousands).

	Real Estate Operations ^a	Commercial Leasing	Hotel	Entertainment Venue	Other	Total
Three Months Ended June 30, 2011:						
Revenues	\$ 33,274	\$ 1,373	\$ 7,060	\$ 2,553	\$ —	\$ 44,260
Cost of sales, excluding depreciation	27,582 ^b	739	6,189	2,578	—	37,088
Depreciation	61	386	1,382	280	—	2,109
General and administrative expenses	936	735	—	—	—	1,671
Operating income (loss)	\$ 4,695	\$ (487)	\$ (511)	\$ (305)	\$ —	\$ 3,392
Capital expenditures	\$ 13,869	\$ 1,493	\$ 1,109	\$ 649	\$ —	\$ 17,120
Total assets at June 30, 2011	210,968	55,056	122,550	42,399	170 ^c	431,143
Three Months Ended June 30, 2010:						
Revenues	\$ 633	\$ 1,132	\$ —	\$ —	\$ —	\$ 1,765
Cost of sales, excluding depreciation	1,831	666	—	—	—	2,497
Depreciation	47	362	—	—	—	409
General and administrative expenses	892	679	—	—	—	1,571
Operating loss	\$ (2,137)	\$ (575)	\$ —	\$ —	\$ —	\$ (2,712)
Capital expenditures	\$ 14,689	\$ 1,587	\$ 10,220	\$ 4,612	\$ —	\$ 31,108
Total assets at June 30, 2010	228,494	46,900	76,000	33,190	170 ^c	384,754

	Real Estate Operations ^a	Commercial Leasing	Hotel	Entertainment Venue	Other	Total
Six Months Ended June 30, 2011:						
Revenues	\$ 64,849	\$ 2,773	\$ 14,331	\$ 3,910	\$ —	\$ 85,863
Cost of sales, excluding depreciation	53,013 ^b	1,468	12,438	4,118	—	71,037
Depreciation	105	726	2,637	456	—	3,924
General and administrative expenses	2,039	1,599	—	—	—	3,638
Operating income (loss)	\$ 9,692	\$ (1,020)	\$ (744)	\$ (664)	\$ —	\$ 7,264
Capital expenditures	\$ 26,393	\$ 2,904	\$ 5,365	\$ 5,092	\$ —	\$ 39,754
Six Months Ended June 30, 2010:						
Revenues	\$ 1,636	\$ 2,429	\$ —	\$ —	\$ —	\$ 4,065
Cost of sales, excluding depreciation	3,937	1,411	—	—	—	5,348
Depreciation	102	727	—	—	—	829
General and administrative expenses	1,932	1,471	—	—	—	3,403
Operating loss	\$ (4,335)	\$ (1,180)	\$ —	\$ —	\$ —	\$ (5,515)
Capital expenditures	\$ 25,083	\$ 2,718	\$ 16,709	\$ 7,297	\$ —	\$ 51,807

- a. Includes sales commissions and other revenues together with related expenses.
b. Includes \$0.7 million associated with building repair costs at the W Austin Residences.
c. Includes deferred tax assets, net of valuation allowances.

9. NEW ACCOUNTING STANDARD

In June 2011, the Financial Accounting Standards Board (FASB) issued an Accounting Standards Update (ASU) in connection with accounting guidance on the presentation of comprehensive income. The objective of this ASU is to improve the comparability, consistency, and transparency of financial reporting and to increase the prominence of items reported in other comprehensive income. This ASU requires an entity to present the components of net income, other comprehensive income and total comprehensive income (i.e. including net income) either in a single continuous statement of comprehensive income or in two separate but consecutive statements. This ASU eliminates the option to present the components of other comprehensive income as part of the statement of equity, but does not change the items that must be reported in other comprehensive income. This ASU is effective for interim and annual reporting periods beginning after December 15, 2011, and early adoption is permitted. Stratus is evaluating the manner and timing of adopting this ASU.

10. SUBSEQUENT EVENTS

Stratus evaluated events after June 30, 2011, and through the date the financial statements were issued, and determined any events or transactions occurring during this period that would require recognition or disclosure are appropriately addressed in these financial statements.

Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations.

OVERVIEW

Management’s discussion and analysis presented below should be read in conjunction with our discussion and analysis of financial results contained in our 2010 Annual Report on Form 10-K (2010 Form 10-K) filed with the Securities and Exchange Commission (SEC). The operating results summarized in this report are not necessarily indicative of our future operating results. All subsequent references to “Notes” refer to Notes to Consolidated Financial Statements (unaudited), unless otherwise stated.

We are engaged in the acquisition, development, management, operation and sale of commercial, hotel, entertainment, multi-family and residential real estate properties located primarily in the Austin, Texas area. We primarily generate revenues from sales of developed properties and through rental income from our commercial properties. Developed property sales can include an individual tract of land that has been developed and permitted for residential use or a developed lot with a home already built on it. We may, on occasion, sell properties under development or undeveloped properties, if opportunities arise that we believe will maximize overall asset values.

In December 2010, the hotel at our W Austin Hotel & Residences project opened, and in January 2011, we began closing on sales of condominium units at the project. The W Austin Hotel & Residences project is located on a two-acre city block in downtown Austin and contains a 251-room luxury hotel, 159 residential condominium units, office, retail and entertainment space. The hotel is managed by Starwood Hotels & Resorts Worldwide, Inc. pursuant to our existing contract. The office space totals approximately 41,000 square feet and the retail space totals approximately 18,000 square feet. The entertainment space, occupied by Austin City Limits Live at the Moody Theater (ACL Live) includes a live music and entertainment venue and production studio, which opened in February 2011 (see “Development and Other Activities – W Austin Hotel & Residences”).

Our principal real estate holdings are in southwest Austin, Texas. The number of developed lots, developed or under development acreage and undeveloped acreage as of June 30, 2011, that comprise our principal development projects are presented in the following table.

	Acreage							Total Acreage
	Developed Lots	Developed or Under Development			Undeveloped			
		Multi- Family	Commercial	Total	Single Family	Commercial	Total	
Austin								
Barton Creek	118	249	368	617	781	28	809	1,426
Lantana	—	—	—	—	—	223	223	223
Circle C	20	—	23	23	132	363	495	518
W Austin Hotel & Residences	—	—	2	2	—	—	—	2
San Antonio								
Camino Real	—	—	—	—	—	2	2	2
Total	138	249	393	642	913	616	1,529	2,171

Our other Austin holdings at June 30, 2011, consisted of two 75,000-square-foot office buildings at 7500 Rialto Boulevard (7500 Rialto) located in our Lantana development, a 22,000-square-foot retail complex and a 3,085-square-foot bank building representing phase one of Barton Creek Village, and two retail buildings totaling 21,000 square feet and a 4,000-square-foot bank building on an existing ground lease at the 5700 Slaughter retail complex in the Circle C community.

In second-quarter 2011, our revenues totaled \$44.3 million and our net loss attributable to common stock totaled \$1.7 million, compared with revenues of \$1.8 million and a net loss attributable to common stock of \$11.5 million for second-quarter 2010. For the first six months of 2011, our revenues totaled \$85.9 million and our net loss attributable to common stock totaled \$2.5 million, compared with revenues of \$4.1 million and a net loss attributable to common stock of \$13.2 million for the first six months of 2010. The significant increase in revenues relates primarily to sales of condominium units, the first full quarter of operations of ACL Live and the operations of our hotel at the W Austin Hotel & Residences project.

Our financial condition and results of operations are highly dependent upon market conditions for real estate activity in Austin, Texas. Our future operating cash flows and, ultimately, our ability to develop our properties and expand our business will be largely dependent on the level of our real estate sales (see “Capital Resources and Liquidity” for further discussion of our

liquidity). In turn, these sales will be significantly affected by future real estate market conditions in Austin, Texas, including development costs, interest rate levels, the availability of credit to finance real estate transactions, demand for residential and commercial real estate, and regulatory factors including our land use and development entitlements. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Risk Factors” in our 2010 Form 10-K for further discussion.

BUSINESS STRATEGY

We continue to focus on our near-term goal of developing our properties and projects in an uncertain economic climate and our long-term goal of maximizing the value of our development projects. We believe that Austin, Texas, continues to be a desirable market and many of our developments are in locations that are unique and where approvals and entitlements, which we have already obtained, are increasingly difficult to secure. Real estate development in southwest Austin historically has been constrained as a result of various restrictions imposed by the City of Austin (the City) and several special interest groups have also traditionally opposed development in the area where most of our property is located. We believe that many of our developments have inherent value given their unique nature and location and that this value should be sustainable in the future.

Our long-term success will depend on our ability to maximize the value of our real estate by developing and selling our properties in a timely manner at a reasonable cost. In addition, we continue to pursue additional development opportunities, and currently believe we can obtain financing necessary for developing our properties, although our ability to obtain financing in the future, as well as the cost of such financing, may be impacted by current U.S. economic conditions. See “Risk Factors” located in Item 1A of our 2010 Form 10-K.

DEVELOPMENT AND OTHER ACTIVITIES

W Austin Hotel & Residences. In 2005, the City selected our proposal to develop a mixed-use project in downtown Austin immediately north of the new City Hall complex. The W Austin Hotel & Residences project includes a two-acre city block and contains a mixture of hotel, residential, office, retail and entertainment space. In 2008, we entered into a joint venture with Canyon-Johnson Urban Fund II, L.P. (Canyon-Johnson) for the development of the project. Construction of the approximate \$300 million project commenced in second-quarter 2008.

We currently consolidate the joint venture with Canyon-Johnson based on our assessment that it is a variable interest entity (VIE) and that we are the primary beneficiary. If it is determined that the W Austin Hotel & Residences project is no longer a VIE or that we are no longer the primary beneficiary of the entity, the project will be deconsolidated from our financial statements. For a discussion of the ownership and financing structure for the W Austin Hotel & Residences project see Note 2 in our 2010 Form 10-K.

In June 2011, there were a series of incidents in which glass attached to the railings on the balconies of the condominium units at the W Austin Hotel & Residences project broke and fell to the surrounding areas, including adjoining streets and the pool deck at the W Austin Hotel. These incidents resulted in the hotel being closed for 11 days during June and July 2011. We investigated these matters and have taken precautionary measures to prevent further incidents. The engineering and redesign of replacement railings is in process and we expect to substantially complete installation of the replacement railing system by year-end 2011. We recorded a \$0.7 million charge to cost of sales in second-quarter 2011 for the estimated repair costs.

W Austin Hotel. We have executed an agreement with Starwood Hotels & Resorts Worldwide, Inc. for the management of hotel operations. The hotel opened in December 2010 and includes 251 luxury rooms and suites, a full service spa, gym and rooftop pool.

W Austin Residences. Delivery of the first condominium units began in January 2011. Condominium units are being completed on a floor-by-floor basis with delivery of pre-sold units as they are completed. As of July 29, 2011, sales of 63 of the 159 condominium units had closed for \$67.3 million (including 26 condominium units for \$32.1 million in second-quarter 2011) and 21 of the remaining 96 condominium units were under contract. Net operating income of the joint venture with Canyon-Johnson, including proceeds from the sales of the condominium units, has been and will continue to be used to repay debt incurred in connection with the project.

ACL Live. The project also includes ACL Live, a live music and entertainment venue and production studio with a maximum capacity of approximately 3,000 people. In addition to hosting concerts and private events, this venue is the new home of Austin City Limits, a television program showcasing popular music legends. ACL Live opened in February 2011, has hosted 79 events through July 29, 2011, and currently has booked events through January 2012.

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Office and Retail. The project has approximately 41,000 square feet of leasable office space, of which 17,500 square feet opened in March 2011, including 9,000 square feet for our corporate office. The project also has 18,000 square feet of leasable retail space, of which 14,500 square feet is pre-leased and expected to open in August 2011. As of June 30, 2011, occupancy was 43 percent for the office space and leasing activities are ongoing.

Crestview Station. In 2005, we formed a joint venture with Trammell Crow Central Texas Development, Inc. (Trammell Crow) to acquire an approximate 74-acre tract at the intersection of Airport Boulevard and Lamar Boulevard in Austin, Texas, for \$7.7 million. The property, known as Crestview Station, is a single-family, multi-family, retail and office development, which is located on the site of a commuter rail line. The joint venture completed environmental remediation, which the State of Texas certified as complete in 2007, and permitting of the property. The joint venture obtained permits to develop Crestview Station as a 450-unit transit-oriented neighborhood. Crestview Station sold substantially all of its multi-family and commercial properties in 2007 and one commercial site in 2008. The joint venture retained the single-family component of Crestview Station and one commercial site. At June 30, 2011, our investment in the Crestview Station project totaled \$3.4 million and the joint venture partnership had \$8.1 million of outstanding debt, of which we guarantee \$1.4 million. During second-quarter 2011, we and Trammell Crow each contributed \$0.5 million to the joint venture for interest and property taxes through loan maturity of May 2012, and scheduled principal payments, which began in June 2011. We account for our 50 percent interest in the Crestview Station joint venture under the equity method.

Residential. As of June 30, 2011, the number of our residential developed lots and potential development by area are shown below (excluding lots and units associated with our Canyon-Johnson and Crestview Station joint ventures):

	Residential Lots		
	Developed	Potential Development ^a	Total
Barton Creek:			
Calera:			
Calera Drive	8	—	8
Verano Drive	67	—	67
Amarra Drive:			
Phase I Lots	6	—	6
Phase II Lots	35	—	35
Townhomes	—	221	221
Phase III Lots	—	89	89
Mirador Estate	2	—	2
Section N Multi-family	—	1,860	1,860
Other Barton Creek Sections	—	154	154
Circle C:			
Meridian	20	57	77
Total Residential Lots	138	2,381	2,519

- a. Our development of the properties identified under the heading “Potential Development” is dependent upon the approval of our development plans and permits by governmental agencies, including the City. Those governmental agencies may either not approve one or more development plans and permit applications related to such properties or require us to modify our development plans. Accordingly, our development strategy with respect to those properties may change in the future. While we may be proceeding with approved infrastructure projects on some of these properties, they are not considered to be “under development” for disclosure in this table unless other development activities necessary to fully realize the properties’ intended final use are in progress or scheduled to commence in the near term.

Calera. Calera is a residential subdivision with plat approval for 155 lots. During 2004, we began construction of 16 courtyard homes at Calera Court, the 16-acre initial phase of the Calera subdivision. The second phase of Calera, Calera Drive, consisting of 53 single-family lots, many of which adjoin the Fazio Canyons Golf Course, received final plat and construction permit approval in 2005. Construction of the final phase, known as Verano Drive, was completed in July 2008 and includes 71 single-family lots. We sold the final Calera Court Courtyard home for \$0.5 million during second-quarter 2011, and as of June 30, 2011, eight lots at Calera Drive and 67 lots at Verano Drive remained unsold.

Amarra Drive. Amarra Drive Phase I, which is the initial phase of the Amarra Drive subdivision, was completed in 2007 and includes eight lots with sizes ranging from approximately one to four acres, some of which are course-side lots on the Fazio Canyons Golf Course and others are secluded lots adjacent to the Nature Conservancy of Texas. We sold one Amarra Drive Phase I lot for \$0.6 million during second-quarter 2011, and as of June 30, 2011, six Amarra Drive Phase I lots remained

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unsold. In 2008, we commenced development of Amarra Drive Phase II, which consists of 35 lots on 51 acres. Development was substantially completed in October 2008, but no sales have occurred.

Mirador Estate. The Mirador subdivision consists of 34 estate lots, with each lot averaging approximately 3.5 acres in size. As of June 30, 2011, two Mirador estate lots remained unsold.

Circle C. We are developing the Circle C community based on the entitlements secured in our Circle C settlement with the City. Our Circle C settlement, as amended in 2004, permits development of 1.16 million square feet of commercial space, 504 multi-family units and 830 single-family residential lots. Meridian is an 800-lot residential development at the Circle C community. Development of Meridian included our contracts with three national homebuilders to complete the construction and sales of 494 lots. We sold the final 13 lots for \$0.9 million in first-quarter 2010.

In 2006, we signed another contract with a national homebuilder for 42 additional lots. Development of those lots was substantially completed in April 2008. In June 2009, the contract was terminated by the homebuilder. As of the date the contract was terminated, there were 30 remaining unclosed lots. We have sold ten of these lots (including one lot in first-quarter 2011 for \$0.1 million) through June 30, 2011, and are pursuing contracts with other homebuilders for the sale of the remaining 20 lots. The final phase of Meridian is expected to consist of 57 one-acre lots.

Commercial. As of June 30, 2011, the number of square feet of our commercial property developed, under development and our remaining entitlements are shown below (excluding property associated with our Canyon-Johnson and Crestview Station joint ventures):

	Commercial Property			Total
	Developed	Under Development	Potential Development ^a	
Barton Creek:				
Barton Creek Village Phase I	25,085	—	—	25,085
Barton Creek Village Phase II	—	—	18,000	18,000
Entry Corner	—	—	5,000	5,000
Amarra Retail/Office	—	—	90,000	90,000
Section N	—	—	1,500,000	1,500,000
Circle C:				
Chase Ground Lease	4,000	—	—	4,000
5700 Slaughter	21,000	—	—	21,000
Parkside Village ^b	—	92,473	—	92,473
Tract 110	—	—	760,000	760,000
Tract 101	—	—	90,000	90,000
Tract 102	—	—	25,000	25,000
Tract 114	—	—	5,000	5,000
Lantana:				
7500 Rialto	150,000	—	—	150,000
Tract G06	—	—	400,000	400,000
Tract GR1	—	—	325,000	325,000
Tract G05	—	—	260,000	260,000
Tract CS5	—	—	175,000	175,000
Tract G07	—	—	160,000	160,000
Tract CS1-CS3	—	—	134,200	134,200
Tract L03	—	—	99,800	99,800
Tract L04	—	—	70,000	70,000
Tract LR1	—	—	62,200	62,200
Austin 290 Tract	—	—	20,000	20,000
Total Square Feet	200,085	92,473	4,199,200	4,491,758

- a. Our development of the properties identified under the heading “Potential Development” is dependent upon the approval of our development plans and permits by governmental agencies, including the City. Those governmental agencies may either not approve one or more development plans and permit applications related to such properties or require us to modify our development plans. Accordingly, our development strategy with respect to those properties may change in the future. While we may be proceeding with approved infrastructure projects on some of these properties, they are not considered to be “under development” for disclosure in this

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table unless other development activities necessary to fully realize the properties' intended final use are in progress or scheduled to commence in the near term.

b. Owned through a joint venture.

Barton Creek. The first phase of the Barton Creek Village includes a 22,000-square-foot retail complex and a 3,085-square-foot bank building within this retail complex. As of June 30, 2011, occupancy was 89 percent for the retail complex and the bank building is leased through January 2023.

Circle C. In 2008, we completed the construction of two retail buildings, totaling 21,000 square feet, at 5700 Slaughter. This retail project also includes a 4,000-square-foot bank building on an existing ground lease. As of June 30, 2011, occupancy was approximately 91 percent for the two retail buildings.

The Circle C community also includes Parkside Village, a 92,473-square-foot retail project under construction. The project consists of a 33,650-square-foot full-service movie theater and restaurant, a 13,890-square-foot medical clinic and five other retail buildings including, a 14,933-square-foot building, a 10,000-square-foot building, two 7,500-square-foot buildings and a stand-alone 5,000-square-foot building. In February 2011, we entered into a joint venture with Moffett Holdings, LLC (Moffett) to develop Parkside Village, obtained final permits and entitlements and began construction (see Note 4). As of July 29, 2011, Parkside Village is 64 percent pre-leased, and leasing activities are ongoing.

Lantana. Lantana is a partially developed, mixed-use real-estate development project. Lantana includes two 75,000-square-foot office buildings at 7500 Rialto. As of June 30, 2011, occupancy was 70 percent for the original office building and 100 percent for the second office building. As of June 30, 2011, we had remaining entitlements for approximately 1.7 million square feet of office and retail use on 223 acres. Regional utility and road infrastructure is in place with capacity to serve Lantana at full build-out permitted under our existing entitlements.

RESULTS OF OPERATIONS

We are continually evaluating the development potential of our properties and will continue to consider opportunities to enter into transactions involving our properties. As a result, and because of numerous other factors affecting our business activities as described herein, our past operating results are not necessarily indicative of our future results.

The following table summarizes our operating results (in thousands):

	Second-Quarter		Six Months Ended	
	2011	2010	June 30, 2011	2010
Revenues:				
Real estate	\$ 33,274	\$ 633	\$ 64,849	\$ 1,636
Hotel	7,060	—	14,331	—
Entertainment venue	2,553	—	3,910	—
Rental	1,373	1,132	2,773	2,429
Total revenues	\$ 44,260	\$ 1,765	\$ 85,863	\$ 4,065
Operating income (loss)	\$ 3,392	\$ (2,712)	\$ 7,264	\$ (5,515)
Provision for income taxes	\$ (165)	\$ (8,876)	\$ (341)	\$ (7,995)
Net loss attributable to Stratus common stock	\$ (1,652)	\$ (11,534)	\$ (2,533)	\$ (13,243)

We have four operating segments, "Real Estate Operations," "Commercial Leasing," "Hotel" and "Entertainment Venue" (see Note 8). The following is a discussion of our operating results by segment.

Real Estate Operations

The following table summarizes our real estate operating results (in thousands):

	Second-Quarter		Six Months Ended	
			June 30,	
	2011	2010	2011	2010
Revenues:				
Developed property sales	\$ 33,139	\$ 595	\$ 64,581	\$ 1,469
Commissions and other	135	38	268	167
Total revenues	33,274	633	64,849	1,636
Cost of sales, including depreciation	27,643	1,878	53,118	4,039
General and administrative expenses	936	892	2,039	1,932
Operating income (loss)	\$ 4,695	\$ (2,137)	\$ 9,692	\$ (4,335)

Developed Property Sales. Residential property sales for the second-quarter and six-month periods of 2011 and 2010 included the following (dollars in thousands):

	Second-Quarter					
	2011			2010		
	Lots/Units	Revenues	Average Cost per Lot/Unit	Lots/Units	Revenues	Average Cost per Lot/Unit
W Austin Hotel & Residences						
Condominium Units	26	\$ 32,099	\$ 950	—	\$ —	\$ —
Barton Creek						
Calera:						
Calera Court Courtyard Homes	1	490	501	1	595	580
Amarra:						
Phase I Lots	1	550	198	—	—	—
Total Residential	28	\$ 33,139		1	\$ 595	

	Six Months Ended June 30,					
	2011			2010		
	Lots/Units	Revenues	Average Cost per Lot/Unit	Lots/Units	Revenues	Average Cost per Lot/Unit
W Austin Hotel & Residences						
Condominium Units	59	\$ 63,396	\$ 823	—	\$ —	\$ —
Barton Creek						
Calera:						
Calera Court Courtyard Homes	1	490	501	1	595	580
Amarra:						
Phase I Lots	1	550	198	—	—	—
Circle C						
Meridian	1	145	121	13	874	44
Total Residential	62	\$ 64,581		14	\$ 1,469	

The increase in developed property sales revenues in the 2011 periods primarily resulted from the sale of condominium units at the W Austin Hotel & Residences project, which became available in first-quarter 2011.

As of July 29, 2011, we had 21 condominium units under contract at the W Austin Hotel & Residences project.

Commissions and Other. Commissions and other primarily included sales of our development fee credits to third parties for less than \$0.1 million for second-quarter 2010, and \$0.1 million for second-quarter 2011 and for the first six months of 2011 and 2010. We receive these development fee credits as part of the Circle C settlement (see Note 9 of our 2010 Form 10-K).

Cost of Sales. Cost of sales includes cost of property sold, project operating and marketing expenses and allocated overhead costs, partly offset by reductions for certain municipal utility district reimbursements. Cost of sales totaled \$27.6 million for second-quarter 2011 compared with \$1.9 million for second-quarter 2010, and \$53.1 million for the first six months of 2011 compared with \$4.0 million for the first six months of 2010. The increase in cost of sales in the 2011 periods primarily resulted from the sale of condominium units at the W Austin Hotel & Residences project, which became available in first-quarter 2011. Cost of sales for our real estate operations also include significant, recurring costs (including property taxes, maintenance and marketing), which totaled \$1.5 million for second-quarter 2011, \$1.0 million for second-quarter 2010, \$3.0 million for the first six months of 2011 and \$2.6 million for the first six months of 2010, that do not vary significantly with the level of property sales.

General and Administrative Expenses. Consolidated general and administrative expenses totaled \$1.7 million for second-quarter 2011, compared with \$1.6 million for second-quarter 2010, and totaled \$3.6 million for the first six months of 2011, compared with \$3.4 million for the first six months of 2010. General and administrative expenses allocated to real estate operations totaled \$0.9 million for second-quarter 2011 and 2010, \$2.0 million for the first six months of 2011 and \$1.9 million for the first six months of 2010. For more information about the allocation of general and administrative expenses to our operating segments, see Note 8.

Hotel

The following table summarizes our hotel operating results (in thousands):

	Second-Quarter 2011	Six Months Ended June 30, 2011
Hotel revenue	\$ 7,060	\$ 14,331
Hotel cost of sales, excluding depreciation	6,189	12,438
Depreciation	1,382	2,637
Operating loss	\$ (511)	\$ (744)

Hotel Revenue. Hotel revenue reflects the results of operations for the W Austin Hotel, which opened in December 2010, and primarily includes revenue from room reservations and food and beverage sales. Certain key operating statistics specific to the hotel industry are included below to further illustrate our hotel operating performance. These statistics include "Average Daily Rate," which is calculated by dividing total room revenue by total rooms occupied and "Revenue per Available Room" (REVPAR), which is calculated by dividing total room revenue by total rooms available. The following table summarizes our operating measures related to hotel operations:

	Second-Quarter 2011	Six Months Ended June 30, 2011
Average daily rate	\$ 234	\$ 250
Average occupancy	78%	76%
REVPAR	\$ 182	\$ 190

Hotel Operating Costs. Hotel operating costs totaled \$6.2 million for second-quarter 2011 and \$12.4 million for the first six months of 2011 and primarily reflect salaries and wages, food and beverage expenses and advertising costs.

Entertainment Venue

The following table summarizes our entertainment venue operating results (in thousands):

	Second-Quarter 2011	Six Months Ended June 30, 2011
Entertainment venue revenue	\$ 2,553	\$ 3,910
Entertainment venue cost of sales, excluding depreciation	2,578	4,118
Depreciation	280	456
Operating loss	\$ (305)	\$ (664)

Entertainment Venue Revenue. Entertainment venue revenue reflects the results of operations for ACL Live, which opened in February 2011, and primarily includes ticket sales; sales of concessions and merchandise; and sponsorships, personal seat license sales and suite sales. Certain key operating statistics specific to the concert and event hosting industry are included

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below to further illustrate our venue operating performance.

	Second-Quarter		Six Months Ended	
	2011		June 30, 2011	
Events:				
Events hosted		40		72
Estimated attendance		45,891		94,516
Ancillary net revenue per attendee ^a	\$	11.92	\$	13.93
Ticketing:				
Number of tickets sold		36,943		62,661
Gross value of tickets sold (in thousands)	\$	1,966	\$	3,009

a. Primarily includes sales of concessions and merchandise.

Entertainment Venue Operating Costs. Entertainment venue operating costs totaled \$2.6 million in second-quarter 2011 and \$4.1 million for the first six months of 2011 and primarily reflect artist performance fees, salaries and advertising costs.

Commercial Leasing

The following table summarizes our commercial leasing operating results (in thousands):

	Six Months Ended			
	Second-Quarter		June 30,	
	2011	2010	2011	2010
Rental revenue	\$ 1,373	\$ 1,132	\$ 2,773	\$ 2,429
Rental cost of sales, excluding depreciation	739	666	1,468	1,411
Depreciation	386	362	726	727
General and administrative expenses	735	679	1,599	1,471
Operating loss	\$ (487)	\$ (575)	\$ (1,020)	\$ (1,180)

Rental Revenue. Rental revenue increased to \$1.4 million for second-quarter 2011, compared with \$1.1 million for second-quarter 2010, and increased to \$2.8 million for the first six months of 2011, compared with \$2.4 million for the first six months of 2010, primarily because of an increase in rental revenue at 7500 Rialto and rental revenue from the office space at the W Austin Hotel & Residences project, which opened in March 2011.

Non-Operating Results

Interest Expense, net. Interest expense (before capitalization) totaled \$5.0 million for second-quarter 2011, \$3.0 million in second-quarter 2010, \$10.2 million for the first six months of 2011 and \$4.6 million for the first six months of 2010. Higher interest expense in the 2011 periods primarily reflected interest on the financing for the W Austin Hotel & Residences project. Capitalized interest is primarily related to the W Austin Hotel & Residences project and totaled \$3.6 million for second-quarter 2011, \$3.0 million for second-quarter 2010, \$7.9 million for the first six months of 2011 and \$4.6 million for the first six months of 2010.

Other Income, net. We recorded other income of \$0.2 million for second-quarter 2011 and \$0.5 million for the first six months of 2011, which reflects forfeited deposits associated with terminated contracts for condominium units at the W Austin Hotel & Residences project. We also recorded other income of \$0.2 million for the first six months of 2010, which primarily reflects a reimbursement of deferred financing costs for extinguished debt.

Equity in Unconsolidated Affiliate's Loss. We account for our 50 percent interest in our unconsolidated affiliate, Crestview Station, using the equity method. Crestview Station sold substantially all of its multi-family and commercial properties prior to 2010. Our equity in Crestview Station's losses totaled \$0.1 million for the second quarters of 2011 and 2010 and for the first six months of 2010 and totaled \$0.2 million for the first six months of 2011, primarily reflecting operating losses recognized by Crestview Station because there were no sales.

Provision for Income Taxes. We recorded a provision for income taxes of \$0.2 million for second-quarter 2011, \$8.9 million for second-quarter 2010, \$0.3 million for the first six months of 2011 and \$8.0 million for the first six months of 2010. The difference between our consolidated effective income tax rate for the first six months of 2011 and 2010, and the U.S. federal statutory tax rate of 35 percent was primarily attributable to additional valuation allowances recorded against deferred tax assets.

Net (Income) Loss Attributable to Noncontrolling Interest in Subsidiaries. Net income attributable to noncontrolling interest in subsidiaries totaled \$3.5 million for second-quarter 2011 and \$7.5 million for the first six months of 2011, and totaled a net loss of \$0.1 million in second-quarter 2010 and \$0.2 million for the first six months of 2010, primarily related to the W Austin Hotel & Residences project (see Note 3).

CAPITAL RESOURCES AND LIQUIDITY

As a result of continuing weak economic conditions and reduced activity in the real estate market, including the markets in which we operate, there is uncertainty about the near-term outlook for sales of our properties. However, we believe that the unique nature and location of our assets will provide positive cash flows when market conditions improve.

At June 30, 2011, we had \$2.7 million in cash and cash equivalents available for use in our real estate operations, excluding \$4.0 million primarily associated with the W Austin Hotel & Residences project (see Note 3). We also had \$36.2 million outstanding and \$5.4 million in availability under our credit facility at June 30, 2011. Net operating income from the W Austin Hotel & Residences project, including proceeds from the sales of condominium units, is required to be used to repay debt incurred in connection with the project. We have \$9.0 million in debt maturities in December 2011 and significant debt maturities in 2012 (see "Maturities" below). In addition, we have a minimum equity covenant in our existing credit arrangements that we could fail to satisfy if we have a prolonged weak or worsening real estate market (see "Credit Facility and Other Financing Arrangements" below). Accordingly, we will require additional capital to fund upcoming debt maturities, our current operations and planned development activities. As a result, we are actively pursuing various alternatives to raise additional capital, the successful completion of which inherently involves uncertainties, including financial market conditions.

Comparison of Six-Months 2011 and 2010 Cash Flows

Cash provided by operating activities increased to \$25.8 million during the first six months of 2011, compared with cash used in operating activities of \$30.8 million during the first six months of 2010, primarily because of a \$63.1 million increase in developed property sales principally resulting from sales of condominium units at the W Austin Hotel & Residences project. As stated previously, the continued weakness in the U.S. real estate market has negatively affected sales of lots, and we expect this trend to continue in the near-term. Expenditures for purchases and development of real estate properties for the first six months of 2011 and 2010 included development costs for our real estate operations properties, primarily for the residential portion of the W Austin Hotel & Residences project (\$20.9 million during the first six months of 2011 and \$23.9 million during the first six months of 2010).

Cash used in investing activities totaled \$13.9 million during the first six months of 2011 and \$26.7 million during the first six months of 2010. Development expenditures for the first six months of 2011 and 2010 included costs for the hotel, office, retail and entertainment venue portions of the W Austin Hotel & Residences project totaling \$12.4 million and \$26.4 million, respectively. We also contributed capital to Crestview Station of \$0.5 million in the first six months of 2011.

Cash used in financing activities totaled \$16.9 million for the first six months of 2011 and cash provided by financing activities totaled \$55.4 million for the first six months of 2010. Noncontrolling interest contributions totaled \$4.6 million for the first six months of 2011 and \$12.2 million for the first six months of 2010. In the first six months of 2011, net borrowings from our credit facility totaled \$11.4 million (including borrowings of \$5.6 million under the Comerica term loan), borrowings from the Beal Bank loan totaled \$20.6 million, borrowings from the Ford loan totaled \$4.9 million and borrowings from the Parkside Village loan totaled \$0.3 million, partially offset by financing costs of \$0.3 million. Debt repayments on the Beal Bank loan, Ford loan and other project and term loans totaled \$58.3 million for the first six months of 2011. In the first six months of 2010, net borrowings from our credit facility totaled \$14.0 million, borrowings from the Ford loan totaled \$30.0 million and borrowings from the 5700 Slaughter term loan totaled \$4.5 million, partly offset by financing costs of \$1.1 million. Debt repayments on project and term loans totaled \$4.2 million for the first six months of 2010. See "Credit Facility and Other Financing Arrangements" for a discussion of our outstanding debt at June 30, 2011.

Credit Facility and Other Financing Arrangements

At June 30, 2011, we had total debt of \$180.4 million, compared with \$201.5 million at December 31, 2010. Our debt outstanding at June 30, 2011 consisted of the following:

- \$60.6 million outstanding under the Beal Bank loan agreement, which is secured by the assets in the W Austin Hotel & Residences project.
- \$36.2 million outstanding, \$2.9 million of letters of credit issued and \$5.4 million of availability under our credit facility with Comerica. The credit facility includes a \$35.0 million revolving loan, of which \$1.0 million is available, and a \$10.0 million term loan, of which \$4.4 million is available. The availability under the term loan was permanently reduced by \$0.5 million in second-quarter 2011 when the first required quarterly principal payment of \$0.5 million was made. We used the proceeds from these borrowings for general corporate purposes, including overhead and development costs. The credit facility is secured by assets at Barton Creek, Lantana and Circle C.
- \$36.0 million outstanding under seven unsecured term loans, which include two \$5.0 million loans, an \$8.0 million loan, a \$7.0 million loan, a \$4.0 million loan and two \$3.5 million loans.
- \$20.5 million outstanding under the Lantana promissory note, which is secured by our buildings at 7500 Rialto Boulevard.
- \$17.9 million outstanding under the Ford loan agreement, which is secured by a second lien on the W Austin Hotel & Residences project assets. Additionally, the Ford loan agreement provides for a profits interest in our joint venture with Canyon-Johnson. The profits interest is accounted for as the lender's participation in the cash flows of the W Austin Hotel & Residences project. Interest related to this participation will be recognized in future periods when cash flows from which the profits interest is payable are generated. The accumulated balance of the profits interest as of June 30, 2011, was \$0.9 million.
- \$4.5 million outstanding under a term loan, which is secured by Barton Creek Village.
- \$4.4 million outstanding under a \$5.4 million term loan, which is secured by 5700 Slaughter.
- \$0.3 million outstanding under a \$13.7 million construction loan, which is secured by the assets at the Parkside Village project (see Note 4 for further discussion).

The Beal Bank and Ford loan agreements contain customary financial covenants, including a requirement that we maintain a minimum total stockholders' equity balance of \$120.0 million, and contain cross-default provisions with our Comerica credit facility and our First American Asset Management (FAAM) unsecured term loans. As of June 30, 2011, our total stockholders' equity was \$126.2 million. A prolonged weak or worsening real estate market in Austin, Texas, including any impact on our sales of condominium units at the W Austin Hotel & Residences project, could have a material adverse effect on our business, which may adversely affect our cash flows and profitability and reduce our stockholders' equity. For additional information, see "Risk Factors" located in Item 1A of our 2010 Form 10-K.

Maturities

The following table summarizes our debt maturities as of June 30, 2011 (in thousands):

	2011	2012	2013	2014	2015	Thereafter	Total
Beal Bank Loan	\$ —	\$ —	\$ —	\$ 60,547	\$ —	\$ —	\$ 60,547
Comerica Credit Facility	—	36,184	—	—	—	—	36,184
FAAM Loans	9,000 ^a	3,500	15,000	8,500	—	—	36,000
Ford Loan	—	17,917	—	—	—	—	17,917
Lantana Promissory Note	160	334	355	377	400	18,901	20,527
Barton Creek Village Loan	45	93	100	4,284	—	—	4,522
5700 Slaughter Loan	36	77	84	89	4,123	—	4,409
Parkside Village Loan	—	—	263	—	—	—	263
Total	\$ 9,241	\$ 58,105	\$ 15,802	\$ 73,797	\$ 4,523	\$ 18,901	\$ 180,369

a. Loans mature in December 2011.

NEW ACCOUNTING STANDARDS

We do not expect the impact of recently issued accounting standards to have a significant impact on our future financial statements and disclosures.

CAUTIONARY STATEMENT

Management's Discussion and Analysis of Financial Condition and Results of Operations contain forward-looking statements in which we discuss certain of our expectations regarding future operational and financial performance. Forward-looking statements are all statements other than statements of historical facts, such as those statements regarding future reimbursements for infrastructure costs, future events related to financing and regulatory matters, anticipated development plans and sales of land, units and lots, projected timeframes for development, construction and completion of our projects, projected capital expenditures, liquidity and capital resources, anticipated results of our business strategy, and other plans and objectives of management for future operations and activities. The words "anticipates," "may," "can," "plans," "believes," "estimates," "expects," "projects," "intends," "likely," "will," "should," "to be" and any similar expressions and/or statements that are not historical facts are intended to identify those assertions as forward-looking statements.

We caution readers that forward-looking statements are not guarantees of future performance, and our actual results may differ materially from those anticipated, projected or assumed in the forward-looking statements. Important factors that can cause our actual results to differ materially from those anticipated in the forward-looking statements include, but are not limited to, changes in economic and business conditions, business opportunities that may be presented to and/or pursued by us, the availability of financing, increases in foreclosures and interest rates, the termination of sales contracts or letters of intent due to, among other factors, the failure of one or more closing conditions or market changes, the failure to attract homebuilding customers for our developments or their failure to satisfy their purchase commitments, the failure to complete agreements with strategic partners and/or appropriately manage relationships with strategic partners, a decrease in the demand for real estate in the Austin, Texas market, competition from other real estate developers, increases in operating costs, including real estate taxes and the cost of construction materials, changes in laws, regulations or the regulatory environment affecting the development of real estate and other factors described in more detail under "Risk Factors" located in Item 1A of our 2010 Form 10-K as updated by our subsequent filings with the Securities and Exchange Commission.

Investors are cautioned that many of the assumptions on which our forward-looking statements are based are likely to change after our forward-looking statements are made. Further, we may make changes to our business plans that could or will affect our results. We caution investors that we do not intend to update our forward-looking statements more frequently than quarterly, notwithstanding any changes in our assumptions, changes in our business plans, our actual experience, or other changes, and we undertake no obligation to update any forward-looking statements.

Item 4. Controls and Procedures.

(a) Evaluation of disclosure controls and procedures. Our chief executive officer and chief financial officer, with the participation of management, have evaluated the effectiveness of our “disclosure controls and procedures” (as defined in Rules 13a-15(e) and 15(d)-15(e) under the Securities Exchange Act of 1934) and determined that our controls and procedures were effective as of the end of the period covered by this report.

(b) Changes in internal control. There was no change in our internal control over financial reporting that occurred during the quarter ended June 30, 2011, that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1A. Risk Factors.

We are exposed to risks associated with real estate development that could adversely impact our results of operations, cash flows and financial condition.

Our real estate development activities entail risks that could adversely impact our results of operations, cash flows and financial condition, including risks associated with:

- construction delays or cost overruns, which may increase project development costs;
- claims for construction or design defects after property has been developed, which may result in additional costs to remedy the defect or require all or a portion of the property to be closed during the period required to rectify the situation;
- an inability to secure tenants necessary to support commercial projects;
- development costs incurred for projects that are not pursued to completion; and
- disagreements with authorities over compliance with building codes and other local regulations.

We engage third-party contractors to construct our development projects. However, our customers may assert claims against us for construction defects or other perceived development defects, including, without limitation, structural integrity, the presence of mold as a result of leaks or other defects, water intrusion, electrical issues, plumbing issues, road construction, water and sewer defects and defects in the engineering of amenities. We could be required to record a significant portion of the cost to repair such defects in the quarter when such defects arise or when the related repair costs are reasonably estimable. A significant number of claims for development-related defects could have a material adverse effect on our results of operations, cash flows and financial condition.

In June 2011 there were a series of incidents in which glass attached to the railings on the balconies of the condominium units at the W Austin Hotel & Residences project broke and fell to the surrounding areas, including adjoining streets and the pool deck at the W Austin Hotel. These incidents resulted in the hotel being closed for 11 days during June and July 2011. Stratus investigated these matters and has taken precautionary measures to prevent further incidents. The engineering and redesign of replacement railings is in process and Stratus expects to begin installation of the replacement railing system by year-end 2011. Stratus recorded a \$0.7 million charge to cost of sales in second-quarter 2011 for the estimated repair costs. If the repair costs exceed our estimate, we will incur an additional charge to cost of sales which will effect our results of operations.

For additional information on risk factors, refer to Part I, Item 1A. “Risk Factors” in our annual report on Form 10-K for the year ended December 31, 2010.

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Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

The following table sets forth shares of our common stock we repurchased during the three months ended June 30, 2011.

Period	(a) Total Number of Shares Purchased	(b) Average Price Paid Per Share	(c) Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs ^a	(d) Maximum Number of Shares That May Yet Be Purchased Under the Plans or Programs ^a
April 1 to 30, 2011	—	—	—	161,145
May 1 to 31, 2011	—	—	—	161,145
June 1 to 30, 2011	—	—	—	161,145
Total	—	—	—	—

- a. In February 2001, our Board of Directors approved an open market share purchase program for up to 0.7 million shares of our common stock. The program does not have an expiration date. Our modified unsecured term loans prohibit common stock purchases while any of the loans are outstanding.

Item 5. Other Information.

On May 17, 2011, Tract 107, L.L.C. ("Tract 107"), our joint venture to develop Parkside Village, entered into a Construction Loan Agreement with Comerica Bank (the "Loan Agreement") to finance the development of the project. Pursuant to the Loan Agreement, the joint venture may borrow up to \$13,664,456 to fund the construction and development costs of the project as set forth in the Budget (as defined in the Loan Agreement).

The Loan Agreement contains customary financial covenants and other restrictions. At the joint venture's option, amounts borrowed will bear interest at a per annum rate equal to (1) the Base Rate (as defined in the Loan Agreement) plus one percent or (2) London Interbank Offered Rate (LIBOR) plus three percent. The outstanding principal balance of the note, together with all accrued and unpaid interest is due and payable on May 31, 2013. The loan may be prepaid in whole or in part at any time prior to maturity without penalty or premium. The loan may be extended for an additional one-year term upon its maturity provided certain conditions are met. The loan is secured by a lien on the assets of the project. The full payment and performance of the Loan Agreement has been guaranteed by us.

Item 6. Exhibits.

The exhibits to this report are listed in the Exhibit Index beginning on page E-1 hereof.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

STRATUS PROPERTIES INC.

By: /s/ Erin D. Pickens

Erin D. Pickens
Senior Vice President and
Chief Financial Officer
(authorized signatory and
Principal Financial Officer)

Date: August 15, 2011

**STRATUS PROPERTIES INC.
EXHIBIT INDEX**

Exhibit Number	Exhibit Title	Filed with this Form 10-Q	Incorporated by Reference		
			Form	File No.	Date Filed
3.1	Composite Certificate of Incorporation of Stratus.		8-A	000-19989	8/26/2010
3.4	By-laws of Stratus, as amended as of November 6, 2007.		10-Q	000-19989	8/11/2008
10.1	Construction Loan Agreement by and between Tract 107, L.L.C. and Comerica Bank dated as of May 17, 2011.	X			
10.2	Promissory Note by and between Tract 107, L.L.C. and Comerica Bank dated as of May 17, 2011.	X			
31.1	Certification of Principal Executive Officer pursuant to Rule 13a-14(a)/15d-14(a).	X			
31.2	Certification of Principal Financial Officer pursuant to Rule 13a-14(a)/15d-14(a).	X			
32.1	Certification of Principal Executive Officer pursuant to 18 U.S.C. Section 1350.	X			
32.2	Certification of Principal Financial Officer pursuant to 18 U.S.C. Section 1350.	X			
101.INS	XBRL Instance Document.	X			
101.SCH	XBRL Taxonomy Extension Schema.	X			
101.CAL	XBRL Taxonomy Extension Calculation Linkbase.	X			
101.DEF	XBRL Taxonomy Extension Definition Linkbase.	X			
101.LAB	XBRL Taxonomy Extension Label Linkbase.	X			
101.PRE	XBRL Taxonomy Extension Presentation Linkbase.	X			

CONSTRUCTION LOAN AGREEMENT

This CONSTRUCTION LOAN AGREEMENT (this "**Agreement**") is made and entered into as of the 17th day of May, 2011, by and between **TRACT 107, L.L.C.**, a Texas limited liability company ("**Borrower**"), whose address is c/o Stratus Properties Inc., 212 Lavaca Boulevard, Suite 300, Austin, Texas 78701, and **COMERICA BANK** ("**Lender**"), whose address is 300 W. Sixth Street, Suite 1300, Austin, Texas 78701, Attn: Commercial Real Estate.

ARTICLE I
DEFINITION OF TERMS

1.1 **Definitions.** As used in this Agreement, the following terms shall have the respective meanings indicated below:

Advance: A disbursement by Lender, whether by journal entry, deposit to Borrower's account, check to third party or otherwise of any of the proceeds of the Loan, any insurance proceeds or Borrower's Deposit.

Affidavit of Completion: As defined in Section 5.14 hereof.

Agreement: This Construction Loan Agreement, as the same may from time to time be amended or supplemented.

Allocations: The line items set forth in the Budget for which Advances of Loan proceeds will be made.

Assignment of Leases: The Assignment of Rents and Leases assigning to Lender Borrower's interest in all leases entered into for the Mortgaged Property and all rents and other rights and benefits to which Borrower is entitled under the terms of such leases.

Borrower's Deposit: Such cash amounts as Lender may deem necessary for Borrower to deposit with it in accordance with the provisions of Section 3.4 of this Agreement.

Budget: The budget which is set forth on Exhibit B attached hereto and incorporated herein by reference.

Buildings: The various buildings to be constructed on the Land as a part of the Improvements, and as reflected on the Site Plan, and which shall consist of Buildings A, B, C, D, E, F and G.

Commencement Date: Means (i) for the first Building to be constructed on the Land, February 21, 2011 and (ii) for the last Building to be constructed on the Land (Buildings B, D, E or G), October 31, 2011 (i.e., the last Building to be constructed on the Land must be commenced no later than October 31, 2011).

Commitment Fee: The sum of \$136,644.56 to be paid by Borrower to Lender in connection with the Loan.

Completion Date: Means (i) for completion of the shell portion of those Improvements consisting of Buildings A, C and F as shown on the Site Plan, June 30, 2012, and (ii) for completion of the shell portion of those Improvements consisting of Buildings B, D, E and G as shown on the Site Plan, August 31, 2012; provided, however, and notwithstanding the foregoing, any improvements subject to a Tenant Lease shall be

completed on or before the date required under such Tenant Lease.

Construction Contract: Collectively, all contracts and agreements entered into between Borrower and Contractor pertaining to the development, construction and completion of the Improvements.

Contractor: Joe Bland Construction, L.P. and Engen Contracting, Inc., together with any other person or entity acceptable to Lender with whom Borrower contracts for the development, construction and completion of the Improvements or any portion thereof.

Debt Coverage Ratio: As defined in Section 5.20 hereof.

Deed of Trust: The Deed of Trust, Security Agreement and Fixture Filing dated of even date herewith pursuant to which Borrower grants a lien and security interest in and to the Mortgaged Property for the benefit of Lender to secure the Loan.

Design Professional: Enviroplan Architect & Planners, Inc. and LJA Engineering & Surveying, Inc., together with any other person or entity acceptable to Lender with whom Borrower contracts for the providing of planning, design, architectural, engineering or other similar services relating to the Improvements.

Design Services Contract: Collectively, all contracts and agreements entered into between Borrower and each Design Professional pertaining to the design, development and construction of the Improvements.

Disposition: Any sale, lease (except as expressly permitted pursuant to the Loan Documents), exchange, assignment, conveyance, transfer, trade, or other disposition of all or any portion of the Mortgaged Property (or any interest therein) or all or any part, directly or indirectly, of the beneficial ownership interest in Borrower (if Borrower is a corporation, limited liability company, partnership, general partnership, limited partnership, joint venture, trust, or other type of business association or legal entity); provided, however, a sale of the publicly traded stock of Stratus Properties Inc. shall not constitute a Disposition under the terms of this Agreement.

Draw Request: A request by Borrower to Lender for an Advance in such form and containing such information as Lender may reasonably require.

Environmental Law: Any federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Land or Improvements, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("**CERCLA**"), 42 U.S.C. § 9601 *et seq.*; Resource, Conservation and Recovery Act ("**RCRA**"), 42 U.S.C. § 6901 *et seq.* as amended by the Superfund Amendments and Reauthorization Act of 1986 ("**SARA**"), Pub. L. 99-499, 100 Stat. 1613; the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. § 1101 *et seq.*; Clean Water Act ("**CWA**"), 33 U.S.C. § 1251 *et seq.*; Clean Air Act ("**CAA**"), 42 U.S.C. § 7401 *et seq.*; Federal Water Pollution Control Act ("**FWPCA**"), 33 U.S.C. § 1251 *et seq.*; and any corresponding state laws or ordinances including the Texas Water Code ("**TWC**") § 26.001 *et seq.*; Texas Health & Safety Code ("**THSC**") § 361.001 *et seq.*; Texas Solid Waste Disposal Act, Tex. Rev. Civ. Stat. Ann. art. 4477-7; and regulations, rules, guidelines, or standards promulgated pursuant to such laws, statutes and regulations.

Event of Default: Any happening or occurrence described in Section 7.1 of this Agreement.

Financing Statement: The financing statement or financing statements (on Standard Form UCC-1 or otherwise) covering Borrower's personal property, as debtor, and naming Lender, as secured party, in connection with the Loan Documents.

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

Governmental Requirements: All statutes, laws, ordinances, rules, regulations, orders, writs, injunctions or decrees of any Governmental Authority applicable to Borrower, Guarantor or the Mortgaged Property.

Guarantor: Stratus Properties Inc., a Delaware corporation.

Guaranty: That or those instruments of guaranty now or hereafter in effect from Guarantor to Lender guaranteeing the repayment of all or any part of the Loan, the satisfaction of, or continued compliance with, the covenants contained in the Loan Documents, or both.

Hazardous Substance: Any substance, product, waste, or other material which is or becomes listed, regulated, or addressed as being a toxic, hazardous, polluting, or similarly harmful substance under any Environmental Law, including without limitation: (i) any substance included within the definition of "hazardous waste" pursuant to Section 1004 of RCRA; (ii) any substance included within the definition of "hazardous substance" pursuant to Section 101 of CERCLA; (iii) any substance included within (a) the definition of "regulated substance" pursuant to Section 26.342(11) of TWC; or (b) the definition of "hazardous substance" pursuant to Section 361.003(11) of THSC; (iv) asbestos; (v) polychlorinated biphenyls; (vi) petroleum products; (vii) underground storage tanks, whether empty, filled or partially filled with any substance; (viii) any radioactive materials, urea formaldehyde foam insulation or radon; (ix) any substance included within the definition of "waste" pursuant to Section 30.003(b) of TWC or "pollutant" pursuant to Section 26.001(13) of TWC; and (x) any other chemical, material or substance, the exposure to which is prohibited, limited or regulated by any Governmental Authority on the basis that such chemical, material or substance is toxic, hazardous or harmful to human health or the environment.

Improvements: That certain shopping center to be constructed containing approximately 92,620 rentable square feet, together with all other amenities, to be constructed on the Mortgaged Property, all as more particularly described in the Plans and Specifications.

Indebtedness: As defined in the Deed of Trust.

Initial Advance: The first Advance to be made at the time Borrower satisfies the conditions set forth in Sections 3.1 and 3.2 of this Agreement.

Inspecting Person: A representative of CD Construction Consulting or another inspecting architect engaged by Lender who will, from time to time, inspect the Improvements for the benefit of Lender.

Land: The real property or interest therein described in Exhibit A attached hereto and incorporated herein by this reference upon which the Improvements are to be constructed.

Loan: The loan evidenced by the Note and governed by this Agreement.

Loan Amount: Up to a maximum amount of THIRTEEN MILLION SIX HUNDRED SIXTY-FOUR THOUSAND FOUR HUNDRED FIFTY-SIX AND NO/100 DOLLARS (\$13,664,456.00).

Loan Documents: The Note, the Deed of Trust, this Agreement, the Security Agreement, the Financing Statement, the Guaranty, the Assignment of Leases, and any and all other documents now or hereafter executed by the Borrower, Guarantor, or any other person or party in connection with the Loan, the indebtedness

evidenced by the Note, or the covenants contained in this Agreement.

Loan Extension: That certain twelve (12) month extension of the Maturity Date (as defined in the Note) of the Loan, provided the conditions of Section 2.9 are satisfied.

Major Leases: Collectively, the Tenant Leases covering a portion of the Mortgaged Property, consisting of (i) the Tenant Lease between Borrower, as lessor, and Alamo Drafthouse, as tenant, covering approximately 33,650 rentable square feet of the Improvements and (ii) the Tenant Lease between Borrower, as lessor, and Austin Diagnostic Clinic, as tenant, covering approximately 13,890 rentable square feet of the Improvements.

Major Tenants: The tenants under the Major Leases, individually or collectively, as the context may require,.

Management Agreement means the written agreement between Borrower and Manager pursuant to which Manager shall manage the Project and which shall be subject to the prior approval of Lender.

Manager means the initial property manager selected by Borrower and approved by Lender, together with any other person or entity with whom Borrower contracts for the management of the Mortgaged Property.

Material Adverse Effect: Any material and adverse effect on (i) the business condition (financial or otherwise), operations, prospects, results of operations, capitalization, liquidity or any properties of the Borrower or Guarantor, taken as a whole, (ii) the value of the Mortgaged Property, (iii) the ability of Borrower or any Guarantor (or if the Borrower or any Guarantor is a partnership, joint venture, trust or other type of business association, of any of the parties comprising Borrower or such Guarantor) to pay and perform the Indebtedness or any other Obligations, or (iv) the validity, enforceability or binding effect of any of the Loan Documents.

Maturity Date: May 31, 2013, subject to being extended to May 31, 2014 pursuant to and in accordance with the Loan Extension.

Mortgaged Property: Collectively, the Land, the Improvements, and all other collateral covered by the Loan Documents.

Note: The promissory note dated as of even date herewith in the principal sum of the Loan Amount (together with all renewals and extensions thereof) executed and delivered by Borrower payable to the order of Lender, evidencing the Loan.

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

Plans and Specifications: The plans and specifications for the development and construction of the Improvements, prepared by Borrower or the Design Professional and approved by Lender as required herein, by all applicable Governmental Authorities, by any party to a purchase or construction contract with a right of approval, all amendments and modifications thereof approved in writing by the same, and all other design, engineering or architectural work, test reports, surveys, shop drawings, and related items.

Security Agreement: The Security Agreement shall mean all security agreements, whether contained

in the Deed of Trust, a separate security agreement or otherwise creating a security interest in all personal property and fixtures of Borrower (including replacements, substitutions and after-acquired property) now or hereafter located in or upon the Land or the Improvements, or used or intended to be used in the operation thereof, to secure the Loan.

Site Plan: The site plan for the Improvements as depicted on the site plan on Exhibit A-1 attached hereto and incorporated herein by this reference, and which reflects the location of Buildings A, B, C, D, E, F and G to be constructed on the Land.

Soft Costs: All architectural, engineering, interior and landscape design, legal, consulting and other related fees, taxes on land and improvements, bond and insurance costs, and commitment fees, interest and other financing charges, all as set forth in the Budget.

Special Account: An account established by Borrower with Lender (in which Borrower shall at all times maintain a minimum balance of \$1,000.00) into which all Advances made directly to Borrower will be deposited.

Stratus Loan Documents: As defined in the Deed of Trust.

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

Tenant Leases: All written leases or rental agreements by which Borrower, as landlord, grants to a tenant a leasehold interest in a portion of the leasable space within the Mortgaged Property.

Title Insurance: A Loan Policy of Title Insurance issued by the Title Company, on a coinsurance or reinsurance basis (with direct access endorsement or rights) if and as required by Lender, in the maximum amount of the Loan insuring or committing to insure that the Deed of Trust constitutes a valid lien covering the Land and the Improvements, subject only to those exceptions which Lender may approve.

Title Company: The Title Company (and its issuing agent, if applicable) issuing the Title Insurance, which shall be acceptable to Lender in its sole and absolute discretion.

ARTICLE II

THE LOAN

2.1 Agreement to Lend. Lender hereby agrees to lend up to but not in excess of the Loan Amount to Borrower, and Borrower hereby agrees to borrow such sum from Lender, all upon and subject to the terms and provisions of this Agreement, such sum to be evidenced by the Note. No principal amount repaid by Borrower may be reborrowed by Borrower. Borrower's liability for repayment of the interest on account of the Loan shall be limited to and calculated with respect to Loan proceeds actually disbursed to Borrower pursuant to the terms of this Agreement and the Note and only from the date or dates of such disbursements. After notice to Borrower, Lender may, in Lender's sole discretion, disburse Loan proceeds by journal entry to pay interest and financing costs and, following an uncured Event of Default, disburse Loan proceeds directly to third parties to pay costs or expenses required to be paid by Borrower pursuant to this Agreement. Loan proceeds disbursed by Lender by journal entry to pay interest or financing costs, and Loan proceeds disbursed directly by Lender to pay costs or expenses required to be paid by Borrower pursuant to this Agreement, shall constitute Advances to Borrower.

2.2 Advances. The purposes for which Loan proceeds are allocated and the respective amounts of such Allocations are set forth in the Budget, which Advances shall be limited to the value of the work in place as determined by the Inspecting Person.

2.3 Allocations. The Allocations shall be disbursed only for the purposes set forth in the Budget. Lender shall not be obligated to make an Advance for an Allocation set forth in the Budget to the extent that the amount of the Advance for such Allocation would, when added to all prior Advances for such Allocation, exceed the total of such Allocation as set forth in the Budget.

2.4 Limitation on Advances. To the extent that Loan proceeds disbursed by Lender pursuant to the Allocations are insufficient to pay all costs required for the acquisition, development, construction and completion of the Mortgaged Property, or to the extent that Loan proceeds available to be disbursed by Lender pursuant to the Allocations are insufficient to pay all remaining costs required for the completion of the Mortgaged Property, Borrower shall pay such excess costs with funds derived from sources other than the Loan prior to any further Advances of the Loan.

2.5 Reallocations. Lender reserves the right, at its option, to disburse Loan proceeds allocated to any of the Allocations for such other purposes or in such different proportions as Lender may, in its sole discretion, deem necessary or advisable. Borrower shall not be entitled to require that Lender reallocate funds among the Allocations.

2.6 Contingency Allocations. Any amount allocated in the Budget for “contingencies” or other non-specific purposes may, in the Lender's discretion after request by Borrower, or upon Lender's own election at any time during the existence of an Event of Default, be disbursed by Lender to pay future contingent costs and expenses of constructing, maintaining, leasing and promoting the Mortgaged Property and such other costs or expenses as Lender shall approve. Under no circumstances shall the Borrower have the right to require Lender to disburse any amounts so allocated and Lender may impose such requirements and conditions as it deems prudent and necessary should it elect to disburse all or any portion of the amounts so allocated.

2.7 Withholding. Lender may withhold from an Advance or, on account of subsequently discovered evidence, withhold from a later Advance under this Agreement or require Borrower to repay to Lender the whole or any part of any earlier Advance to such extent as may be necessary to protect the Lender from loss on account of (i) defective work not remedied or requirements of this Agreement not performed, (ii) liens filed or reasonable evidence indicating probable filing of liens which are not bonded, (iii) failure of Borrower to make payments to the Contractor for material or labor, except as is permitted by the Construction Contract, or (iv) a reasonable doubt that the construction of the Improvements can be completed for the balance of the Loan Amount then undisbursed. When all such grounds are removed, payment shall be made of any amount so withheld because of them.

2.8 Loan Limitation. It is expressly agreed and understood that, in accordance with the Budget, to the extent an Advance is for construction costs of the Improvements, such Advance, except for the final payment under the Loan, shall not exceed ninety percent (90%) of the actual construction costs to which such Advance relates, except for (i) the final payment under the applicable Construction Contract (i.e., disbursement of Retainage permitted under Section 3.7 of this Agreement), (ii) the work described in that certain Limited Notice to Proceed dated February 9, 2011 with Engen Contracting, Inc., in an amount that does not exceed \$373,152.00 (the “**LNTP Work**”) or (iii) unless otherwise approved in writing by Lender in its sole discretion.

2.9 Loan Extension. Provided the following conditions precedent shall have been satisfied, then Borrower shall be entitled to extend the Maturity Date one (1) time by an additional twelve (12) months. The conditions precedent to extension of the Maturity Date for the twelve (12) month period are as follows:

a. Written notice of such extension shall be given by Borrower no sooner than ninety (90) days prior to the original Maturity Date and not later than forty-five (45) days prior to the original Maturity Date; and, with such notice, Borrower shall pay to the Lender, in cash, an extension fee in an amount equal to one-fourth of one percent (.25%) of the then outstanding commitment (i.e., the outstanding principal balance of the Loan plus any unfunded portion of the Loan) for the extension;

b. The Improvements shall have been completed in substantial accordance with the Plans and Specifications and within the Budget, and a final certificate of occupancy shall have been issued for the shell portion of the Improvements and for any portion of the Improvements occupied by any tenants then in possession;

c. The Major Tenants shall be in occupancy under their respective Tenant Leases and open for business to the public (or a replacement tenant acceptable to Lender in its sole discretion shall be in occupancy under the space in the Mortgaged Property formerly leased by the Major Tenants and open for business to the public), and Lender shall have received evidence reasonably acceptable to Lender that none of the Major Tenants are in bankruptcy or in default under their respective Tenant Leases.

d. No Event of Default, or any event, circumstance or action of which the Borrower is aware (by notice from Lender or otherwise) and with the passage of time or failure to cure would give rise to an Event of Default, has occurred and is then existing;

e. No event, claim, liability or circumstance shall have occurred which, in the Lender's determination, could be expected to have or have had a Material Adverse Effect;

f. Written evidence being provided by Borrower and reasonably satisfactory to the Lender indicating that the Debt Coverage Ratio calculated for the three (3) month Calendar Period (as defined in Section 5.20 below) ending on the last day of the month prior to the month in which the then term of the Loan expires (absent extension pursuant to this Section 2.9) shall be not less than 1.35:1.0 of the then outstanding Indebtedness; or Borrower shall have prepaid the Curative Amount pursuant to Section 5.20(d) below necessary to achieve a 1.35:1.0 Debt Coverage Ratio or pledged adequate liquid collateral pursuant to Section 5.20(e) below; and

g. Lender shall have received a new appraisal or an updated appraisal of the Mortgaged Property, at Borrower's expense, dated within ninety (90) days of the original Maturity Date, prepared by an appraiser acceptable to Lender and based upon such standards as Lender may require, which appraisal shall confirm that the amount of the Loan (including any amounts which Lender has not yet disbursed under this Agreement but which remain subject to disbursement hereunder) is not more than sixty percent (60%) of the fair market, as-stabilized value of the Mortgaged Property.

2.10 Staging of Construction. As of the date of this Agreement, Borrower has commenced the construction of Buildings A, C and F on the Land, but has not commenced construction of Buildings B, D, E and G as shown on the Site Plan. Prior to commencing any work on any of Buildings B, D, E and G, Borrower shall with respect to each such Building: (i) cause the Design Professional to prepare and complete the Plans and Specifications for such Building and submit them to Lender and the Inspecting Person for

review and approval, (ii) submit to Lender a Construction Contract with a Contractor acceptable to Lender and a Design Services Contract with a Design Professional acceptable to Lender (or an amendment to an existing Construction Contract and/or Design Services Contract, as the case may be, which shall provide for the construction of the applicable Building and preparation of Plans and Specifications therefor) for Lender's review and approval, (iii) if the Building in question is to be constructed pursuant to a new Construction Contract, Borrower and such Contractor shall execute an Assignment of Rights under Construction Contract and Subordination Agreement in favor of Lender, in the same form as previously provided by the existing Contractors, (iv) if the Plans and Specifications for such Building are to be prepared pursuant to a new Design Services Contract, Borrower and the applicable Design Professional preparing such Plans and Specifications shall execute an Assignment of Architect's Plans and Specifications and Consent in favor of Lender, in the same form as previously provided by the existing Design Professionals, and (v) Borrower shall provide any permits required for the construction of the Building in question as required by Section 3.1(i)(11) below. Borrower shall submit to Lender all of the items required under clauses (i) through (iv) of the immediately preceding sentence, and such items shall be acceptable to Lender, as a condition to Lender funding any Advances for the construction of any such Buildings, which conditions are in addition to any other conditions set forth in Article III of this Agreement. In the event that Borrower does not satisfy the items required under clauses (i) through (iv) above and commence construction of a Building prior to the Commencement Date for such Building (i.e., by October 31, 2011), then Lender shall have the right to terminate its commitment to fund any Advances for such Building, and Lender shall not be obligated to fund any Advances for such Building.

ARTICLE III

ADVANCES

3.1 Conditions to Initial Advance. The obligation of Lender to make the Initial Advance hereunder and the first Advance after the closing of the Loan is subject to the prior or simultaneous occurrence of each of the following conditions:

- (a) Lender shall have received from Borrower all of the Loan Documents duly executed by Borrower and, if applicable, by Guarantor.
 - (b) Lender shall have received certified copies of resolutions of Borrower, if Borrower is a corporation or limited liability company, or a certified copy of a consent of partners, if Borrower is a partnership, authorizing execution, delivery and performance of all of the Loan Documents and authorizing the borrowing hereunder, along with such certificates of existence, certificates of good standing and other certificates or documents as Lender may reasonably require to evidence Borrower's authority.
 - (c) Lender shall have received true copies of all organization documents of Borrower, including all amendments or supplements thereto, along with such certificates or other documents as Lender may reasonably require to evidence Borrower's authority.
 - (d) Lender shall have received evidence that the Mortgaged Property is not located within any designated flood plain or special flood hazard area; or evidence that Borrower has applied for and received flood insurance covering the Mortgaged Property in the amount of the Loan or the maximum coverage available to Lender.
 - (e) Lender shall have received evidence of compliance with all Governmental Requirements.
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(f) Lender shall have received a full-size, single sheet copy of all recorded subdivision or plat maps of the Land approved (to the extent required by Governmental Requirements) by all Governmental Authorities, if applicable, and legible copies of all instruments representing exceptions to the state of title to the Mortgaged Property.

(g) Lender shall have received policies of all-risk builder's risk insurance (non-reporting form) for the construction of the Improvements, owner's and contractor's liability insurance, workers' compensation insurance, and such other insurance as Lender may reasonably require, with standard endorsements attached naming Lender as the insured mortgagee or additional insured, whichever is applicable, such policies to be in form and content and issued by companies reasonably satisfactory to Lender, with copies, or certificates thereof, being delivered to Lender.

(h) Lender shall have received the Title Insurance, at the sole expense of Borrower.

(i) Lender shall have received from Borrower such other instruments, evidence and certificates as Lender may reasonably require, including the items indicated below:

(1) Evidence that all the streets furnishing access to the Mortgaged Property have been or will be completed and dedicated to public use and accepted by applicable Governmental Authorities.

(2) A current survey of the Land prepared by a registered surveyor or engineer and certified to Lender, Borrower and the Title Company, in form and substance reasonably acceptable to Lender, showing all easements, building or setback lines, rights-of-way and dedications affecting said land and showing no state of facts objectionable to Lender.

(3) Evidence reasonably satisfactory to Lender showing the availability of all necessary utilities at the boundary lines of the Land (except as disclosed to Lender, and provided that in any event the Plans and Specifications provide that all such utilities will be available to the Land upon construction of the improvements contemplated thereby), including sanitary and storm sewer facilities, potable water, telephone, electricity, gas, and municipal services.

(4) Evidence that the current and proposed use of the Mortgaged Property and the construction of the Improvements complies with all Governmental Requirements.

(5) An opinion of counsel for Borrower, which counsel shall be satisfactory to Lender, to the effect that (i) Borrower possesses full power and authority to own the Mortgaged Property, to construct the Improvements and to perform Borrower's obligations hereunder; (ii) the Loan Documents have been duly authorized, executed and delivered by Borrower and, where required, by Guarantor, and constitute the valid and binding obligations of Borrower and Guarantor, not subject to any defense based upon usury, capacity of Borrower or otherwise; (iii) the Loan Documents are enforceable in accordance with their respective terms, except as limited by bankruptcy, insolvency and other laws affecting creditors' rights generally, and except that certain remedial provisions thereof may be limited by the laws of the State of Texas; (iv) to the knowledge of such counsel, there are no actions, suits or proceedings pending or threatened against or affecting Borrower, Guarantor or the Mortgaged Property, or involving the priority, validity or enforceability of the liens or security interests arising out of the Loan

Documents, at law or in equity, or before or by any Governmental Authority, except actions, suits or proceedings fully covered by insurance or which, if adversely determined, would not substantially impair the ability of Borrower or Guarantor to pay when due any amounts which may become payable in respect to the Loan as represented by the Note; (v) to the knowledge of such counsel, neither Borrower nor Guarantor is in default with respect to any order, writ, injunction, decree or demand of any court or any Governmental Authority of which such counsel has knowledge; (vi) to the knowledge of such counsel, the consummation of the transactions hereby contemplated and the performance of this Agreement and the execution and delivery of the Guaranty will not violate or contravene any provision of any instrument creating or governing the business operations of Borrower or Guarantor and will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement or other instrument to which Borrower or any Guarantor is a party or by which Borrower, Guarantor or the Mortgaged Property may be bound or affected; and (vii) such other matters as Lender may reasonably request.

(6) A cost breakdown satisfactory to Lender showing the total costs, including, but not limited to, such related nonconstruction items as interest during construction, commitment, legal, design professional and real estate agents' fees, plus the amount of the Land cost and direct construction costs required to be paid to satisfactorily complete the Improvements, free and clear of liens or claims for liens for material supplied and for labor services performed.

(7) Original or a copy of each Construction Contract for any Improvements then under construction.

(8) Original or a copy of each fully executed Design Services Contract for any Improvements then under construction.

(9) Waiver of lien or lien subordination agreement(s) for the prior month's draw request executed by each Contractor and by each contractor, laborer and suppliers furnishing labor or materials to the Mortgaged Property, in a form acceptable to Lender, together with Borrower's affidavit to Lender that all changes and expenses incurred to date for the Mortgaged Property have been paid in full.

(10) A copy of the Plans and Specifications for the Improvements then under construction.

(11) Building permit(s), grading permit(s) and all other permits required with respect to the construction of the Improvements prior to construction of work requiring the same; accordingly, it is not a requirement for an Advance to have a permit that is not then required for the construction of Improvements then in progress; however, with respect to an Advance requested for any particular Building, Borrower must have a building permit for such Building, together with any other items required by Section 2.10 hereof, as a condition to Lender's obligation to fund any Loan proceeds for that Building.

(12) Evidence that all applicable zoning ordinances and restrictive covenants affecting the Land permit the use for which the Improvements are intended and have been or will be complied with.

(13) Evidence of payment of required sums for insurance, taxes, expenses, charges and fees customarily required or recommended by Lender or any Governmental Authority, corporation, or person guaranteeing, insuring or purchasing, committing to guaranty, insure, purchase or refinance the Loan or any portion thereof.

(14) A current financial statement of Guarantor certified by said Guarantor.

(15) A Guaranty executed by the Guarantor.

(16) A schedule of construction progress for the Improvements with the anticipated commencement and completion dates of each Building and the anticipated date and amounts of each Advance for the same.

(17) Copies of all agreements entered into by Borrower or its operating partner pertaining to the development, construction and completion of the Improvements or pertaining to materials to be used in connection therewith, together with a schedule of anticipated dates and amounts of each Advance for the same.

(18) Environmental site assessment report with respect to the Mortgaged Property prepared by a firm of engineers approved by Lender, which report shall be satisfactory in form and substance to Lender, certifying that there is no evidence that any Hazardous Substance have been generated, treated, stored or disposed of on any of the Mortgaged Property and none exists on, under or at the Mortgaged Property.

(19) A soils and geological report covering the Land issued by a laboratory approved by Lender, which report shall be satisfactory in form and substance to Lender, and shall include a summary of soils test borings.

(20) Such other instruments, evidence or certificates as Lender may reasonably request.

(j) Lender shall have ordered and received, at Borrower's expense, an appraisal of the Mortgaged Property, prepared by an appraiser acceptable to Lender and presented and based upon such standards as may be required by Lender.

(k) Lender shall have received payment of the Commitment Fee.

(l) Borrower shall have furnished evidence to Lender that it has contributed cash equity and/or the Land (at its fair market value) of an amount not less than \$6,899,470 in the aggregate.

3.2 Conditions to Advances. The obligation of Lender to make each Advance hereunder, including the Initial Advance, shall be subject to the prior or simultaneous occurrence or satisfaction of each of the following conditions:

(a) The conditions to the Initial Advance shall have been satisfied.

(b) No Event of Default shall have occurred and then be continuing under this Agreement or any of the other Loan Documents.

(c) The Loan Documents shall be and remain outstanding and enforceable in all material respects in accordance with their terms, all as required hereunder.

(d) Lender shall have received a title report dated within two (2) days of the requested Advance from the Title Company showing no state of facts objectionable to Lender, including, but not limited to, a showing that title to the Land is vested in Borrower and that no claim for mechanics' or materialmen's liens has been filed against the Mortgaged Property.

(e) A monthly construction status report for the Improvements shall be prepared and submitted by Borrower to Lender on or before the tenth (10th) day of each month, commencing upon commencement of construction of the Improvements and continuing for each month thereafter until completion of the Improvements.

(f) Completion of any inspections required by Lender with respect to any work performed since the date of the last Advance.

(g) The representations and warranties made by Borrower, as contained in this Agreement and in all other Loan Documents shall be true and correct as of the date of each Advance; and if requested by Lender, Borrower shall give to Lender a certificate to that effect.

(h) The covenants made by Borrower to Lender, as contained in this Agreement and in all other Loan Documents shall have been fully complied with, except to the extent such compliance may be limited by the passage of time or the completion of construction of the Improvements.

(i) Lender shall have received (i) a fully executed copy of each Construction Contract then in effect or copy thereof (to be dated after the date of recordation of that certain Deed of Trust, Security Agreement and Assignment of Rents and Leases dated February 3, 2011 and recorded under Document No. 2011018885 of the Official Public Records of Travis County, Texas); (ii) a report of any changes, replacements, substitutions, additions or other modification in the list of contractors, subcontractors and materialmen involved or expected to be involved in the construction of the Improvements; and (iii) all permits required under Section 3.1(i)(11) above for Improvements then under construction.

(j) Except in connection with the Initial Advance, Lender shall have received from Borrower a Draw Request for such Advance, completed, executed and sworn to by Borrower and Contractor, with the Inspecting Person's approval noted thereon, stating that the requested amount does not exceed ninety percent (90%) of the then unpaid cost of construction of the Improvements since the last certificate furnished hereunder (except with regard to the LNTP Work); that said construction was performed in accordance with the Plans and Specifications in all material respects; and that, in the opinion of Borrower, the applicable Contractor and the applicable Design Professional, construction of the Improvements can be completed on or before the Completion Date for an additional cost not in excess of the amount then available under the Loan. To the extent approved by Lender and included in the Budget, such expenses will be paid from the proceeds of the Loan.

(k) Except in connection with the Initial Advance, Borrower shall have furnished to Lender, from each contractor, subcontractor and materialman, including each Contractor, an invoice, lien waiver and such other instruments and documents as Lender may from time to time specify, in form and content, and containing such certifications, approvals and other data and information, as Lender may reasonably require. The invoice, lien waiver and other documents shall cover and be

based upon work actually completed or materials actually furnished and paid under a prior application for payment. The lien waiver for the prior month's draws of each contractor, subcontractor and materialman shall, if required by Lender, be received by Lender simultaneously with the making of any Advance hereunder for the benefit of such contractor, subcontractor or materialman.

(l) There shall exist no default or breach by any obligated party (other than Lender) under the Loan Documents.

(m) The Improvements shall not have been materially injured, damaged or destroyed by fire or other casualty, nor shall any part of the Mortgaged Property be subject to condemnation proceedings or negotiations for sale in lieu thereof.

(n) All work typically done at the stage of construction when the Advance is requested shall have been done, and all materials, supplies, chattels and fixtures typically furnished or installed at such stage of construction shall have been furnished or installed.

(o) All personal property not yet incorporated into the Improvements but which is to be paid for out of such Advance, must then be located upon the Land, secured in a method acceptable to Lender, and Lender shall have received evidence thereof, or if stored off-site, must be stored in a secured area and must be available for inspection by the Inspecting Person. Any materials stored off-site shall be stored in a third-party bonded warehouse acceptable to Lender, with adequate safeguards to prevent loss, theft, damage or commingling with other materials not intended to be used in the construction of the Improvements; provided, further, (i) Borrower shall give Lender prior notice of the off-site storage of any materials and (ii) any materials stored must be incorporated within 45 days after receipt of Loan proceeds from Lender to pay for such materials, unless such date is extended in writing by Lender.

(p) Borrower shall have complied with all reasonable requirements of the Inspecting Person to insure compliance with the Plans and Specifications and all requirements of the Governmental Authorities.

(q) Except in connection with the Initial Advance, if the Improvements are being built for any party under a purchase or construction contract, then Lender at its election may require the approval of such purchaser before making any additional Advance.

(r) Borrower shall have fully completed (to the extent applicable), signed, notarized and delivered to Lender the Draw Request Form.

(s) If any portion of the Improvements are being built for a specific lessee, the approval by such lessee of the construction thereof with respect to the applicable portion of the Improvements subject to such Tenant Lease shall, to the extent contemplated by such Tenant Lease, be obtained and furnished to Lender, upon request therefor by Lender.

(t) if (1) the Loan is not "in balance" as provided in Section 3.4 (i.e., the unfunded Loan proceeds and any portion of the Borrower's equity not yet expended are not sufficient to complete construction of the Improvements in accordance with the Plans and Specifications and pay for all costs of construction in connection therewith), (2) Borrower has not made any required Borrower's Deposit with Lender within the time period required under Section 3.4 or (3) if Borrower shall not have collaterally assigned any Borrower's Deposit furnished to put the Loan in balance by executing

an assignment satisfactory to Lender.

(u) Borrower shall have funded all Borrower equity requirements indicated on the Budget.

(v) Notwithstanding anything to the contrary contained in this Agreement, Borrower shall not be obligated to fund more than \$1,000,000 of Loan proceeds in the aggregate under this Agreement until such time as Borrower has furnished to Lender evidence acceptable to Lender that Borrower has entered into Tenant Leases covering at least sixty percent (60%) of the rentable area of the Improvements.

3.3 Advance Not A Waiver. No Advance of the proceeds of the Loan shall constitute a waiver of any of the conditions of Lender's obligation to make further Advances, nor, in the event Borrower is unable to satisfy any such condition, shall any such Advance have the effect of precluding Lender from thereafter declaring such inability to be an Event of Default.

3.4 Borrower's Deposit. If at any time after Borrower has met its funding requirements under Section 3.1(l) above with respect to its required cash equity, Lender shall in its sole discretion deem that the undisbursed proceeds of the Loan are insufficient to meet the costs of completing construction of the Improvements, plus any and all Soft Costs for the Improvements, Lender may refuse to make any additional Advances to Borrower hereunder until Borrower shall have deposited with Lender sufficient additional funds ("**Borrower's Deposit**") to cover the deficiency which Lender deems to exist. Such Borrower's Deposit will be disbursed by Lender to Borrower pursuant to the terms and conditions hereof as if they constituted a portion of the Loan being made hereunder prior to any further Advances of the Loan proceeds. Borrower agrees upon fifteen (15) days written demand by Lender to deposit with Lender such Borrower's Deposit. Lender agrees that the Borrower's Deposit shall be placed in an interest-bearing account. Borrower hereby grants a security interest to Lender in and to the Borrower's Deposit and such account, and agrees that at any time during the existing of an Event of Default, Lender shall have the right to offset any Borrower's Deposit against the Indebtedness then outstanding, in addition to any and all other remedies provided under this Agreement and the other Loan Documents or otherwise available at law or in equity.

3.5 Advance Not An Approval. The making of any Advance or part thereof shall not be deemed an approval or acceptance by Lender of the work theretofore done. Lender shall have no obligation to make any Advance or part thereof after the happening of any Event of Default, but shall have the right and option so to do; provided that if Lender elects to make any such Advance, no such Advance shall be deemed to be either a waiver of the right to demand payment of the Loan, or any part thereof, or an obligation to make any other Advance.

3.6 Time and Place of Advances. All Advances are to be made at the office of Lender, or at such other place as Lender may designate; and Lender shall require five (5) days prior notice in writing before the making of any such Advance. Lender shall not be obligated to undertake any Advance hereunder more than once in any 30-day period. Except as set forth in this Agreement, all Advances are to be made by direct deposit into the Special Account. In the event Borrower shall part with or be in any manner whatever deprived of Borrower's interests in the Land, Lender may, at Lender's option but without any obligation to do so, continue to make Advances under this Agreement, and subject to all its terms and conditions, to such person or persons as may succeed to Borrower's title and interest and all sums so disbursed shall be deemed Advances under this Agreement and secured by the Deed of Trust and all other liens or security interests securing the Loan.

3.7 Retainage. An amount equal to ten percent (10%) of the cost of construction of the

Improvements (“**Retainage**”) shall be retained by Lender (except with regard to the LNTP Work) and shall be paid over by Lender to Borrower, provided that no lien claims are then filed against the Mortgaged Property, when all of the following have occurred to the satisfaction of Lender with respect to those Improvements covered by a Construction Contract:

- (a) Lender has received a completion certificate prepared by the Inspecting Person and executed by Borrower and the Design Professional stating that the Improvements have been completed in accordance with the Plans and Specifications, together with such other evidence that no mechanics or materialmen's liens or other encumbrances have been filed and remain in effect against the Mortgaged Property which have not been bonded to Lender's satisfaction and that all offsite utilities and streets, if any, have been completed to the satisfaction of Lender and any applicable Governmental Authority;
- (b) each applicable Governmental Authority shall have duly inspected and approved the Improvements and issued the appropriate permit, license or certificate to evidence such approval;
- (c) thirty (30) days shall have elapsed from the later of (i) the date of completion of the Improvements, as specified in Texas Property Code §53.106, if the Affidavit of Completion provided for in this Agreement is filed within ten (10) days after such date of completion, or (ii) the date of filing of such Affidavit of Completion if such Affidavit of Completion is filed ten (10) days or more after the date of the completion of the Improvements as specified in Texas Property Code §53.106;
- (d) receipt by Lender of an as-built ALTA survey of the Mortgaged Property, in form reasonably acceptable to Lender; and
- (e) receipt by Lender of evidence satisfactory to Lender that payment in full has been made for all obligations incurred in connection with the construction and completion of all off-site utilities and improvements (if any) as required by Lender or any Governmental Authority.

Notwithstanding the foregoing, Lender will disburse to Borrower the Retainage withheld by Lender with respect to a particular Construction Contract upon completion of all work under such Contract, so that Borrower may pay all remaining amounts owed under such Construction Contract, upon the satisfaction of all of the following conditions: (i) all materials to be supplied and all work required to be performed or constructed under such Construction Contract have been completed in accordance with the Construction Contract and the applicable Plans and Specifications, (ii) the Inspecting Person has inspected and approved the completion of such work, (iii) Borrower has provided to Lender full and complete lien releases and waivers from the applicable Contractor and any subcontractors, materialmen and suppliers under such Construction Contract as required by Lender, in form and substance acceptable to Lender, (iv) at least thirty (30) days has elapsed after the completion of all work under the Construction Contract and (v) no Event of Default is then existing.

3.8 No Third Party Beneficiaries. The benefits of this Agreement shall not inure to any third party, nor shall this Agreement be construed to make or render Lender liable to any materialmen, subcontractors, contractors, laborers or others for goods and materials supplied or work and labor furnished in connection with the construction of the Improvements or for debts or claims accruing to any such persons or entities against Borrower. Lender shall not be liable for the manner in which any Advances under this Agreement may be applied by Borrower, Contractor and any of Borrower's other contractors or subcontractors. Notwithstanding anything contained in the Loan Documents, or any conduct or course of conduct by the parties hereto, before or after signing the Loan Documents, this Agreement shall not be construed as creating

any rights, claims or causes of action against Lender, or any of its officers, directors, agents or employees, in favor of any contractor, subcontractor, supplier of labor or materials, or any of their respective creditors, or any other person or entity other than Borrower. Without limiting the generality of the foregoing, Advances made to any contractor, subcontractor or supplier of labor or materials, pursuant to any requests for Advances, whether or not such request is required to be approved by Borrower, shall not be deemed a recognition by Lender of a third-party beneficiary status of any such person or entity.

3.9 Interest Reserve. The amount of the Loan was determined on the basis of the Borrower's projection of the interest that will accrue on the disbursed principal of the Note during the construction and lease-up phase of the Loan, which interest has been estimated not to exceed \$1,588,194 (such amount being referred to as the "**Interest Reserve**"). Subject to the conditions to funding Advances set forth in this Agreement, Lender will disburse on the fifth (5th) day of each calendar month a portion of the Loan sufficient to pay accrued interest then due and payable on the Note during the construction phase, and the amount thereof shall increase the principal of the Note and shall reduce the balance of the Interest Reserve. Under no circumstances shall any undisbursed proceeds of the Loan be disbursed to pay accrued interest thereon during the construction phase upon depletion of the balance of the Interest Reserve. In lieu of disbursing Loan proceeds to Borrower for payment of accrued interest thereon during the construction phase, Lender may handle such disbursement and payment by making appropriate entries on the books and records of Lender, whereupon a statement summarizing such entries shall be furnished to Borrower.

3.10 Additional Expenditures by Lender. Borrower agrees that all sums paid or expended by Lender under the terms of this Agreement in excess of the amount of the Loan shall be considered to be an additional loan to Borrower and the repayment thereof, together with interest thereon at the Default Rate (as defined in the Note), from the date of demand by Lender until the date paid, shall be secured by the Deed of Trust and the other Loan Documents and shall be immediately due and payable within ten (10) days of written notice to Borrower, and Borrower agrees to pay such sum upon demand. Nothing contained herein, however, shall obligate Lender to make such advances. In addition to the foregoing, if Borrower fails to perform any act or to take any action or to pay any amount provided to be paid by it under the provisions of any of the covenants and agreements contained in this Agreement or any other Loan Document, Lender may but shall not be obligated to perform or cause to be performed such act or take such action or pay such money, and any expenses so incurred by Lender and any money so paid by Lender shall be an advance against the Note and shall bear interest from the date of making such payment until paid at the Default Rate and shall be part of the Indebtedness secured by the Deed of Trust, and Lender upon making any such payment shall be subrogated to all rights of the person, corporation or body politic receiving such payment. Lender will endeavor to promptly notify Borrower of such amounts paid by Lender hereunder, but Lender's failure to do so shall not create or give rise to any liability on Lender's part or impair or affect any of Lender's rights and remedies under this Agreement or any of the other Loan Documents.

ARTICLE IV WARRANTIES AND REPRESENTATIONS

Borrower hereby unconditionally warrants and represents to Lender, as of the date hereof and at all times during the term of the Agreement, as follows:

4.1 Plans and Specifications. The Plans and Specifications for the Improvements are satisfactory to Borrower, are in compliance with all Governmental Requirements in all material respects and, to the extent required by Governmental Requirements or any effective restrictive covenant, have been approved by each Governmental Authority (or will timely be approved by the applicable Governmental Authority when required for construction) and/or by the beneficiaries of any such restrictive covenant affecting the Mortgaged Property.

4.2 Governmental Requirements. No violation of any Governmental Requirements exists or will exist with respect to the Mortgaged Property and neither the Borrower nor the Guarantor is, nor will either be, in default with respect to any Governmental Requirements.

4.3 Utility Services. All utility services of sufficient size and capacity necessary for the construction of the Improvements and the use thereof for their intended purposes are available (or will be available upon completion of construction of any offsite utility lines contemplated by the Plans and Specifications) at the property line(s) of the Land for connection to the Improvements, including potable water, storm and sanitary sewer, gas, electric and telephone facilities.

4.4 Access. All roads necessary for the full utilization of the Improvements for their intended purposes either have been completed and dedicated to the public use and accepted by the appropriate Governmental Authority, or will be completed and dedicated to the public and accepted by the appropriate Governmental Authority in connection with the construction of the Improvements, as contemplated by the Plans and Specifications.

4.5 Financial Statements. Each financial statement of Borrower and Guarantor delivered heretofore, concurrently herewith or hereafter to Lender was and will be prepared in conformity with general accepted accounting principles, or other good accounting principles approved by Lender in writing, applied on a basis consistent with that of previous statements and completely and accurately disclose the financial condition of Borrower and Guarantor (including all contingent liabilities) as of the date thereof and for the period covered thereby, and there has been no material adverse change in either Borrower's or Guarantor's financial condition subsequent to the date of the most recent financial statement of Borrower and Guarantor delivered to Lender.

4.6 Statements. No certificate, statement, report or other information delivered heretofore, concurrently herewith or hereafter by Borrower or Guarantor to Lender in connection herewith, or in connection with any transaction contemplated hereby, contains or will contain any untrue statement of a material fact or fails to state any material fact necessary to keep the statements contained therein from being misleading, and same were true, complete and accurate as of the date hereof.

4.7 Disclaimer of Permanent Financing. Borrower acknowledges and agrees that Lender has not made any commitments, either express or implied, to extend the term of the Loan past its stated maturity date or to provide Borrower with any permanent financing except as expressly set forth herein.

ARTICLE V
COVENANTS OF BORROWER

Borrower hereby unconditionally covenants and agrees with Lender, until the Loan shall have been paid in full and the lien of the Deed of Trust shall have been released, as follows:

5.1 Commencement and Completion. Borrower will cause the construction of the Improvements to commence by the Commencement Date and to be prosecuted with diligence and continuity and will complete the same in all material respects in accordance with the Plans and Specifications for the Improvements on or before the Completion Date and within the Budget (subject to any increases in the Budget funded by additional equity contributed by Borrower or Guarantor), free and clear of liens or claims for liens for material supplied and for labor services performed in connection with the construction of the Improvements. Notwithstanding anything to the contrary contained in this Agreement, if Borrower has not

commenced construction of a particular Building and satisfied the conditions in Section 2.10 with respect to such Building by the applicable Commencement Date for such Building, then Lender shall not have any obligation to fund any Advances for such Building.

5.2 No Changes. Borrower will not amend, alter or change (pursuant to change order, amendment or otherwise) the Plans and Specifications for the Improvements unless the same shall have been approved in advance in writing by Lender, by all applicable Governmental Authorities; provided, however, Borrower shall have the right to approve change orders without Lender's consent which do not individually exceed \$25,000.00, or in the aggregate exceed \$100,000.00 for the Improvements.

5.3 Advances. Borrower will receive the Advances and will hold same as a trust fund for the purpose of paying the cost of construction of the Improvements and related nonconstruction costs related to the Mortgaged Property as provided for herein. Borrower will apply the same promptly to the payment of the costs and expenses for which each Advance is made and will not use any part thereof for any other purpose.

5.4 Lender's Expenses. Borrower will reimburse Lender for all out-of-pocket expenses of Lender, including reasonable attorneys' fees, incurred in connection with the preparation, execution, delivery, administration and performance of the Loan Documents.

5.5 Surveys. Borrower will furnish Lender at Borrower's expense (i) a foundation survey and (ii) an as-built survey, each prepared by a registered engineer or surveyor acceptable to Lender, showing the locations of the Improvements, and certifying that same are entirely within the property lines of Land, do not encroach upon any easement, setback or building line or restrictions, are placed in accordance with the Plans and Specifications, all Governmental Requirements and all restrictive covenants affecting the Land and/or the Improvements, and showing no state of facts objectionable to Lender. All surveys shall be in form and substance and from a registered public surveyor acceptable to Lender.

5.6 Defects and Variances. Borrower will, upon demand of Lender and at Borrower's sole expense, correct any structural defect in the Improvements or any variance from the Plans and Specifications for the Improvements (except for those for which Lender's approval is not required under Section 5.2 above) which is not approved in writing by Lender.

5.7 Estoppel Certificates. Borrower will deliver to Lender, promptly after request therefor, estoppel certificates or written statements, duly acknowledged, stating the amount that has then been advanced to Borrower under this Agreement, the amount due on the Note, and whether any known offsets or defenses exist against the Note or any of the other Loan Documents.

5.8 Inspecting Person. Borrower will pay the fees and expenses of, and cooperate, with the Inspecting Person and will cause the Design Professional, the Contractor, each contractor and subcontractor and the employees of each of them to cooperate with the Inspecting Person and, upon request, will furnish the Inspecting Person whatever the Inspecting Person may consider necessary or useful in connection with the performance of the Inspecting Person's duties. Without limiting the generality of the foregoing, Borrower shall furnish or cause to be furnished such items as working details, Plans and Specifications and details thereof, samples of materials, licenses, permits, certificates of public authorities, zoning ordinances, building codes and copies of the contracts between such person and Borrower (if applicable). Borrower will permit Lender, the Inspecting Person and their representative to enter the Mortgaged Property for the purposes of inspecting same. Borrower acknowledges that the duties of the Inspecting Person run solely to Lender and that the Inspecting Person shall have no obligations or responsibilities whatsoever to Borrower, Contractor,

the Design Professional, or to any of Borrower's or Contractor's agents, employees, contractors or subcontractors.

5.9 **BROKERS. BORROWER WILL INDEMNIFY LENDER FROM CLAIMS OF BROKERS ARISING BY REASON OF THE EXECUTION HEREOF OR THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREBY TO THE EXTENT SUCH BROKER WAS CONTACTED OR HIRED BY BORROWER OR EITHER OF ITS JOINT VENTURERS.**

5.10 Personalty and Fixtures. Borrower will deliver to Lender, on demand, any contracts, bills of sale, statements, receipted vouchers or agreements under which Borrower claims title to any materials, fixtures or articles incorporated in the Improvements or subject to the lien of the Deed of Trust or to the security interest of the Security Agreement.

5.11 Compliance with Governmental Requirements. Borrower will comply promptly with all Governmental Requirements.

5.12 Compliance with Restrictive Covenants. Borrower will comply with all restrictive covenants, if any, affecting the Mortgaged Property. Construction of the Improvements will be performed in a good and workmanlike manner, within the perimeter boundaries of the Land and within all applicable building and setback lines in accordance with all Governmental Requirements and the Plans and Specifications. There are, and will be, no structural defects in the Improvements.

5.13 Intentionally Omitted.

5.14 Affidavit of Completion. Borrower, within ten (10) days after construction of the Improvements has been completed, shall file in the appropriate records in the county in which the Land is situated an Affidavit of Completion (“**Affidavit of Completion**”) in the form of Exhibit D attached hereto and incorporated herein by this reference.

5.15 Payment of Expenses. Borrower shall pay or reimburse to Lender all out-of-pocket costs and expenses relating to the Mortgaged Property and for which an Advance is made, including (without limitation), title insurance and examination charges, survey costs, insurance premiums, filing and recording fees, and other expenses payable to third parties incurred by Lender in connection with the consummation of the transactions contemplated by this Agreement.

5.16 Notices Received. Borrower will promptly deliver to Lender a true and correct copy of all notices received by Borrower from any person or entity with respect to Borrower, Guarantor, the Mortgaged Property, or any or all of them, which in any way relates to or affects the Loan or the Mortgaged Property.

5.17 Advertising by Lender. Borrower agrees that during the term of the Loan, Borrower shall erect and thereafter shall maintain on the Mortgaged Property one or more advertising signs furnished by Lender indicating that the financing for the Mortgaged Property has been furnished by Lender.

5.18 Approval to Lease Required. Except as provided herein, Borrower will obtain the prior written consent of Lender, which consent shall be granted or denied in Lender's sole discretion, as to any Tenant Lease proposed to be entered into by Borrower for space in the Improvements and will not thereafter materially modify any Tenant Lease as to the rental rate, term or any credit enhancement issue without Lender's prior consent. Lender agrees that it will respond to any request for review of a Tenant Lease, or change thereto, within ten (10) days of receipt of a written request from Borrower. Lender's consent shall not be required

for any Tenant Lease which (i) covers less than 5,000 rentable square feet, (ii) is substantially on the standard form of lease approved by Lender, (iii) has a minimum lease term of five (5) years, (iv) provides for an average rental rate of not less than \$22.00 per rentable square foot (taking into consideration all other executed Tenant Leases), and in any event a rental rate in excess of \$24.00 per rentable square foot for each Tenant Lease executed after the date of this Agreement and (v) a tenant finish allowance not to exceed an average of \$44.00 per rentable square foot for all Tenant Leases. Borrower agrees to submit to each tenant in connection with a proposed Tenant Lease covering 5,000 rentable square feet or more of the Improvements the Lender's required form of Subordination, Non-Disturbance and Attornment Agreement (the "SNDA"), substantially in the form attached hereto as Exhibit E.

5.19 Statements and Reports. Borrower agrees to deliver to Lender, during the term of the Loan and until the Loan has been fully paid and satisfied, the following statements and reports:

(a) Annual, audited financial statements of Borrower, each general partner of Borrower and Guarantor within ninety (90) days after the end of each calendar year, commencing in the calendar year 2010 with respect to Guarantor and the calendar year 2011 with respect to Borrower, prepared and certified to by Guarantor and, in the case of Borrower, the chief financial officer of the general partner of Borrower;

(b) Monthly marketing reports with detailed information as to leasing activities shall be provided Lender on or before the fifteenth (15th) day of the following month;

(c) Copies of all state and federal tax returns prepared with respect to Borrower, Guarantor and the general partner of Borrower within ten (10) days of such returns being filed with the Internal Revenue Service or applicable state authority;

(d) Copies of extension requests or similar documents with respect to federal or state income tax filings for Borrower, each Guarantor and the general partner of Borrower within ten (10) days of such documents being filed with the Internal Revenue Service or applicable state authority;

(e) Annual operating statements with respect to the Mortgaged Property within ninety (90) days after the end of each calendar year, prepared in such form and detail as Lender may require and certified to by the chief financial officer of the general partner of Borrower;

(f) Monthly operating statements and a rent roll with respect to the Improvements, within thirty (30) days after the end of each calendar month, commencing at such time as any tenants occupy their leased space in the Mortgaged Property and commence paying rent (estimated to be December, 2011), prepared in such form and detail as Lender may reasonably require and in accordance with generally accepted accounting principles and certified to by the chief financial officer of the general partner of Borrower; and

(g) Such other financial statements and reports required to be delivered to Lender for Guarantor as set forth in the Guaranty.

(h) Such other reports and statements as Lender may reasonably require from time to time.

5.20 Debt Coverage. If, at any time after the commencement of the Loan Extension, the Borrower should maintain with respect to the Mortgaged Property a Debt Coverage Ratio (hereinafter defined) of less than 1.35:1.0, then Borrower must partially prepay the Note to the extent of the Curative Amount (hereinafter

defined).

(a) **Calculation.** The Debt Coverage Ratio calculation shall be undertaken for each three (3) month calendar period (the “**Calendar Period**”). The term “**Debt Coverage Ratio**” means Net Operating Income (hereinafter defined) for a Calendar Period divided by Debt Service Requirements (hereinafter defined) with respect to such same Calendar Period. Borrower shall provide written evidence and documents to Lender indicating the calculations and backup information for the Debt Coverage Ratio for each Calendar Period within fifteen (15) days after the expiration of each such Calendar Period. The Lender shall be entitled to request and require such backup documentation, including but not limited to certified financial information, as may be reasonably required by the Lender in order to satisfy itself as to the correct calculation of the Debt Coverage Ratio for any Calendar Period.

(b) **Debt Service Requirements.** For Calendar Periods occurring from and after Loan Extension (and in connection with the calculation of the Debt Coverage Ratio for purposes of determining whether Borrower qualifies for the Loan Extension), the term “**Debt Service Requirements**” shall mean all principal and interest payments with respect to the Loan which would be owing during such Calendar Period, based upon a hypothetical payment schedule calculated using the outstanding balance of the Note at Loan Extension, based upon a level-payment mortgage amortization schedule of thirty (30) years and utilizing an interest rate which is the greater of: (i) two hundred (200) basis points over the ten (10) year Treasury Index, or (ii) seven percent (7.0%). As used herein, “**Treasury Index**” means the Treasury Constant Maturity Series yields reported, for the latest day for which such yields shall have been so reported as of the applicable business day, in Federal Reserve statistical Release H.15 (519) (or any comparable successor publication) for actively traded U.S. Treasury securities having a constant maturity equal to ten (10) years. Such implied yield shall be determined, if necessary, by (i) converting U.S. Treasury bill quotations to bond-equivalent yields in accordance with accepted financial practice and (ii) interpolating linearly between reported yields.

(c) **Net Operating Income.** The term “**Net Operating Income**” shall mean, for each applicable Calendar Period, the Gross Income less Operating Expenses, determined on a cash basis of accounting except as otherwise provided herein. As used herein, the following terms shall have the respective meanings set forth below.

(1) **Gross Income.** The term “**Gross Income**” for each Calendar Period shall mean rentals, revenues and other cash forms of consideration, received by, or paid to or for the account of or for the benefit of, Borrower resulting from or attributable to the operation, leasing and occupancy of the Mortgaged Property, determined on a cash basis (except as specified herein), including, but not limited to, the following:

- (i) rents by any lessees or tenants of the Mortgaged Property actually in occupancy;
 - (ii) rents and receipts received by or for the benefit of Borrower with respect to the full or partial reimbursement of Operating Expenses from any lessee or tenant of the Mortgaged Property;
 - (iii) installments of proceeds received by or for the benefit of Borrower in connection with any rental loss or business interruption insurance with respect to the
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Mortgaged Property calculated on an accrual basis;

(iv) any other fees or rents collected by, for or on behalf of Borrower with respect to the leasing and operation of the Mortgaged Property;

(v) any refunds of deposits for obtaining, using or maintaining utility services for all or any portion of the Mortgaged Property;

(vi) interest, if any, earned by Borrower on security and other type deposits of and advance rentals paid by, any lessees or tenants of the Mortgaged Property; and

(vii) the amount of any security and other type deposits and advance rentals relating to the Mortgaged Property which have been forfeited.

Notwithstanding anything included within the above definition of Gross Income, there shall be excluded from Gross Income the following: (i) any security or other deposits of lessees and tenants, unless and until the same actually are either applied to actual rentals owed or other charges or fees or forfeited; (ii) the proceeds of any financing or refinancing with respect to all or any part of the Mortgaged Property; (iii) the proceeds of any sale or other capital transaction (excluding Tenant Leases for occupancy purposes only) of all or any portion of the Mortgaged Property; (iv) any insurance or condemnation proceeds paid with respect to the Mortgaged Property, except for rental loss or business interruption insurance; and (v) any insurance and condemnation proceeds applied in reduction of the principal of the Note in accordance with the terms of the Deed of Trust or the other Loan Documents; provided, however, nothing set forth herein shall in any manner imply the Lender's consent to a sale, refinancing or other capital transaction.

(2) Operating Expenses. The term "**Operating Expenses**" shall mean the greater of (a) the pro-forma expenses (as assumed in the Appraisal obtained by Lender in connection with the Loan) allocable to the applicable period which shall be not less than \$8.55 per square foot for the Improvements (inclusive of the management fee), or (b) those amounts actually incurred and paid with respect to the ownership, operation, management, leasing and occupancy of the Mortgaged Property, determined on a cash basis, except as otherwise specified herein, including, but not limited to, any and all of the following (but without duplication of any item):

(i) ad valorem taxes calculated on an accrual basis (and not on the cash basis) of accounting for the Calendar Period; such accrual accounting for ad valorem taxes shall be based upon taxes actually assessed for the current calendar year, or if such assessment for the current calendar year has not been made, then until such assessment has been made (and with any retroactive adjustments for prior calendar months as may ultimately be needed when the actual assessments has been made) ad valorem taxes for the Calendar Period shall be estimated based on the last such assessment for the Mortgaged Property;

(ii) foreign, U.S., state and local sales, use or other taxes, except for taxes measured by net income;

(iii) installments of special assessments or similar charges against the

Mortgaged Property calculated on an accrual basis;

(iv) costs of utilities, air conditioning and heating for the Mortgaged Property to the extent not directly paid by lessees or tenants;

(v) maintenance and repair costs for the Mortgaged Property;

(vi) management fees provided, however, the amount of such management fees which may be charged hereunder shall not be less than the sum of four percent (4%) of the Gross Income for each applicable calendar month;

(vii) all salaries, wages and other benefits to “on-site” employees of the Borrower (excluding all salaries, wages and other benefits of officers and supervisory personnel, and other general overhead expenses of Borrower and Borrower's property manager) employed in connection with the leasing, maintenance and management of the Mortgaged Property;

(viii) insurance premiums calculated on an accrual basis (and not on the cash basis) of accounting for the Calendar Period; such accrual accounting for insurance premiums shall be based upon the insurance premiums for the Mortgaged Property which was last billed to the Borrower, adjusted to an annualized premium if necessary;

(ix) to the extent not included in the Budget, costs, including leasing commissions, advertising and promotion costs, to obtain new Tenant Leases or to extend or renew existing Tenant Leases, and the costs of work performed and materials provided to ready tenant space in the Mortgaged Property for new or renewal occupancy under Tenant Leases; provided, however, such costs shall be amortized throughout the period of the primary term of the applicable Tenant Lease;

(x) outside accounting and audit fees and costs and administrative expenses in connection with the direct operation and management of the Mortgaged Property; and

(xi) any payments, and any related interest thereon, to lessees or tenants of the Mortgaged Property with respect to security deposits or other deposits required to be paid to tenants but only to the extent any such security deposits and related interest thereon have been previously included in Gross Income.

Notwithstanding anything to the contrary as being included in the definition of Operating Expenses, there shall be excluded from Operating Expenses the following: (i) depreciation and any other non-cash deduction allowed to Borrower for income tax purposes, and (ii) costs incurred to obtain new Tenant Leases or to extend or renew existing Tenant Leases to the extent included in the Budget (i.e., leasing commissions, advertising and promotion costs, costs of work performed and material provided to ready tenant space in the Mortgaged Property).

(d) Curative Amount. In the event the Debt Coverage Ratio for any Calendar Period should be less than 1.35:1.0, and unless Borrower otherwise elects to pledge Additional Collateral as provided in Section 5.20(e) below, then, within fifteen (15) days after written notice from the

Lender to Borrower, Borrower shall prepay a portion of the Note (the “**Curative Amount**”) such that a minimum Debt Coverage Ratio of 1.35:1.0 or more is created based on (1) the actual Net Operating Income for the immediately preceding Calendar Period and (2) a revised Debt Service Requirement for the then current Calendar Period, determined as of the beginning of such Calendar Period, which results from a reamortization of such reduced balance of the Loan sufficient to fully amortize such Loan on a level-payment mortgage amortization basis in 25-years from the date of Loan Extension. Failure of Borrower to timely fund any required Curative Amount shall be deemed an “Event of Default” pursuant to this Agreement in addition to any other “Events of Default” specified herein.

(e) Pledge of Liquid Collateral. As an alternative to payment of the Curative Amount, Borrower shall be entitled, in the event the Debt Coverage Ratio for any Calendar Period should be determined to be less than 1.35:1.0, to pledge additional collateral to secure the Loan. The collateral to be so pledged to the Lender must be in the form of cash, certificates of deposit, letters of credit, stocks, bonds or other highly liquid investments acceptable in all respects to the Lender in its sole and absolute discretion (for purposes of this Agreement, the term “**Additional Collateral**” shall mean and refer to such additional collateral as shall be approved by the Lender and pledged pursuant to this Section 5.20[e]). The amount or value of the Additional Collateral required to be pledged shall be a function of the liquidation value of such collateral, as determined by the Lender in its reasonable discretion, and shall be such amount properly margined (i.e., the liquidation value) as would, if subtracted from the total amount of indebtedness evidenced and represented by the Note at such time, result in a Debt Coverage Ratio (calculated as provided above) equal to 1.35:1.0. In connection with such pledge of Additional Collateral, and not later than fifteen (15) days after written notice from the Lender to Borrower of Borrower's obligation to either pay the Curative Amount or to pledge the Additional Collateral, and provided that Borrower has not instead paid the Curative Amount required at that time pursuant to Section 5.20(d) above, Borrower shall execute and deliver to the Lender all pledge and security agreements, financing statements and other instruments, certificates and agreements as the Lender shall reasonably require, and shall deliver to the Lender the Additional Collateral or such instruments, certificates, acknowledgments, stock powers, authorizations, powers of attorney, consents and any and all other documentation, as executed by all appropriate parties as may be necessary to effectuate the collateral pledge and assignment of such collateral to the Lender, as the Lender and its counsel shall reasonably deem necessary or appropriate. If, after the Borrower's provision of Additional Collateral, the Debt Coverage Ratio should improve so as to be 1.35:1.0 or more for any Calendar Period (without taking into account the Additional Collateral), then Borrower shall be entitled to a release of the Additional Collateral. Borrower shall thereafter be required to either pay to Lender the Curative Amount or repledge Additional Collateral to the extent the required Debt Coverage Ratio should fail to be met during any subsequent Calendar Period and shall likewise be entitled to a re-release of any such subsequently pledged Additional Collateral consistent with the immediately preceding sentence.

5.21 Mechanic's Liens. Borrower shall not install nor otherwise incorporate in the Improvements any materials, equipment or fixtures under any conditional sales agreements or security agreement whereby the right is reserved or accrued to anyone to remove or repossess any such items. Borrower shall not cause or permit any lien or claim for lien for any labor or material to be filed or to become valid or effective against the Mortgaged Property; provided, however, that the existence of any unperfected and unrecorded mechanic's lien shall not constitute a violation of this Section if payment is not yet due for the work giving rise to the lien. In the event a lien is filed against the Mortgaged Property, Borrower shall, upon the request of Lender, obtain an indemnity bond for such lien complying with the requirements of Tex. Property Code §§ 53.171 et. seq., and shall provide such bond to Lender within twenty (20) days of Lender's request unless Borrower otherwise causes such lien to be released prior to the expiration of such twenty (20) day period.

5.22 Intentionally Omitted.

5.23 Transfer of Ownership Interests. Except as otherwise expressly permitted by this Loan Agreement, Borrower shall not convey, transfer or assign any interest in the Mortgaged Property, or permit a change in the ownership interests in the Borrower (whether direct or indirect) or other Disposition, unless the written consent of the Lender is first obtained, which consent may be granted or refused in Lender's sole discretion.

5.24 Assignment of Licenses and Permits. Borrower shall not assign or transfer any of its interest in any licenses and permits pertaining to the Project, or assign, transfer, or remove or permit any other person to assign, transfer, or remove any records pertaining to the Mortgaged Property without Lender's prior written consent, which consent may be granted or refused in Lender's sole discretion.

5.25 Management Agreement. No later than the first rent commencement date under a Tenant Lease, Borrower shall maintain the Management Agreement in full force and effect and timely perform all of Borrower's obligations thereunder and enforce performance of all obligations of the Manager thereunder and not permit the termination, amendment or assignment of the Management Agreement unless the prior written consent of Lender is first obtained, which consent may be in the sole and absolute discretion of Lender. No later than the first rent commencement date under a Tenant Lease, Borrower will enter and cause the Manager to enter into a subordination agreement in form and substance acceptable to Lender, subordinating the Management Agreement to the lien of the Deed of Trust. Borrower will not change the Manager or enter into any other management agreement without Lender's prior written consent, which may be in the sole and absolute discretion of Lender.

5.26 Single Purpose Entity. Borrower (i) shall exist solely for the purpose of owning the Project, (ii) will conduct business only in its own name, (iii) will not engage in any business or have any assets unrelated to the Property, (iv) does not have and will not incur any indebtedness other than the Loan and trade payables incurred in the ordinary course of business and which are paid prior to the delinquency date thereof, (v) will have its own separate books, records, and accounts (with no commingling of assets), (vi) will hold itself out as being an entity separate and apart from any other entity, and (vii) will observe corporate formalities independent of any other entity.

5.27 Existing Pipelines. The Environmental Report discloses that there are two pipelines on the Mortgaged Property owned by Kinder Morgan and Conoco Phillips which have been used to transport crude oil and more recently, natural gas. In the event that during development and construction of the Improvements on the Land any evidence of release of petroleum or hydrocarbons on the Land is discovered or encountered in the soil, Borrower shall (i) promptly notify Lender of such discovery, (ii) conduct any further testing of the Mortgaged Property necessary to identify the nature and extent of contamination of the Mortgaged Property by such Hazardous Substances and (iii) promptly commence and pursue without delay such corrective action as is necessary under Applicable Environmental Laws to remove and dispose of such Hazardous Substances from the Mortgaged Property in accordance with all Applicable Environmental Laws.

ARTICLE VI

ASSIGNMENTS

6.1 Assignment of Construction Contract. As additional security for the payment of the Loan, Borrower hereby collaterally transfers and assigns to Lender all of Borrower's rights and interest, but not its obligations, in, under and to each Construction Contract upon the following terms and conditions:

(a) Borrower represents and warrants that the copy of each Construction Contract the Borrower has furnished or will furnish to Lender is or will be (as applicable) a true and complete copy thereof, including all amendments thereto, if any, and that Borrower's interest therein is not subject to any claim, setoff or encumbrance.

(b) Neither this assignment nor any action by Lender shall constitute an assumption by Lender of any obligations under any Construction Contract, and Borrower shall continue to be liable for all obligations of Borrower thereunder, Borrower hereby agreeing to perform all of its obligations under each Construction Contract. **BORROWER AGREES TO INDEMNIFY AND HOLD LENDER HARMLESS AGAINST AND FROM ANY LOSS, COST, LIABILITY OR EXPENSE (INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES) RESULTING FROM ANY FAILURE OF BORROWER TO SO PERFORM.**

(c) Following any required notice and opportunity to cure, Lender shall have the right at any time thereafter (but shall have no obligation) to take in its name or in the name of Borrower such action as Lender may at any time determine to be necessary or advisable to cure any default under any Construction Contract or to protect the rights of Borrower or Lender thereunder. **LENDER SHALL INCUR NO LIABILITY IF ANY ACTION SO TAKEN BY IT OR IN ITS BEHALF SHALL PROVE TO BE INADEQUATE OR INVALID, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF LENDER, AND BORROWER AGREES TO INDEMNIFY AND HOLD LENDER HARMLESS AGAINST AND FROM ANY LOSS, COST, LIABILITY OR EXPENSE (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES) INCURRED IN CONNECTION WITH ANY SUCH ACTION. THIS INDEMNITY INCLUDES ANY LIABILITY ASSERTED AGAINST LENDER ON ACCOUNT OF LENDER'S NEGLIGENCE OR ALLEGED NEGLIGENCE, BUT NOT ANY LIABILITY ARISING FROM LENDER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.**

(d) Borrower hereby irrevocably constitutes and appoints Lender as Borrower's attorney-in-fact effective upon the occurrence of an Event of Default, in Borrower's or Lender's name, to enforce all rights of Borrower under each Construction Contract. Such appointment is coupled with an interest and is therefore irrevocable.

(e) Prior to the occurrence of an Event of Default, Borrower shall have the right to exercise its rights as owner under each Construction Contract, provided that Borrower shall not cancel or amend any Construction Contract or do or suffer to be done any act which would impair the security constituted by this assignment without the prior written consent of Lender.

(f) This assignment shall inure to the benefit of Lender and its successors and assigns, any purchaser upon foreclosure of the Deed of Trust, any receiver in possession of the Mortgaged Property and any corporation affiliated with Lender which assumes Lender's rights and obligations under this Agreement.

6.2 Assignment of Plans and Specifications. As additional security for the Loan, Borrower hereby collaterally transfers and assigns to Lender all of Borrower's right, title and interest in and to the Plans and Specifications and hereby represents and warrants to and agrees with Lender as follows:

(a) Each schedule of the Plans and Specifications for the Improvements delivered or to

be delivered to Lender is and shall be a complete and accurate description of such Plans and Specifications.

(b) The Plans and Specifications for the Improvements are and shall be complete and adequate for the construction of the Improvements and there have been no modifications thereof except as described in such schedule. The Plans and Specifications shall not be modified without the prior consent of Lender.

(c) Lender may use the Plans and Specifications for the Improvements for any purpose relating to the Improvements, including but not limited to inspections of construction and the completion of the Improvements.

(d) Lender's acceptance of this assignment shall not constitute approval of the Plans and Specifications by Lender. Lender has no liability or obligation in connection with the Plans and Specifications and no responsibility for the adequacy thereof or for the construction of the Improvements contemplated by the Plans and Specifications for the Improvements. Lender has no duty to inspect the Improvements, and if Lender should inspect the Improvements, Lender shall have no liability or obligation to Borrower or any other party arising out of such inspection. No such inspection nor any failure by Lender to make objections after any such inspection shall constitute a representation by Lender that the Improvements are in accordance with the Plans and Specifications or any other requirement or constitute a waiver of Lender's right thereafter to insist that the Improvements be constructed in accordance with the Plans and Specifications or any other requirement.

(e) This assignment shall inure to the benefit of Lender and its successors and assigns, any purchaser upon foreclosure of the Deed of Trust, any receiver in possession of the Mortgaged Property and any corporation affiliated with Lender which assumes Lender's rights and obligations under this Agreement.

6.3 Assignment of Design Services Contract. As additional security for the payment of the Loan, Borrower hereby collaterally transfers and assigns to Lender all of Borrower's rights and interest, but not its obligations, in, under and to each Design Services Contract upon the following terms and conditions:

(a) Borrower represents and warrants that the copy of each Design Services Contract the Borrower has furnished or will furnish to Lender is or will be (as applicable) a true and complete copy thereof, including all amendments thereto, if any, and that Borrower's interest therein is not subject to any claim, setoff or encumbrance.

(b) Neither this assignment nor any action by Lender shall constitute an assumption by Lender of any obligations under any Design Services Contract, and Borrower shall continue to be liable for all obligations of Borrower thereunder, Borrower hereby agreeing to perform all of its obligations under each Design Services Contract. **BORROWER AGREES TO INDEMNIFY AND HOLD LENDER HARMLESS AGAINST AND FROM ANY LOSS, COST, LIABILITY OR EXPENSE (INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES) RESULTING FROM ANY FAILURE OF BORROWER TO SO PERFORM.**

(c) Following any required notice and opportunity to cure, Lender shall have the right at any time thereafter (but shall have no obligation) to take in its name or in the name of Borrower such action as Lender may at any time determine to be necessary or advisable to cure any default under

any Design Services Contract or to protect the rights of Borrower or Lender thereunder. **LENDER SHALL INCUR NO LIABILITY IF ANY ACTION SO TAKEN BY IT OR IN ITS BEHALF SHALL PROVE TO BE INADEQUATE OR INVALID, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF LENDER, AND BORROWER AGREES TO INDEMNIFY AND HOLD LENDER HARMLESS AGAINST AND FROM ANY LOSS, COST, LIABILITY OR EXPENSE (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES) INCURRED IN CONNECTION WITH ANY SUCH ACTION. THIS INDEMNITY INCLUDES ANY LIABILITY ASSERTED AGAINST LENDER ON ACCOUNT OF LENDER'S NEGLIGENCE OR ALLEGED NEGLIGENCE, BUT NOT ANY LIABILITY ARISING FROM LENDER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.**

(d) Borrower hereby irrevocably constitutes and appoints Lender as Borrower's attorney-in-fact effective upon the occurrence of an Event of Default, in Borrower's or Lender's name, to enforce all rights of Borrower under each Design Services Contract. Such appointment is coupled with an interest and is therefore irrevocable.

(e) Prior to the occurrence of an Event of Default, Borrower shall have the right to exercise its rights as owner under each Design Services Contract, provided that Borrower shall not cancel or amend any Design Services Contract or do or suffer to be done any act which would impair the security constituted by this assignment without the prior written consent of Lender.

(f) This assignment shall inure to the benefit of Lender and its successors and assigns, any purchaser upon foreclosure of the Deed of Trust, any receiver in possession of the Mortgaged Property and any corporation affiliated with Lender which assumes Lender's rights and obligations under this Agreement.

6.4 Assignment of Proceeds. Borrower hereby further collaterally transfers and assigns to Lender and acknowledges that Lender shall be entitled to receive (i) any and all sums which may be awarded and become payable to Borrower for condemnation of all or any portion of the Mortgaged Property, or (ii) the proceeds of any and all insurance upon the Mortgaged Property (other than the proceeds of general public liability insurance).

(a) Borrower shall, upon request of Lender, make, execute, acknowledge and deliver any and all additional assignments and documents as may be necessary from time to time to enable Lender to collect and receipt for any of such insurance or condemnation proceeds.

(b) Lender shall not be, under any circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any of such sums.

(c) Any sums so received by Lender pursuant to this Section 6.4 may, in Lender's sole discretion, be provided back to Borrower for restoration of the Mortgaged Property, in the amounts, manner, method and pursuant to such requirements in documents as Lender may require, or shall be applied to the liquidation of the Indebtedness in accordance with the provisions of Section 6.4 of the Deed of Trust; provided, however, if Lender determines that the Mortgaged Property can be restored prior to the maturity date of the Note, and no Event of Default exists, then Lender will apply the proceeds to the restoration of the Mortgaged Property.

ARTICLE VII

EVENTS OF DEFAULT

7.1 Events of Default. Each of the following shall constitute an “**Event of Default**” hereunder:

(a) If Borrower shall fail, refuse, or neglect to pay, in full, any installment or portion of the Indebtedness as and when the same shall become due and payable, whether at the due date thereof stipulated in the Loan Documents, upon acceleration or otherwise and such default shall continue for a period of five (5) calendar days beyond any due date (provided, however, any default in making the payment due on the Maturity Date shall be an immediate Event of Default without any grace period).

(b) If Borrower shall fail, refuse or neglect, or cause others to fail, refuse, or neglect to comply with, perform and discharge fully and timely any of the Obligations as and when called for, and such failure shall continue for a period of fifteen (15) days after receipt of written notice from Lender; provided, however, Borrower shall have the right to attempt to cure said default for up to an additional forty-five (45) days if Borrower is diligently prosecuting a cure of said default.

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

(d) If Borrower shall default or commit an event of default under and pursuant to any other mortgage or security agreement which covers or affects any part of the Mortgaged Property which is not cured within any notice or grace period.

(e) If Borrower (i) shall execute an assignment for the benefit of creditors or an admission in writing by Borrower of Borrower's inability to pay, or Borrower's failure to pay, debts generally as the debts become due; or (ii) shall allow the levy against the Mortgaged Property or any part thereof, of any execution, attachment, sequestration or other writ which is not vacated within sixty days after the levy; or (iii) shall allow the appointment of a receiver, trustee or custodian of Borrower or of the Mortgaged Property or any part thereof, which receiver, trustee or custodian is not discharged within sixty (60) days after the appointment; or (iv) files as a debtor a petition, case, proceeding or other action pursuant to, or voluntarily seeks of the benefit or benefits of any Debtor Relief Law (as defined in the Deed of Trust), or takes any action in furtherance thereof; or (v) files either a petition, complaint, answer or other instrument which seeks to effect a suspension of, or which has the effect of suspending any of the rights or powers of Lender or the trustee under the Deed of Trust granted in the Note, herein or in any Loan Document; or (vi) allows the filing of a petition, case, proceeding or other action against Borrower as a debtor under any Debtor Relief Law or seeks appointment of a receiver, trustee, custodian or liquidator of Borrower or of the Mortgaged Property, or any part thereof, or of any significant portion of Borrower's other property and (a) Borrower admits, acquiesces in or fails to contest diligently the material allegations thereof, or (b) the petition, case, proceeding or other action results in the entry of an order for relief or order granting the relief sought against Borrower, or (c) the petition, case, proceeding or other action is not permanently dismissed or discharged on or before the earlier of trial thereon or sixty (60) days next following the date of filing.

(f) If Borrower, any Constituent Party (as defined in the Deed of Trust), or any Guarantor, shall die, dissolve, terminate or liquidate, or merge with or be consolidated into any other entity, or

become permanently disabled.

(g) If Borrower creates, places, or permits to be created or placed, or through any act or failure to act, acquiesces in the placing of, or allows to remain, any Subordinate Mortgage, regardless of whether such Subordinate Mortgage is expressly subordinate to the liens or security interests of the Loan Documents, with respect to the Mortgaged Property, other than the Permitted Exceptions and subject to the right of Borrower to cure or bond over a mechanic's or materialmen's lien in accordance with this Agreement.

(h) If Borrower makes a Disposition, without the prior written consent of Lender.

(i) If any condemnation proceeding is instituted or threatened which would, in Lender's sole judgment, materially impair the use and enjoyment of the Mortgaged Property for its intended purposes.

(j) If the Mortgaged Property is demolished, destroyed, or substantially damaged so that, in Lender's judgment, it cannot be restored or rebuilt with available funds to the condition existing immediately prior to such demolition, destruction, or damage within a reasonable period of time.

(k) If Lender reasonably determines that any event shall have occurred that could be expected to have a Material Adverse Effect.

(l) If Borrower abandons all or any portion of the Mortgaged Property.

(m) The occurrence of any event referred to in Sections 7.1(e) and (f) hereof with respect to any Guarantor, Constituent Party or other person or entity obligated in any manner to pay or perform the Indebtedness or Obligations, respectively, or any part thereof (as if such Guarantor, Constituent Party or other person or entity were the "Borrower" in such Sections).

(n) An Event of Default, as defined in any of the Loan Documents, occurs.

(o) If the construction of the Improvements are, at any time, (i) discontinued due to acts or matters within Borrower's control for a period of ten (10) or more consecutive days, (ii) not carried on with reasonable dispatch, or (iii) not completed by the Completion Date; subject, however, to Force Majeure (hereinafter defined). "**Force Majeure**" shall be deemed to mean that Borrower is delayed or hindered in or prevented from the performance of any act required hereunder, not the failure of Borrower, by reason of (i) inability to procure materials or reasonable substitutes thereof, (ii) failure of power, (iii) civil commotion, riots, insurrection or war, (iv) unavoidable fire or other casualty, or acts of God (v) strikes, lockouts or other labor disputes (not by Borrower's employees), (vi) restrictive governmental law or regulation, (vii) delay by Lender of any act required of it hereunder, or (viii) any other causes of a like nature to the above listed (i) through (vii). Financial inability on the part of Borrower shall not be construed a Force Majeure hereunder. Borrower agrees to use its best efforts to resume the construction of the Improvements as soon as practicable after the cause of such delay has been removed or cancelled.

(p) If Borrower is unable to satisfy any condition of Borrower's right to receive Advances hereunder for a period in excess of thirty (30) days after Lender's refusal to make any further Advances.

(q) If Borrower executes any conditional bill of sale, chattel mortgage or other security

instrument covering any materials, fixtures or articles intended to be incorporated in the Improvements or the appurtenances thereto, or covering articles of personal property placed in the Improvements, or files a financing statement publishing notice of such security instrument, or if any of such materials, fixtures or articles are not purchased in such a manner that the ownership thereof vests unconditionally in Borrower, free from encumbrances, on delivery at the Improvements, or if Borrower does not produce to Lender upon reasonable demand the contracts, bills of sale, statements, receipted vouchers or agreements, or any of them, under which Borrower claims title to such materials, fixtures and articles.

(r) If any levy, attachment or garnishment is issued, or if any lien for the performance of work or the supply of materials is filed, against any part of the Mortgaged Property and remains unsatisfied or unbonded following the earlier of (i) twenty (20) days after the date of filing thereof or (ii) the requesting by Borrower of an Advance.

(s) Any default by Borrower occurs under any Major Lease and continues beyond any applicable grace or cure period.

(t) The Management Agreement shall be terminated without the prior written approval of Lender.

(u) Borrower fails to make a Borrower's Deposit upon the written request of Lender within the time period required under this Agreement.

(v) If (i) any representation or warranty made by Guarantor in the Guaranty or any of the other Loan Documents is false or misleading in any material respect, (ii) Guarantor breaches any covenant of Guarantor set forth in the Guaranty which is not cured within fifteen (15) days after written notice from Lender or (iii) Guarantor breaches any of the negative covenants or financial covenants applicable to Guarantor set forth in Sections 5 and 6 of the Guaranty.

(w) Any event of default occurs under any of the Stratus Loan Documents (after expiration of any applicable grace or cure period).

7.2 Remedies. Lender shall have the right, upon the happening of an Event of Default, in addition to any rights or remedies available to it under all other Loan Documents, to enter into possession of the Mortgaged Property and perform any and all work and labor necessary to complete the Improvements in accordance with the Plans and Specifications. All amounts so expended by Lender shall be deemed to have been disbursed to Borrower as Loan proceeds and secured by the Deed of Trust. For this purpose, Borrower hereby constitutes and appoints (which appointment is coupled with an interest and is therefore irrevocable) Lender as Borrower's true and lawful attorney-in-fact, with full power of substitution to complete the Improvements in the name of Borrower, and hereby empowers Lender, acting as Borrower's attorney-in-fact, as follows: to use any funds of Borrower, including any balance which may be held in escrow, any Borrower's Deposit and any funds which may remain unadvanced hereunder, for the purpose of completing the Improvements in the manner called for by the Plans and Specifications; to make such additions and changes and corrections in the Plans and Specifications which shall be necessary or desirable to complete the Improvements in the manner contemplated by the Plans and Specifications; to continue all or any existing construction contracts or subcontracts; to employ such contractors, subcontractors, agents, design professionals and inspectors as shall be required for said purposes; to pay, settle or compromise all existing bills and claims which are or may be liens against the Mortgaged Property, or may be necessary or desirable for the completion of the work or the clearing of title; to execute all the applications and certificates in the

name of Borrower which may be required by any construction contract; and to do any and every act with respect to the construction of the Improvements which Borrower could do in Borrower's own behalf. Lender, acting as Borrower's attorney-in-fact, shall also have power to prosecute and defend all actions or proceedings in connection with the Mortgaged Property and to take such action and require such performance as is deemed necessary.

ARTICLE VIII
LENDER'S DISCLAIMERS - BORROWER'S INDEMNITIES

8.1 No Obligation by Lender to Construct. Lender has no liability or obligation whatsoever or howsoever in connection with the Mortgaged Property or the development, construction or completion thereof or work performed thereon, and has no obligation except to disburse the Loan proceeds as herein agreed, Lender is not obligated to inspect the Improvements nor is Lender liable, and under no circumstances whatsoever shall Lender be or become liable, for the performance or default of any contractor or subcontractor, or for any failure to construct, complete, protect or insure the Mortgaged Property, or any part thereof, or for the payment of any cost or expense incurred in connection therewith, or for the performance or nonperformance of any obligation of Borrower or Guarantor to Lender nor to any other person, firm or entity without limitation. Nothing, including without limitation, any disbursement of Loan proceeds or the Borrower's Deposit nor acceptance of any document or instrument, shall be construed as such a representation or warranty, express or implied, on Lender's part.

8.2 No Obligation by Lender to Operate. Any term or condition of any of the Loan Documents to the contrary notwithstanding, Lender shall not have, and by its execution and acceptance of this Agreement hereby expressly disclaims, any obligation or responsibility for the management, conduct or operation of the business and affairs of Borrower or Guarantor. Any term or condition of the Loan Documents which permits Lender to disburse funds, whether from the proceeds of the Loan, the Borrower's Deposit or otherwise, or to take or refrain from taking any action with respect to Borrower, Guarantor, the Mortgaged Property or any other collateral for repayment of the Loan, shall be deemed to be solely to permit Lender to audit and review the management, operation and conduct of the business and affairs of Borrower and Guarantor, and to maintain and preserve the security given by Borrower to Lender for the Loan, and may not be relied upon by any other person. Further, Lender shall not have, has not assumed and by its execution and acceptance of this Agreement hereby expressly disclaims any liability or responsibility for the payment or performance of any indebtedness or obligation of Borrower or Guarantor and no term or condition of the Loan Documents, shall be construed otherwise. Borrower hereby expressly acknowledges that no term or condition of the Loan Documents shall be construed so as to deem the relationship between Borrower, Guarantor and Lender to be other than that of borrower, guarantor and lender, and Borrower shall at all times represent that the relationship between Borrower, Guarantor and Lender is solely that of borrower, guarantor and lender. **BORROWER HEREBY INDEMNIFIES AND AGREES TO HOLD LENDER HARMLESS FROM AND AGAINST ANY COST, EXPENSE OR LIABILITY INCURRED OR SUFFERED BY LENDER AS A RESULT OF ANY ASSERTION OR CLAIM OF ANY OBLIGATION OR RESPONSIBILITY OF LENDER FOR THE MANAGEMENT, OPERATION AND CONDUCT OF THE BUSINESS AND AFFAIRS OF BORROWER OR GUARANTOR, OR AS A RESULT OF ANY ASSERTION OR CLAIM OF ANY LIABILITY OR RESPONSIBILITY OF LENDER FOR THE PAYMENT OR PERFORMANCE OF ANY INDEBTEDNESS OR OBLIGATION OF BORROWER OR GUARANTOR, INCLUDING WITHOUT LIMITATION ANY COST, EXPENSE OR LIABILITY RESULTING FROM ANY CLAIMS OF NEGLIGENCE OR ALLEGED NEGLIGENCE BY LENDER, BUT NOT ANY COST, EXPENSE OR LIABILITY ARISING FROM LENDER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.**

8.3 **INDEMNITY BY BORROWER.** BORROWER HEREBY INDEMNIFIES LENDER AND EACH AFFILIATE THEREOF AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS FROM, AND HOLDS EACH OF THEM HARMLESS AGAINST, ANY AND ALL LOSSES, LIABILITIES, CLAIMS, DAMAGES, COSTS, AND EXPENSES TO WHICH ANY OF THEM MAY BECOME SUBJECT, INsofar AS SUCH LOSSES, LIABILITIES, CLAIMS, DAMAGES, COSTS, AND EXPENSES ARISE FROM OR RELATE TO ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREBY OR FROM ANY INVESTIGATION, LITIGATION, OR OTHER PROCEEDING, INCLUDING, WITHOUT LIMITATION, ANY THREATENED INVESTIGATION, LITIGATION, OR OTHER PROCEEDING RELATING TO ANY OF THE FOREGOING, INCLUDING WITHOUT LIMITATION, ANY LOSSES, LIABILITIES, CLAIMS, DAMAGES, COSTS, AND EXPENSES RESULTING FROM ANY CLAIMS OF NEGLIGENCE OR ALLEGED NEGLIGENCE BY LENDER, BUT NOT ANY LOSSES, LIABILITIES, CLAIMS, DAMAGES, COSTS, AND EXPENSES ARISING FROM LENDER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. Without intending to limit the remedies available to Lender with respect to the enforcement of its indemnification rights as stated herein or as stated in any Loan Document, in the event any claim or demand is made or any other fact comes to the attention of Lender in connection with, relating or pertaining to, or arising out of the transactions contemplated by this Agreement, which Lender reasonably believes might involve or lead to some liability of Lender, Borrower shall, immediately upon receipt of written notification of any such claim or demand, assume in full the personal responsibility for and the defense of any such claim or demand and pay in connection therewith any loss, damage, deficiency, liability or obligation, including, without limitation, legal fees and court costs incurred in connection therewith. In the event of court action in connection with any such claim or demand, Borrower shall assume in full the responsibility for the defense of any such action and shall immediately satisfy and discharge any final decree or judgment rendered therein. Lender may, in its sole discretion, make any payments sustained or incurred by reason of any of the foregoing; and Borrower shall immediately repay to Lender, in cash and not with proceeds of the Loan, the amount of such payment, with interest thereon at the Default Rate (as defined in the Note) from the date of such payment. Lender shall have the right to join Borrower as a party defendant in any legal action brought against Lender, and Borrower hereby consents to the entry of an order making Borrower a party defendant to any such action.

8.4 **No Agency.** Nothing herein shall be construed as making or constituting Lender as the agent of Borrower in making payments pursuant to any construction contracts or subcontracts entered into by Borrower for construction of the Improvements or otherwise. The purpose of all requirements of Lender hereunder is solely to allow Lender to check and require documentation (including, but not limited to, lien waivers) sufficient to protect Lender and the Loan contemplated hereby. Borrower shall have no right to rely on any procedures required by Lender, Borrower hereby acknowledging that Borrower has sole responsibility for constructing the Improvements and paying for work done in accordance therewith and that Borrower has solely, on Borrower's own behalf, selected or approved each contractor, each subcontractor and each materialman, Lender having no responsibility for any such persons or entities or for the quality of their materials or workmanship.

ARTICLE IX
MISCELLANEOUS

9.1 **Successors and Assigns.** This Agreement shall be binding upon, and shall inure to the benefit of, Borrower and Lender, and their respective heirs, legal representatives, successors and assigns; provided, however, that Borrower may not assign any rights or obligations under this Agreement without the prior written consent of Lender.

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

9.3 Survival. The provisions hereof shall survive the execution of all instruments herein mentioned, shall continue in full force and effect until the Loan has been paid in full and shall not be affected by any investigation made by any party.

9.4 **APPLICABLE LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. COURTS WITHIN THE STATE OF TEXAS SHALL HAVE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN BORROWER AND LENDER, WHETHER IN LAW OR EQUITY, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL DISPUTES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT; AND VENUE IN ANY SUCH DISPUTE WHETHER IN FEDERAL OR STATE COURT SHALL BE LAID IN DALLAS COUNTY, TEXAS.**

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

9.6 Reliance by Lender. Lender is relying and is entitled to rely upon each and all of the provisions of this Agreement; and accordingly, if any provision or provisions of this Agreement should be held to be invalid or ineffective, then all other provisions hereof shall continue in full force and effect notwithstanding.

9.7 Participations. Lender shall have the right at any time and from time to time to grant participations in the Loan and Loan Documents or sell or assign its interest in the Loan and the Loan Documents to a third party. Each participant or assignee of Lender shall be entitled to receive all information received by Lender regarding the creditworthiness of Borrower, any of its principals and the Guarantor, including (without limitation) information required to be disclosed to a participant pursuant to Banking Circular 181 (Rev., August 2, 1984), issued by the Comptroller of the Currency (whether the participant is subject to the circular or not).

9.8 Maximum Interest. It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply strictly with the applicable Texas law governing the maximum rate or amount of interest payable on the Indebtedness (as defined in the Deed of Trust) (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law). If the applicable law is ever judicially interpreted so as to render usurious any amount (i) contracted for, charged, taken, reserved or received pursuant to the Note, any of the other

Loan Documents or any other communication or writing by or between Borrower and Lender related to any of the Indebtedness, (ii) contracted for, charged or received by reason of Lender's exercise of the option to accelerate the maturity of the Note and/or any other portion of the Indebtedness, or (iii) Borrower will have paid or Lender will have received by reason of any voluntary prepayment by Borrower of the Note and/or any of the other Indebtedness, then it is Borrower's and Lender's express intent that all amounts charged in excess of the Maximum Lawful Rate (as defined in the Deed of Trust) shall be automatically canceled, *ab initio*, and all amounts in excess of the Maximum Lawful Rate theretofore collected by Lender shall be credited on the principal balance of the Note and/or any of the other Indebtedness (or, if the Note and all other Indebtedness have been or would thereby be paid in full, refunded to Borrower), and the provisions of the Note and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder; provided, however, if the Note has been paid in full before the end of the stated term of the Note, then Borrower and Lender agree that Lender shall, with reasonable promptness after Lender discovers or is advised by Borrower that interest was received in an amount in excess of the Maximum Lawful Rate, either refund such excess interest to Borrower and/or credit such excess interest against any other Indebtedness then owing by Borrower to Lender. Borrower hereby agrees that as a condition precedent to any claim seeking usury penalties against Lender, Borrower will provide written notice to Lender, advising Lender in reasonable detail of the nature and amount of the violation, and Lender shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to Borrower or crediting such excess interest against the Note and/or other Indebtedness then owing by Borrower to Lender. All sums contracted for, charged or received by Lender for the use, forbearance or detention of any of the Indebtedness, including any portion of the debt evidenced by the Note shall, to the extent permitted by applicable law, be amortized or spread, using the actuarial method, throughout the stated term of the Note and/or other Indebtedness (including any and all renewal and extension periods) until payment in full so that the rate or amount of interest on account of the Note and/or other Indebtedness does not exceed the Maximum Lawful Rate from time to time in effect and applicable to the Note and/or the other Indebtedness for so long as any Indebtedness is outstanding. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to the Note and/or any of the other Indebtedness. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

9.9 Controlling Document. In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of any other Loan Document, the terms and conditions of this Agreement shall control.

9.10 Construction of Agreement. All pronouns, whether in masculine, feminine or neuter form, shall be deemed to refer to the object of such pronoun whether same is masculine, feminine or neuter in gender, as the context may suggest or require. All terms used herein, whether or not defined in Section 1.1 hereof, and whether used in singular or plural form, shall be deemed to refer to the object of such term, whether such is singular or plural in nature, as the context may suggest or require.

9.11 Counterpart Execution. To facilitate execution, this Agreement may be executed in one or more counterparts as may be convenient or required, with all such counterparts collectively constituting a single instrument.

9.12 **JURISDICTION. BORROWER HEREBY IRREVOCABLY SUBMITS TO THE**

NON-EXCLUSIVE JURISDICTION OF ANY TEXAS OR FEDERAL COURT SITTING IN DALLAS, TEXAS (OR ANY COUNTY IN TEXAS WHERE ANY PORTION OF THE MORTGAGED PROPERTY IS LOCATED) OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY OF THE LOAN DOCUMENTS, AND BORROWER HEREBY AGREES AND CONSENTS THAT, IN ADDITION TO ANY METHODS OF SERVICE OF PROCESS PROVIDED FOR UNDER APPLICABLE LAW, ALL SERVICE OF PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY TEXAS OR FEDERAL COURT SITTING IN DALLAS, TEXAS (OR SUCH OTHER COUNTY IN TEXAS) MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO BORROWER AT THE ADDRESS INDICATED BELOW, AND SERVICE SO MADE SHALL BE COMPLETE FIVE DAYS AFTER THE SAME SHALL HAVE BEEN SO MAILED.

9.13 **WAIVER OF JURY TRIAL.** BORROWER AND LENDER, BY ACCEPTANCE OF THIS AGREEMENT, ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS AGREEMENT OR THE INDEBTEDNESS.

9.14 **USA PATRIOT ACT NOTIFICATION.** The following notification is provided to Borrower pursuant to Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318:

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person or entity that opens an account, including any deposit account, treasury management account, loan, other extension of credit, or other financial services product. What this means for Borrower: When Borrower opens an account, if Borrower is an individual, Lender will ask for Borrower's name, taxpayer identification number, residential address, date of birth and other information that will allow Lender to identify Borrower, and, if Borrower is not an individual, Lender will ask for Borrower's name, tax identification number, business address, and other information that will allow Lender to identify Borrower. Lender may also ask, if Borrower is an individual, to see Borrower's driver's license or other identifying documents, and, if Borrower is not an individual, to see Borrower's legal organizational documents or other identifying documents.

9.15 **NOTICE OF INDEMNIFICATION. BORROWER ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT CONTAINS CERTAIN INDEMNIFICATION PROVISIONS PURSUANT TO SECTIONS 5.9, 6.1, 6.3, 8.2 AND 8.3 HEREOF WHICH MAY, IN CERTAIN INSTANCES, INCLUDE INDEMNIFICATION BY BORROWER OR OTHERS AGAINST LENDER'S OWN NEGLIGENCE, BUT SAID INDEMNIFICATION DOES NOT INCLUDE INDEMNIFICATION FOR LENDER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.**

9.16 **ENTIRE AGREEMENT.** THIS LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR

SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. THIS INSTRUMENT MAY BE AMENDED ONLY BY AN INSTRUMENT IN WRITING EXECUTED BY THE PARTIES HERETO. IN ACCORDANCE WITH SECTION 26.02 OF THE TEXAS BUSINESS AND COMMERCE CODE, THE PARTIES ACKNOWLEDGE THAT THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

The remainder of this page is blank. The signature page follows.

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

LENDER:

COMERICA BANK

By: /s/ Sterling J. Silver, Senior Vice President
Sterling J. Silver, Senior Vice President

BORROWER:

TRACT 107, L.L.C.,
a Texas limited liability company

By: Circle C GP, L.L.C., a Delaware limited liability company, its Manager

By: Stratus Properties Inc., a Delaware corporation, Sole Member and Manager

By: /s/ Erin D Pickens, Senior Vice President
Erin D. Pickens, Senior Vice President

List of Attachments:

Exhibit A - Land Description

Exhibit A -1 - Site Plan

Exhibit B - Budget

Exhibit C - Intentionally Omitted

Exhibit D - Affidavit of Completion

Exhibit E - Subordination, Non-Disturbance and Attornment Agreement

EXHIBIT A, Land Description - Solo Page

EXHIBIT A

Land Description

Lot 1, Parkway Village, a subdivision in Travis County, Texas, according to the map or plat thereof recorded under Document No. 200900073 of the Official Public Records of Travis County, Texas.

EXHIBIT A-1

Site Plan

EXHIBIT B

Budget

EXHIBIT C

Intentionally Omitted

EXHIBIT D

Affidavit of Completion

BEFORE ME, the undersigned authority, on this day personally appeared _____ (“**Affiant**”), the _____ of **Tract 107, L.L.C.**, a Texas limited liability company (“**Owner**”), known to me to be the person whose name is subscribed below, and who, being by me first duly sworn, did his oath state as follows:

1. **Owner.** The name and address of Owner are:
Tract 107, L.L.C.
c/o Stratus Properties Inc.
212 Lavaca Boulevard, Suite 300
Austin, Texas 78701

2. **Contractor.** The name and address of the original contractor (“**Contractor**”) are:

3. **Improvements.** Certain improvements (“**Improvements**”) were furnished under an original contract (“**Contract**”) between Owner and Contractor, which Improvements are generally described as follows:

4. **Real Property.** Owner is the owner of the real property (“**Real Property**”) situated in Travis County, Texas, on which the Improvements were constructed and are located, which Real Property is more particularly described as follows:
See Exhibit A attached hereto and incorporated herein by reference for all purposes.

5. **Completion.** The Improvements under the Contract between Owner and Contractor have been completed within the meaning of Texas Property Code §53.106(e), and the date of such completion was _____, 201__ (“**Date of Completion**”).

6. **Affiant.** The Affiant is an authorized representative of Owner and has been duly authorized to execute this Affidavit of Completion and cause it to be recorded with the County Clerk of the county in which the Real Property is situated.

**NOTICE: A CLAIMANT MAY NOT HAVE A LIEN
ON RETAINED FUNDS UNLESS THE CLAIMANT FILES
THE AFFIDAVIT CLAIMING A LIEN NOT LATER THAN
THE 30TH DAY AFTER THE DATE OF COMPLETION.**

DATED as of the ____ day of _____, 200__.

AFFIANT:

Print Name: _____,
who is an authorized representative
of Owner

SUBSCRIBED AND SWORN BEFORE ME, on this the ____ day of _____, 200__.

[SEAL]

Notary Public, State of Texas

My Commission Expires:

Printed or Typed Name of Notary

EXHIBIT E

**FORM OF SUBORDINATION, NONDISTURBANCE AND
ATTORNMEN T AGREEMENT**

When recorded, return to:

Thompson & Knight LLP
1722 Routh Street, Suite 1500
Dallas, Texas 75201
Attn: Mark M. Sloan

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMEN T AGREEMENT (this “ **Agreement**”) made this ___ day of _____, 201___, by and among COMERICA BANK (“**Lender**”), _____, a _____ (“**Tenant**”) and TRACT 107, L.L.C., a Texas limited liability company (“**Landlord**”).

WITNESSETH:

WHEREAS, Lender is the owner and holder of a Deed of Trust, Security Agreement and Fixture Filing (the “**Security Instrument**”), dated _____, 2011, recorded as Document No. _____ of the Real Property Records of in Travis County, Texas, covering the real property described in Exhibit A and the buildings and improvements thereon (hereinafter collectively called the “**Property**”) securing the payment of a promissory note in the stated principal amount of \$13,664,456.00, payable to the order of Lender;

WHEREAS, Tenant is the tenant under Lease Agreement (the “**Lease**”) dated _____, by and between Landlord and Tenant, covering certain property (the “**Demised Premises**”) consisting of a part of the Property; and

WHEREAS, Tenant, Landlord and Lender desire to confirm their understanding with respect to the Lease and the Security Instrument;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Lender, Landlord and Tenant hereby agree and covenant as follows:

1. Subordination. The Lease now is, and shall at all times and for all purposes continue to be, subject and subordinate, in each and every respect, to the Security Instrument, with the provisions of the Security Instrument controlling in all respects over the provisions of the Lease, it being understood and agreed that the foregoing subordination shall apply to any and all increases, renewals, modifications, extensions, substitutions, replacements and/or consolidations of the Security Instrument, provided that any and all such increases, renewals, modifications, extensions, substitutions, replacements and/or consolidations shall nevertheless be subject to the terms of this Agreement.

2. Non-Disturbance. So long as (i) Tenant is not in default (beyond any period given Tenant to cure such default) in the payment of rent or additional rent or in the performance of any of the other terms, covenants or conditions of the Lease on Tenant's part to be performed, (ii) the Lease is in full force and effect, and (iii) Tenant attorns to Lender or a purchaser of the Property as provided in Paragraph 3, then (a) Tenant's possession, occupancy, use and quiet enjoyment of the Demised Premises under the Lease, or any extensions or renewals thereof or acquisition of additional space which may be effected in accordance with any option therefor in the Lease, shall not be terminated, disturbed, diminished or interfered with by Lender in the

exercise of any of its rights under the Security Instrument, and (b) Lender will not join Tenant as a party defendant in any action or proceeding for the purpose of terminating Tenant's interest and estate under the Lease because of any default under the Security Instrument.

3. Attornment. If Lender shall become the owner of the Property, or if the Property shall be sold by reason of non-judicial or judicial foreclosure or other proceedings brought to enforce the Security Instrument, or the Property shall be conveyed by deed in lieu of foreclosure (any of the foregoing are herein called a "**Foreclosure Transfer**"), the Lease shall continue in full force and effect as a direct lease between Lender or other purchaser of the Property (the "**Foreclosure Transferee**"), who shall succeed to the rights and duties of Landlord, and Tenant. in such event, Tenant shall attorn to the Foreclosure Transferee upon any such occurrence and shall recognize the Foreclosure Transferee as the Landlord under the Lease. such attornment shall be effective and self-operative without the execution of any further instrument on the part of any of the parties hereto. Tenant agrees, however, to execute and deliver at any time and from time to time, upon the request of the Foreclosure Transferee any instrument or certificate which, in the sole reasonable judgment of the requesting party, is necessary or appropriate, in connection with any such Foreclosure Transfer or otherwise, to evidence such attornment, which instrument or certificate shall be in form and content reasonably acceptable to Tenant. Tenant hereby waives the provisions of any statute or rule of law, now or hereafter in effect, which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect the Lease and the obligations of Tenant thereunder as a result of any such foreclosure or deed in lieu of foreclosure.

4. Obligations and Remedies. If Lender shall become the owner of the Property or the Property shall be sold by reason of a Foreclosure Transfer, the Foreclosure Transferee shall have the same remedies by entry, action or otherwise in the event of any default by Tenant (beyond any period given Tenant to cure such default) in the payment of rent or additional rent or in the performance of any of the other terms, covenants and conditions of the Lease on Tenant's part to be performed that Landlord had or would have had if the Foreclosure Transferee had not succeeded to the interest of Landlord. upon attornment by Tenant as provided herein, the Foreclosure Transferee shall be bound to Tenant under all the terms, covenants and conditions of the Lease and Tenant shall have the same remedies against the Foreclosure Transferee for the breach of an agreement contained in the Lease that Tenant might have had under the Lease against Landlord if the Foreclosure Transferee had not succeeded to the interest of Landlord; provided, however, that the Foreclosure Transferee shall not be liable or bound to Tenant:

- (a) for any act or omission of any prior landlord (including Landlord); or
 - (b) for any offsets or defenses which the Tenant might be entitled to assert against Landlord; or
 - (c) for or by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord (including Landlord); or
 - (d) by any amendment or modification of the Lease made without Lender's consent; or
 - (e) for any security deposit, rental deposit or similar deposit given by Tenant to a prior landlord (including Landlord) unless such deposit is actually paid over to Lender or such purchaser by the prior landlord; or
 - (f) for the payment of any tenant finish allowance or the construction of any improvements required of Landlord under the Lease in the event a Foreclosure Transferee acquires title to the Property prior to full completion and acceptance by Tenant of improvements required under the Lease; provided,
-

however, such lack of liability on the part of Foreclosure Transferee pursuant to this subparagraph shall not affect Tenant's rights of self-help and offset or termination described in the Lease in the event of such failure to pay such tenant finish allowance or to complete such improvements as long as Tenant has provided all applicable notices and cure periods as required under the Lease and this Agreement; or

(g) for the payment of any leasing commissions or other expenses for which any prior landlord (including Landlord) incurred the obligation to pay; or

(h) for any construction warranty made by Landlord under the Lease, except to the extent of any improvements constructed by the Foreclosure Transferee if Foreclosure Transferee acquires title to the Property prior to full completion and acceptance by Tenant of the improvements required by Landlord under the Lease and the Foreclosure Transferee elects to complete or cause the completion of such improvements.

(i) by any notice given by Tenant to a prior landlord (including Landlord) unless a copy thereof was also then given to Lender.

The person or entity to whom Tenant attorns shall be liable to Tenant under the Lease only for matters arising during such person's or entity's period of ownership.

5. No Abridgment. Nothing herein contained is intended, nor shall it be construed, to abridge or adversely affect any right or remedy of Landlord under the Lease in the event of any default by Tenant (beyond any period given Tenant to cure such default) in the payment of rent or additional rent or in the performance of any of the other terms, covenants or conditions of the Lease on Tenant's part to be performed.

6. Notices of Default to Lender. Tenant agrees to give Lender a copy of any default notice sent by Tenant under the Lease to Landlord.

7. Representations by Tenant. Tenant represents and warrants to Lender that Tenant has validly executed the Lease; the Lease is valid, binding and enforceable and is in full force and effect in accordance with its terms; the Lease has not been amended except as stated herein; no rent under the Lease has been paid more than thirty (30) days in advance of its due date; there are no defaults existing under the Lease; and Tenant, as of this date, has no charge, lien, counterclaim or claim of offset under the Lease, or otherwise, against the rents or other charges due or to become due under the Lease.

8. Rent Payment. If the Property shall be sold by reason of a Foreclosure Transfer, Tenant agrees to pay all rents directly to the Foreclosure Transferee in accordance with the Lease immediately upon notice of the Foreclosure Transferee succeeding to Landlord's interest under the Lease. Tenant further agrees to pay all rents directly to Lender immediately upon notice that Lender is exercising its rights to such rents under the Security Instrument or any other loan documents (including but not limited to any assignment of leases and rents) following a default by Landlord or other applicable party. Tenant shall be under no obligation to ascertain whether a default by Landlord has occurred under the Security Instrument or any other loan documents. Landlord waives any right, claim or demand it may now or hereafter have against Tenant by reason of such direct payment to Lender and agrees that such direct payment to Lender shall discharge all obligations of Tenant to make such payment to Landlord.

9. Notice of Security Instrument. To the extent that the Lease shall entitle Tenant to notice of any deed of trust or security agreement, this Agreement shall constitute such notice to the Tenant with respect to the Security Instrument and to any and all other deeds of trust and security agreements which may hereafter

be subject to the terms of this Agreement.

10. Landlord Defaults. Tenant agrees with Lender that effective as of the date of this Agreement: (i) Tenant shall not take any steps to terminate the Lease for any default by Landlord or any succeeding owner of the Property until after giving Lender written notice of such default, stating the nature of the default and giving Lender thirty (30) days from receipt of such notice to effect cure of the same, or if cure cannot be effected within said thirty (30) days due to the nature of the default, Lender shall have a reasonable time to cure provided that it commences cure within said thirty (30) day period of time and diligently carries such cure to completion; and (ii) notice to Landlord under the Lease (oral or written) shall not constitute notice to Lender.

11. Liability of Lender. If Lender shall become the owner of the Property or the Property shall be sold by reason of foreclosure or other proceedings brought to enforce the Security Instrument or the Property shall be conveyed by deed in lieu of foreclosure, Tenant agrees that, notwithstanding anything to the contrary contained in the Lease, after such foreclosure sale or conveyance by deed in lieu of foreclosure, Lender shall have no personal liability to Tenant under the Lease and Tenant shall look solely to the estate and property of Landlord in the Property, to the net proceeds of sale thereof or the rentals received therefrom, for the satisfaction of Tenant's remedies for the collection of a judgment or other judicial process requiring the payment of money by Landlord in the event of any default or breach by Landlord with respect to any of the terms, covenants, and conditions of the Lease to be observed or performed by Landlord and any other obligation of Landlord created by or under the Lease, and no other property or assets of Lender shall be subject to levy, execution or other enforcement procedures for the satisfaction of Tenant's remedies. further, in the event of any transfer by Lender of Landlord's interest in the Lease, Lender (and in the case of any subsequent transfers or conveyances, the then assignor), including each of its partners, officers, beneficiaries, co-tenants, shareholders or principals (as the case may be) shall be automatically freed and released, from and after the date of such transfer or conveyance, of all liability for the performance of any covenants and agreements which accrue subsequent to the date of such transfer of Landlord's interest.

12. Notice. Any notice or communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery, or (b) expedited delivery service with proof of delivery, or (c) united states mail, postage prepaid, registered or certified mail, or (d) telegram or telex, addressed as follows:

To Lender: Comerica Bank
300 W. Sixth Street, Suite 1300
MC 6571
Austin, Texas 78701
Attention: Commercial Real Estate, Sterling Silver

To Tenant: _____

To Landlord: Tract 107, L.L.C.
c/o Stratus Properties, Inc.
212 Lavaca Blvd., Suite 300
Austin, Texas 78701

or to such other address or to the attention of such other person as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice or communication shall be deemed to have been given and received either at the time of personal delivery or, in the case of delivery service or

mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of telegram or telex, upon receipt.

13. No Amendment, Assignment or Subletting of Lease. Lender and Tenant agree that Tenant's interest in and obligations under the Lease shall not be altered or modified without the prior written consent of Lender. Lender and Tenant also agree that Tenant shall neither assign the Lease or allow it to be assigned in any manner nor sublet the Demised Premises or any part thereof without the prior written consent of Lender in any situation where Landlord's consent to any such action is required under the Lease.

14. No Amendment or Termination of Lease. Lender and Tenant agree that Tenant's interest in and obligations under the Lease shall not be altered or modified without the prior written consent of Lender, nor shall Landlord and Tenant enter into a consensual termination of the Lease without the prior written consent of Lender.

15. Modification. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest.

16. Successor Lender. The term "lender" as used throughout this Agreement includes any successor or assign of Lender, any affiliate of Lender acquiring the mortgaged property at foreclosure or by deed-in-lieu of foreclosure, and any holder(s) of any interest in the indebtedness secured by the Security Instrument.

17. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns, and any purchaser or purchasers at foreclosure of the Property, and their respective successors and assigns.

18. Paragraph Headings. the paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof.

19. Gender and Number. Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural and words in the plural number shall be held and construed to include the singular, unless the context otherwise requires.

20. Applicable Law. This Agreement and the rights and duties of the parties hereunder shall be governed by all purposes by the law of the state where the Property is located and the law of the united states applicable to transactions within such state.

21. Counterparts. This Agreement may be executed in multiple counterparts and by the different parties hereto in separate counterparts, each of which shall for all purposes be deemed to be an original and all of which together shall constitute but one and the same instrument, with the same effect as if all parties to this agreement had signed the same signature page.

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

LENDER:

COMERICA BANK, a Texas banking association

By: /s/ Sterling J. Silver, Sr. Vice President
Sterling J. Silver, Sr. Vice President

TENANT:

By:
Name:
Title:

LANDLORD:

TRACT 107, L.L.C.,
a Texas limited liability company

By: Circle C GP, L.L.C., a Delaware limited liability company, Manager

By: Stratus Properties Inc., a Delaware corporation, Sole Member and Manager

By: /s/ Erin D. Pickens
Erin D. Pickens,
Senior Vice President

THE STATE OF TEXAS)
)
COUNTY OF TRAVIS)

This instrument was acknowledged before me on _____, 201__, by Sterling J. Silver, Sr. Vice President of Comerica Bank, a Texas banking association, on behalf of said banking association.

Notary Public, State of Texas

(printed name)

My Commission Expires:

THE STATE OF _____)
)
COUNTY OF _____)

This instrument was acknowledged before me on _____, 201__, by _____, _____ of _____, a _____, on behalf of said _____.

Notary Public, State of

(printed name)

My Commission Expires:

THE STATE OF TEXAS)
)
COUNTY OF TRAVIS)

This instrument was acknowledged before me on _____, 201__, by Erin D. Pickens, Senior Vice President of Stratus Properties Inc., a Delaware corporation, Sole Member and Manager of Circle C GP, L.L.C., a Delaware limited liability company, Manager of Tract 107, L.L.C., a Texas limited liability company, on behalf of said corporation and companies.

Notary Public, State of Texas

(printed name)

My Commission Expires:

_____.

PROMISSORY NOTE

\$13,664,456.00

May 17, 2011

I. **COVENANT TO PAY.**

FOR VALUE RECEIVED, **TRACT 107, L.L.C.**, a Texas limited liability company (herein called "**Borrower**", whether one or more), promises to pay to the order of **COMERICA BANK** [herein, together with all subsequent holders of this Promissory Note ("**Note**"), called "**Lender**"], on or before the Maturity Date, as hereinafter provided, the principal sum of THIRTEEN MILLION SIX HUNDRED SIXTY-FOUR THOUSAND FOUR HUNDRED FIFTY-SIX AND NO/100 DOLLARS (\$13,664,456.00), or so much thereof as may actually be outstanding hereunder, together with interest on the unpaid principal balance from time to time outstanding at the rate or rates herein specified and otherwise in strict accordance with the terms and provisions hereof.

II. **DEFINITIONS.**

As used in this Note, the following terms have the respective meanings indicated below:

"**Applicable Margin**" means one percent (1.0%) for the Base Rate Balance and three percent (3.0%) for each LIBOR Balance.

"**Applicable Rate**" means (a) with respect to the Base Rate Balance outstanding from time to time, a fluctuating per annum rate of interest equal to the Base Rate **plus** the Applicable Margin and (b) with respect to each LIBOR Balance, a per annum rate of interest equal to the LIBOR Rate for the Interest Period then in effect with respect to such LIBOR Balance **plus** the Applicable Margin; provided, however, in no event shall the Applicable Rate ever be less than the Floor Rate nor more than the Maximum Lawful Rate.

"**Base Rate**" means that annual rate of interest which is equal to the greater of the annual rate of interest designated by Lender as its base or prime rate which is charged by Lender from time to time or a variable per annum rate of interest determined from day to day which equals the sum of 1% plus the average per annum rate of interest on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers ("**Overnight Transactions**") transacted on the immediately preceding Business Day, as published by the Federal Reserve Bank of New York, or, if such interest rate is not so published for any Business Day, the average of the per annum interest rate quotations for Overnight Transactions received by Lender (or, at its option, the Reference Bank) for such Business Day from three Federal funds brokers of recognized standing selected by Lender (or, at its option, the Reference Bank). Lender's Base Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged by Lender to any of its customers. Lender may make commercial loans at rates of interest at, above or below its Base Rate.

"**Base Rate Balance**" means each portion of the unpaid principal balance of this Note designated by Borrower to bear interest at a rate determined with respect to the Base Rate.

"**Business Day**" means any day other than a Saturday, Sunday or holiday, on which Lender and the Reference Bank are open to carry on all or substantially all of their normal commercial lending business.

"**Charges**" means all fees and charges and/or any other things of value, if any, contracted for, charged, received, taken or reserved by Lender in connection with the transactions relating to this Note and

the Indebtedness, which are treated as interest under applicable law.

“**Debtor Relief Laws**” means Title 11 of the United States Code, as now or hereafter in effect, or any other applicable law, domestic or foreign, as now or hereafter in effect, relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement or composition, extension or adjustment of debts, or similar laws affecting the rights of creditors.

“**Deed of Trust**” means the Deed of Trust, Security Agreement and Fixture Filing of even date herewith from Borrower to David J. Neumeyer, Trustee, for the benefit of Lender.

“**Default Rate**” means at any time of determination thereof with respect to the applicable portion of the Indebtedness, a per annum rate of interest equal to the sum of the Applicable Rate then in effect plus six percent (6%), but not more than the Maximum Lawful Rate.

“**Event of Default**” has the meaning given to the term in the Loan Agreement, which definition is hereby incorporated into this Note for all purposes by this reference.

“**Floor Rate**” means a rate equal to five percent (5%) per annum.

“**Indebtedness**” means (i) the principal of, interest on, or other sums evidenced by this Note or the Loan Documents; (ii) any other amounts, payments, or premiums payable under the Loan Documents; (iii) such additional or future sums (whether or not obligatory), with interest thereon, as may hereafter be borrowed or advanced from Lender, its successors or assigns, by the then record owner of the Mortgaged Property, when evidenced by a promissory note which, by its terms, is secured thereby (it being contemplated by Borrower and Lender that such future indebtedness may be incurred); and (iv) any and all other indebtedness, obligations, and liabilities of any kind or character of Borrower to Lender, now or hereafter existing, absolute or contingent, due or not due, arising by operation of law or otherwise, or direct or indirect, primary or secondary, joint, several, joint and several, fixed or contingent, secured or unsecured by additional or different security or securities, voluntarily or involuntarily incurred, known or unknown, or originally payable to Lender or to a third party and subsequently acquired by Lender, including, without limitation, (A) late charges, loan fees or charges, and overdraft indebtedness, (B) costs incurred by Lender in establishing, determining, continuing or defending the validity or priority of any Lien or in pursuing any of its rights or remedies under any Loan Document or in connection with any proceeding involving Lender as a result of any financial accommodation to Borrower, (C) debts, obligations and liabilities for which Borrower would otherwise be liable to Lender were it not for the invalidity or unenforceability of them by reason of any Debtor Relief Law or for any other reason, and (D) reasonable costs and expenses of attorneys and paralegals, whether any suit or other action is instituted, and court costs if suit or action is instituted, (whether any such fees, costs or expenses are incurred at the trial court level or on appeal, in any Debtor Relief Law proceeding, in administrative proceedings, in probate proceedings or otherwise; (v) any of the foregoing indebtedness, obligations, and liabilities to Lender of Borrower as a member of any partnership, joint venture, trust or other type of business association, or other group, and whether incurred by Borrower as principal, surety, endorser, guarantor, accommodation party or otherwise; and (vi) any and all renewals, modifications, amendments, restatements, rearrangements, consolidations, substitutions, replacements, enlargements, and extensions of any of the foregoing, it being contemplated by Borrower and Lender that Borrower may hereafter become indebted to Lender in further sum or sums. Notwithstanding the foregoing provisions of this definition, the Loan Documents shall not secure any such other Indebtedness with respect to which Lender is by applicable law prohibited from obtaining a lien on real estate. Further, the term “Indebtedness” shall not operate or be effective to constitute or require any assumption or payment by any Person, in any way, of any

debt or obligation of any other Person to the extent that the same would violate or exceed the limit provided in any applicable usury or other law or include any consumer loan to the extent treatment of such loan or extension of credit as part of the Indebtedness would violate any Governmental Requirement.

“**Interest Notice**” means a written notice from Borrower in form and content satisfactory to Lender specifying the Interest Option(s) and the respective amounts of the Base Rate Balance and each LIBOR Balance designated by Borrower for such advance.

“**Interest Option**” means Borrower's right, exercisable from time to time, to designate a portion of the unpaid principal balance of this Note as a “Base Rate Balance” and to designate one or more portions of the unpaid principal balance of this Note as a “LIBOR Balance.”

“**Interest Period**” means, with respect to the applicable LIBOR Balance, a period commencing on the date (which must be a LIBOR Business Day) upon which, pursuant to an Interest Notice, the principal amount of such LIBOR Balance begins to accrue interest at the applicable LIBOR Rate plus the Applicable Margin (or, in the case of a rollover to a successive Interest Period, the last day of the immediately preceding Interest Period) and ending either 30, 60 or 90 days after the commencement date (as designated by Borrower in the Interest Notice); provided, that: (i) any Interest Period which would otherwise end on a day which is not a LIBOR Business Day shall be extended to the next succeeding LIBOR Business Day (unless such LIBOR Business Day falls in another calendar month, in which case, such Interest Period shall end on the next preceding LIBOR Business Day); and (ii) any Interest Period which begins on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period shall end on the last LIBOR Business Day of such last calendar month; and (iii) no Interest Period shall extend beyond the Maturity Date.

“**LIBOR Balance**” means each portion of the unpaid principal balance of this Note designated by Borrower to bear interest at a rate determined with respect to the LIBOR Rate.

“**LIBOR Business Day**” means a Business Day on which dealings in U.S. dollars are carried out in the interbank eurodollar market selected by Lender or Reference Bank (or, if applicable, the Reference Bank's designated eurodollar lending office).

“**LIBOR Rate**” means, with respect to the applicable Interest Period and applicable LIBOR Balance (as defined herein), the quotient of the following (rounded upwards, if necessary, to the nearest 1/16 of 1%): (a) the interest rate determined by the Lender or Reference Bank (which determination shall be conclusive) to be the per annum interest rate at which deposits in immediately available funds in U.S. dollars are offered to the Lender or Reference Bank (or, if elected by the Lender, by the Reference Bank's designated eurodollar lending office) on the first (1st) day of such Interest Period, to prime banks in the interbank eurodollar market selected by Lender or Reference Bank (or, if applicable, by the Reference Bank's designated eurodollar lending office) for delivery on the first day of such Interest Period in an amount equal to the principal amount of the corresponding LIBOR Balance for a period equal to the length of such Interest Period; divided by (b) a percentage (expressed as a decimal) equal to 1.00 minus the maximum rate during such interest period at which Lender or the Reference Bank (or, if applicable, the Reference Bank's designated eurodollar lending office) is required to maintain reserves on “Eurocurrency Liabilities” as defined in and pursuant to Regulation D of the Board of Governors of the Federal Reserve System or, if such regulation or designation is modified, and as long as Lender or the Reference Bank (or, if applicable, the Reference Bank's designated eurodollar lending office) is required to maintain reserves against a category of liabilities which includes

eurodollar deposits or includes a category of assets which includes eurodollar loans, the rate at which such reserves are required to be maintained on such category.

“**Loan Agreement**” means that certain Construction Loan Agreement of even date herewith between Borrower and Lender.

“**Loan Extension**” shall mean the extension of the Loan in accordance with the provisions of Section 2.9 of the Loan Agreement.

“**Maturity Date**” means (i) at all times prior to the Loan Extension as provided for in the Loan Agreement, May 31, 2013; and (ii) if, and only if, the Loan Extension occurs as provided for in the Loan Agreement, May 31, 2014; subject, however, in all events to the right of acceleration prior to the Maturity Date as provided for in the this Note and the other Loan Documents.

“**Maximum Lawful Rate**” shall mean the maximum lawful rate of interest which may be contracted for, charged, taken, received or reserved by Lender in accordance with the applicable laws of the State of Texas (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law), taking into account all Charges made in connection with the loan evidenced by this Note and the Loan Documents. To the extent that Lender is relying on Chapter 303 of the Texas Finance Code to determine the Maximum Lawful Rate payable on the Indebtedness, Lender will utilize the weekly ceiling from time to time in effect as provided in such Chapter 303, as amended. To the extent United States federal law permits Lender to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law, Lender will rely on United States federal law instead of such Chapter 303 for the purpose of determining the Maximum Lawful Rate. Additionally, to the extent permitted by applicable law now or hereafter in effect, Lender may, at its option and from time to time, utilize any other method of establishing the Maximum Lawful Rate under such Chapter 303 or under other applicable law by giving notice, if required, to Borrower as provided by applicable law now or hereafter in effect.

“**Reference Bank**” means Comerica Bank, a Texas banking association, its successors and assigns.

Any term use in this Note with an initial capitalized letter and not otherwise defined in this Note has the meaning given to such term in the Loan Agreement.

III. INTEREST RATE COMPUTATION.

3.1 Interest Rate. Except as otherwise provided herein, interest on the principal balance of this Note outstanding from time to time shall accrue at a per annum rate equal to the lesser of (a) the Applicable Rate (but in no event less than the Floor Rate) or (b) the Maximum Lawful Rate until maturity, whether by acceleration or otherwise, or until an Event of Default occurs and after that at the Default Rate (but in no event in excess of the Maximum Lawful Rate).

3.2 Default Rate. Upon the occurrence of an Event of Default hereunder or under any of the Loan Documents, at the option of the Lender, the principal balance of this Note then outstanding shall bear interest at the Default Rate for the period beginning with the date of occurrence of such Event of Default.

3.3 Interest Limitation Recoupment. Notwithstanding anything in this Note to the contrary, if at any time (i) interest at the Applicable Rate, (ii) interest at the Default Rate, if applicable, and (iii) the Charges computed over the full term of this Note, exceed the Maximum Lawful Rate, then the rate of interest payable hereunder, together with all Charges, shall be limited to the Maximum Lawful Rate; provided, however, that

any subsequent reduction in any applicable reference rate shall not cause a reduction of the rate of interest payable hereunder below the Maximum Lawful Rate until the total amount of interest earned hereunder, together with all Charges, equals the total amount of interest which would have accrued at the Applicable Rate if such interest rate had at all times been in effect.

3.4 Computation Period. Except for the computation of the Maximum Lawful Rate which shall be undertaken on the basis of a 365- or 366-day year, as the case may be, interest on the indebtedness evidenced by this Note shall be computed on the basis of a 360-day year and shall accrue on the actual number of days any principal balance hereof is outstanding.

3.5 Interest Rate Changes. Interest rate changes will be effective for interest computation purposes as and when the Maximum Lawful Rate or the Applicable Rate, as applicable, changes.

3.6 LIBOR Rate Provisions.

(a) The Interest Option shall be exercisable by Borrower subject to the other limitations in this Note on Borrower's option to designate a portion of the unpaid principal balance hereof as a LIBOR Balance and only in the manner provided below:

(i) Before 12:00 noon at least three (3) Business Days prior to the date Borrower has requested Lender to make the initial advance upon this Note, Borrower shall have given Lender an Interest Notice with respect to such advance. If the required Interest Notice shall not have been timely received by Lender or fails to designate all or any portion of the unpaid principal amount hereof of the advance as either a Base Rate Balance or a LIBOR Balance in accordance with the terms and provisions of this Note, Borrower shall be deemed conclusively to have designated such amounts to be a Base Rate Balance and to have given Lender notice of such designation.

(ii) At least three (3) LIBOR Business Days prior to the termination of any Interest Period for a LIBOR Balance, Borrower shall give Lender an Interest Notice specifying the Interest Option which is to be applicable to such LIBOR Balance upon the expiration of such Interest Period. If the required Interest Notice shall not have been timely received by Lender, Borrower shall be deemed conclusively to have designated such amount as a Base Rate Balance immediately upon the expiration of such Interest Period and to have given Lender notice of such designation.

(iii) Borrower shall have the right, exercisable on any Business Day subject to the terms of this Note, to convert an eligible portion of the Base Rate Balance to a LIBOR Balance by giving Lender an Interest Notice of such designation at least three (3) LIBOR Business Days prior to the effective date of such exercise. Additionally, upon termination of any Interest Period, Borrower shall have the right, on any Business Day, to convert all or a portion of such principal amount from the LIBOR Balance to a Base Rate Balance by giving Lender an Interest Notice of such selection at least three (3) LIBOR Business Days prior to effective date of such exercise.

(iv) There may be no more than three (3) LIBOR Balances in effect at any time.

(v) Each LIBOR Balance must be, as of the first day of the applicable Interest Period, at least \$250,000.00.

(vi) No Event of Default, or condition or event which, with the giving of notice or the lapse of time, or both, would constitute an Event of Default, shall have occurred and be continuing or exist.

(vii) Each exercise of an Interest Option to designate a LIBOR Balance to bear interest at an Applicable Rate which is based on the LIBOR Rate shall not be revocable.

(viii) Borrower shall exercise Interest Options with designated Interest Periods which permit Borrower to make the mandatory installment payments required under the terms of this Note, if any, when due, in accordance with the terms hereof, without having to repay the then outstanding LIBOR Balance prior to the expiration of the applicable Interest Period.

(b) Changes in the Applicable Rate applicable to a Base Rate Balance or a LIBOR Balance shall become effective without prior notice to Borrower automatically as of the opening of business on the date of each change in the Base Rate or the LIBOR Rate, as the case may be.

(c) If Lender or Reference Bank (or, if applicable, the Reference Bank's designated eurodollar lending office) reasonably determines that deposits in U.S. dollars (in the applicable amounts) are not being offered to prime banks in the interbank eurodollar market selected by Lender or Reference Bank (or if applicable, the Reference Bank's designated eurodollar lending office) for the applicable Interest Period, or that the rate at which such dollar deposits are being offered will not adequately and fairly reflect the cost to Lender or Reference Bank (or, if applicable, the Reference Bank's designated eurodollar lending office) of making or maintaining a LIBOR Balance for the applicable Interest Period, Lender shall forthwith give notice thereof to Borrower, whereupon, until Lender notifies Borrower that such circumstances no longer exist, the right of Borrower to select an Interest Option based upon a LIBOR Rate shall be suspended, and Borrower may only select Interest Options based on the Base Rate.

(d) If the adoption of any applicable law, rule or regulation, or any change therein, or any change in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by Lender or Reference Bank (or, if applicable, its designated eurodollar lending office) with any request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency shall make it unlawful or impractical for Lender or the Reference Bank (or, if applicable, its designated eurodollar lending office) to make or maintain a LIBOR Balance, Lender shall so notify Borrower and any then-existing LIBOR Balance shall automatically convert to a Base Rate Balance either (i) on the last day of the then-current Interest Period applicable to such LIBOR Balance, if Lender and Reference Bank (and, if applicable, its designated eurodollar lending office) may lawfully continue to maintain and fund such LIBOR Balance to such day, or (ii) immediately, if Lender or Reference Bank (or, if applicable, its designated eurodollar lending office) may not lawfully continue to maintain such LIBOR Balance to such day. Further, until Lender notices Borrower that such conditions or circumstances no longer exist, the right of Borrower to select an Interest Option based on a LIBOR Rate shall be suspended, and Borrower may only select Interest Options based on the Base Rate.

(e) If either (i) the adoption of any applicable law, rule or regulation, or any change therein, or any change in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance

by Lender or Reference Bank (or, if applicable, its designated eurodollar lending office) with any request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency shall subject Lender or Reference Bank (or, if applicable, its designated eurodollar lending office) to any tax (including without limitation any United States interest equalization or similar tax, however named), duty or other charge with respect to any LIBOR Balance, this Note or Lender's or Reference Bank's (or, if applicable, its designated eurodollar lending office's) obligation to compute interest on the principal balance of this Note at a rate based upon a LIBOR Rate, or shall change the basis of taxation of payments to Lender or Reference Bank (or, if applicable, its designated eurodollar lending office) of the principal or interest on any LIBOR Balance or any other amounts due under this Note in respect of any LIBOR Balance or Lender's or the Reference Bank's (or, if applicable, its designated eurodollar lending office's) obligation to compute the interest on the balance of this Note at a rate based upon a LIBOR Rate, or (ii) any governmental authority, central bank or other comparable authority shall at any time impose, modify or deem applicable any reserve (including, without limitation, any imposed by the Board of Governors of the Federal Reserve System), special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, Lender or Reference Bank (or, if applicable, its designated eurodollar lending office), or shall impose on Lender or the Reference Bank (or, if applicable, its designated eurodollar lending office) or any relevant interbank eurodollar market or exchange any other condition affecting any LIBOR Balance, this Note or Lender's or Reference Bank's (or, if applicable, its designated eurodollar lending office's) obligation to compute the interest on the balance of this Note at a rate based upon a LIBOR Rate; and the result of any of the foregoing is to increase the cost to Lender or Reference Bank (or, if applicable, the Reference Bank's designated eurodollar lending office) of maintaining any LIBOR Balance, or to reduce the amount of any sum received or receivable by Lender or Reference Bank (or, if applicable, the Reference Bank's designated eurodollar lending office) under or with respect to this Note by an amount deemed by Lender to be material, then upon demand by Lender, Borrower shall pay to Lender such additional amount or amounts as will reimburse Lender and the Reference Bank (and, if applicable, its designated eurodollar lending office) for such increased cost or reduction. The Lender will promptly notify Borrower of any event of which it has knowledge, occurring after the date hereof, which will entitle Lender or Reference Bank (or, if applicable, the Reference Bank's designated eurodollar lending office) to compensation pursuant to this paragraph. A certificate of Lender claiming compensation under this paragraph and setting forth the additional amount or amounts to be paid hereunder shall be conclusive in the absence of manifest error.

(f) If any applicable law, treaty, rule, or regulation (whether domestic or foreign) now or hereafter in effect and whether presently applicable to Lender or Reference Bank (or, if applicable, the Reference Bank's designated eurodollar lending office) or any change therein or any interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof or compliance by Lender or Reference Bank (or, if applicable, the Reference Bank's designated eurodollar lending office) therewith or with any guidance, request or directive of any such governmental authority, central bank or comparable agency (whether or not having the force of law), including any risk-based capital guidelines, affects or would affect the amount of capital required or expected to be maintained by Lender or Reference Bank (or any corporation controlling Lender or Reference Bank), and Lender determines that the amount of such capital is increased by or based upon the existence of any obligations of Lender hereunder or the maintaining of any LIBOR Balance hereunder, and such increase has the effect of reducing the rate of return on Lender's or Reference Bank's (or its controlling corporation's) capital as a consequence of such obligations or the maintaining of LIBOR Balances hereunder to a level below that which Lender or Reference Bank (or such controlling corporation) could have achieved but for such circumstances (taking into consideration its policies with respect to capital adequacy), then Borrower

shall pay to Lender, within fifteen (15) days of receipt by Borrower of written notice, together with such documentation as is reasonably available to Lender, from Lender demanding such compensation, such additional amounts as are sufficient to compensate Lender or Reference Bank (or its controlling corporation) for any increase in the amount of capital and reduced rate of return which Lender determines to be allocable to the existence of any obligations of Lender hereunder or maintenance of any LIBOR Balances hereunder. A certificate of Lender as to the amount of such compensation, prepared in good faith and in reasonable detail by Lender, together with such documentation as is reasonably available to Lender, which is submitted by Lender to Borrower shall be conclusive and binding for all purposes absent manifest error.

(g) Notwithstanding any other term or provisions of this Note to the contrary, Borrower may not repay any LIBOR Balance or convert all or any portion of a LIBOR Balance to a Base Rate Balance prior to the expiration of the applicable Interest Period, unless (i) such repayment or conversion is specifically required by the terms of this Note, (ii) Lender demands that such repayment or conversion be made, (iii) Lender, in its sole discretion, consents to such repayment or conversion, or (iv) Borrower compensates Lender for any loss or cost incurred by Lender as a result of such prepayment or conversion prior to the expiration of the Interest Period or Interest Option. If for any reason, whether or not consent shall have been given or demand shall have been made by Lender, any LIBOR Balance is repaid or converted prior to the expiration of the corresponding Interest Period or any Interest Option which designates a LIBOR Balance is revoked for any reason whatsoever prior to the commencement of the applicable Interest Period or Borrower fails for any reason to borrow the full amount of any LIBOR Balance for which Borrower has exercised an Interest Option, or if for any other reason whatsoever, the basis for determining the Applicable Rate shall be changed from a LIBOR Rate to the Base Rate prior to the expiration of the applicable Interest Period, or Borrower shall fail to make any payment of principal or interest upon this Note at any time that the Applicable Rate is based on a LIBOR Rate, then Borrower shall pay to Lender on demand any amounts required to compensate Lender and Reference Bank (and, if applicable, its designated eurodollar lending office) for any losses, costs or expenses which any of them may incur as a result thereof, including, without limitation, any loss, cost or expense incurred in obtaining, liquidating, employing or redeploying deposits from third parties. Amounts payable by Borrower to Lender pursuant to this paragraph may include, without limitation, amounts equal to the excess, if any of (a) the amounts of interest which would have accrued on any amounts so prepaid, refunded, converted or not so borrowed, from the respective dates of prepayment, refund, conversion or failure to borrow through the last day of the relevant Interest Periods at the applicable rates of interest for the applicable LIBOR Balances, as provided under this Note, over (b) the amounts of interest determined by Lender or Reference Bank (or, if applicable, its designated eurodollar lending office) which would have accrued to Lender or Reference Bank (or, if applicable, its designated eurodollar lending office) on such respective amounts by placing such amounts on deposit for comparable periods with leading banks in the interbank eurodollar market selected by Lender or Reference Bank (or, if applicable, the Reference Bank's designated eurodollar lending office). The calculation of any such amounts under this paragraph shall be made as if Lender or Reference Bank (or, if applicable, the Reference Bank's designated eurodollar lending office) actually funded or committed to fund the relevant LIBOR Balances hereunder through the purchase of underlying deposits in amounts equal to the respective amounts of the applicable LIBOR Balances and having terms comparable to the applicable Interest Periods; provided, however, that Lender or Reference Bank may fund LIBOR Balances hereunder in any manner they may elect in their sole discretion, and the foregoing assumptions shall be utilized only for the purposes of calculating amounts payable under this paragraph. Upon written request by Borrower, Lender shall deliver to Borrower a certificate setting forth the basis for determining such losses, costs and expenses which certificate shall be conclusive in the absence of manifest error.

(h) For any LIBOR Balance, if Lender or the Reference Bank shall designate a eurodollar lending office which maintains books separate from those of Lender or the Reference Bank, Lender and the Reference Bank shall have the option of maintaining and carrying such LIBOR Balance on the Books of such eurodollar lending office.

IV. PAYMENTS.

4.1 Payment Schedule.

This Note shall be due and payable as follows:

(a) Commencing on June 5, 2011, and continuing thereafter on the fifth (5th) day of each successive month until the Maturity Date or upon earlier maturity hereof, whether by acceleration or otherwise, Borrower shall pay Lender interest payments equal to all then accrued but unpaid interest hereon; and

(b) In the event the Borrower extends the Maturity Date pursuant to and in accordance with the Loan Extension, then commencing on June 5, 2013 and continuing thereafter on the fifth (5th) day of each successive month until the Maturity Date or upon earlier maturity hereof, whether by acceleration or otherwise, Borrower shall also pay Lender successive monthly principal installments in the amount of \$45,000.00 each month (being an amount equal to a hypothetical principal payment calculated on a level payment basis with an assumed mortgage amortization term of fifteen (15) years at an interest rate of 7% per annum); and

(c) The entire remaining unpaid principal balance hereof and any and all accrued but unpaid interest thereon shall be due and payable in full on the Maturity Date or upon earlier maturity hereof, whether by acceleration or otherwise.

4.2 Application. All payments on this Note shall, at the sole option of Lender, be applied at any time and from time to time and in any order, to the following: (i) the payment of accrued but unpaid interest hereon, (ii) the payment or reimbursement of any expenses, costs or obligations (other than the principal hereof and interest hereon) for which Borrower shall be obligated or Lender entitled pursuant to the provisions hereof or of the other Loan Documents, and (iii) the payment of all or any portion of the principal balance then outstanding hereunder, in either the direct or inverse order of maturity.

4.3 Place. All payments hereunder shall be made to Lender at its offices located in Dallas County, Texas, at the address of Lender as specified herein or as Lender may from time to time designate in writing to Borrower.

4.4 Business Days. If any payment of principal or interest on this Note shall become due and payable on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day of Lender. Any such extension of time for payment shall be included in computing interest which has accrued and shall be payable in connection with such payment.

4.5 Legal Tender. All amounts payable hereunder are payable in immediate lawful money or legal tender of the United States of America without setoff or counterclaim.

4.6 Prepayment. Borrower shall have the right to prepay without premium or penalty at any time the entire unpaid principal balance of this Note and from time to time any portion thereof, provided that (i) Borrower shall give Lender at least five (5) days prior written notice thereof, (ii) Borrower must also pay

the amount of then accrued but unpaid interest on the amount of principal being so prepaid and (iii) Borrower shall pay any amounts owing to Lender under this Note on account of the payment of any LIBOR Balance prior to the expiration of the Interest Period applicable to such LIBOR Balance. Any such partial prepayments of principal shall be applied in inverse order of maturity to the last maturing installment(s) of principal.

4.7 Late Charge. In addition to the payments otherwise specified herein, subject to the provisions of Section 6.4 hereof, if Borrower fails, refuses or neglects to pay, in full, any installment or portion of the indebtedness evidenced hereby, within ten (10) days of when same shall be due and payable, then Borrower shall be obligated to pay to Lender a late charge equal to five percent (5%) of the amount of such delinquent payment to compensate Lender for Borrower's default and the additional costs and administrative efforts required by reason of such default.

4.8 Advances. The principal amount payable under this Note at any time shall be the sum of all advances made by Lender to or at the request of Borrower, as provided in the Loan Agreement, less principal payments, if any, actually received by Lender. The books and records of Lender shall be prima facie evidence of the principal and interest amounts owing and unpaid at any time under this Note and shall be conclusive absent manifest error. No interest shall accrue under this Note until the date of the first advance made by Lender; after that interest on all advances shall accrue and be computed on the principal balance outstanding from time to time under this Note until the same is paid in full.

V. DEFAULT AND REMEDIES.

5.1 Remedies. Upon the occurrence of any Event of Default, Lender may, at its option, without further notice or demand, declare the unpaid principal balance of, and the accrued but unpaid interest on, this Note immediately due and payable, foreclose any or all liens and security interests securing payment hereof, set off against the Indebtedness any amounts owing by Lender to Borrower, charge interest at the Default Rate, and pursue any and all other rights, remedies and recourses available to Lender or pursue any combination of the foregoing. All remedies hereunder, under the Loan Documents and at law or in equity shall be cumulative.

5.2 Waiver. Borrower and any endorsers or guarantors hereof severally waive presentment and demand for payment, notice of demand, notice of intent to accelerate maturity, notice of acceleration of maturity, protest and notice of protest, notice of nonpayment, notice of dishonor, bringing of suit, diligence in taking any action to collect any sums owing hereunder or in proceeding against any of the rights and Mortgaged Property securing payment hereof and all other notices. Borrower and any endorsers or guarantors hereof agree (i) that the time for any payments hereunder may be extended from time to time at Lender's sole discretion without notice and consent, (ii) to the acceptance of further property as security for the Indebtedness, and/or (iii) the release of any existing Mortgaged Property for the payment of this Note, all without in any manner affecting its or their liability under or with respect to this Note. No extension of time for the payment of this Note or any installment hereof shall affect the liability of Borrower under this Note or any endorser or guarantor hereof even though the Borrower or such endorser or guarantor is not a party to such agreement. Borrower waives all defenses or right to discharge available under Section 3.605 of the Texas Uniform Commercial Code and waives all other suretyship defenses or right to discharge.

5.3 No Waiver. Failure of Lender to exercise any of the options granted herein to Lender upon the happening of one or more of the events giving rise to such options shall not constitute a waiver of the right to exercise the same or any other option at any subsequent time in respect to the same or any other event. The acceptance by Lender of any payment hereunder that is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the

options granted herein to Lender at that time or at any subsequent time or nullify any prior exercise of any such option without the express written acknowledgment of the Lender.

5.4 Collection Costs. Borrower agrees to reimburse the holder or owner of this Note upon demand for any and all costs and expenses (including without limit, court costs, legal expenses and reasonable attorneys' fees, whether inside or outside counsel is used, and whether or not suit is instituted and, if suit is instituted, whether at the trial court level, appellate level, in a bankruptcy, probate or administrative proceeding or otherwise) incurred in collecting or attempting to collect this Note or incurred in any other matter or proceeding relating to this Note.

VI. MISCELLANEOUS.

6.1 Loan Documents. This Note is issued pursuant to the Loan Agreement, is one of the Loan Documents and is secured, inter alia, by the Deed of Trust described in the Loan Agreement.

6.2 Notices. All notices or other communications required or permitted to be given pursuant hereto shall be given in the manner provided for in the Section of the Loan Agreement entitled "Notices."

6.3 **GOVERNING LAW. THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. THIS NOTE IS PERFORMABLE IN DALLAS COUNTY, TEXAS. ANY ACTION OR PROCEEDING UNDER OR IN CONNECTION WITH THIS NOTE AGAINST BORROWER OR ANY OTHER PARTY EVER LIABLE FOR PAYMENT OF ANY SUMS OF MONEY PAYABLE ON THIS NOTE MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT IN DALLAS COUNTY, TEXAS. BORROWER AND EACH SUCH OTHER PARTY HEREBY IRREVOCABLY (i) SUBMITS TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURTS, AND (ii) WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING BROUGHT IN SUCH COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM. WHENEVER POSSIBLE, EACH PROVISION OF THIS NOTE SHALL BE INTERPRETED IN SUCH MANNER AS TO BE EFFECTIVE AND VALID UNDER APPLICABLE LAW, BUT IF ANY PROVISION OF THIS NOTE SHALL BE PROHIBITED BY OR INVALID UNDER APPLICABLE LAW, SUCH PROVISION SHALL BE INEFFECTIVE TO THE EXTENT OF SUCH PROHIBITION OR INVALIDITY, WITHOUT INVALIDATING THE REMAINDER OF SUCH PROVISION OR THE REMAINING PROVISIONS OF THIS NOTE.**

6.4 Maximum Interest. It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply strictly with the applicable Texas law governing the maximum rate or amount of interest payable on the Indebtedness (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law). If the applicable law is ever judicially interpreted so as to render usurious any amount (i) contracted for, charged, taken, reserved or received pursuant to this Note, any of the other Loan Documents or any other communication or writing by or between Borrower and Lender related to any of the Indebtedness, (ii) contracted for, charged or received by reason of Lender's exercise of the option to accelerate the maturity of this Note and/or any other portion of the Indebtedness, or (iii) Borrower will have paid or Lender will have received by reason of any voluntary prepayment by Borrower of this Note and/or any of the other Indebtedness, then it is Borrower's and Lender's express intent that all amounts charged in excess of the Maximum Lawful Rate shall be automatically canceled, ab initio, and all amounts in excess of the Maximum Lawful Rate theretofore collected by Lender shall be credited on the principal balance of this Note and/or

any of the other Indebtedness (or, if this Note and all other Indebtedness have been or would thereby be paid in full, refunded to Borrower), and the provisions of this Note and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder; provided, however, if this Note has been paid in full before the end of the stated term of this Note, then Borrower and Lender agree that Lender shall, with reasonable promptness after Lender discovers or is advised by Borrower that interest was received in an amount in excess of the Maximum Lawful Rate, either refund such excess interest to Borrower and/or credit such excess interest against any other Indebtedness then owing by Borrower to Lender. Borrower hereby agrees that as a condition precedent to any claim seeking usury penalties against Lender, Borrower will provide written notice to Lender, advising Lender in reasonable detail of the nature and amount of the violation, and Lender shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to Borrower or crediting such excess interest against this Note and/or other Indebtedness then owing by Borrower to Lender. All sums contracted for, charged or received by Lender for the use, forbearance or detention of any of the Indebtedness, including any portion of the debt evidenced by this Note shall, to the extent permitted by applicable law, be amortized or spread, using the actuarial method, throughout the stated term of this Note and/or other Indebtedness (including any and all renewal and extension periods) until payment in full so that the rate or amount of interest on account of this Note and/or other Indebtedness does not exceed the Maximum Lawful Rate from time to time in effect and applicable to this Note and/or the other Indebtedness for so long as any Indebtedness is outstanding. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to this Note and/or any of the other Indebtedness. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

6.5 Captions. The article and section headings used in this Note are for convenience of reference only and shall not affect, alter or define the meaning or interpretation of the text of any article or section contained in this Note.

6.6 Joint and Several Liability. If this Note is executed by more than one party, each such party shall be jointly and severally liable for the obligations of Borrower under this Note. If Borrower is a partnership, each general partner of Borrower shall be jointly and severally liable hereunder, and each such general partner hereby waives any requirement of law that in the event of a default hereunder, Lender exhaust any assets of Borrower before proceeding against such general partner's assets.

6.7 Participations. Borrower agrees that Lender has the right to sell, assign, or grant participations or any interest in, any or all of the Indebtedness, and that, in connection with this right, but without limiting its ability to make other disclosures to the full extent allowable, Lender may disclose all documents and information which Lender now or later has relating to Borrower or the Indebtedness. Borrower agrees that Lender may provide information relating to this Note or the Indebtedness or relating to Borrower to Lender's parent, affiliates, subsidiaries and service providers.

6.8 **WAIVER OF RIGHT TO TRIAL BY JURY . BORROWER, AND LENDER BY ACCEPTANCE OF THIS NOTE, ACKNOWLEDGE AND AGREE THAT ALTHOUGH THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, IT MAY BE WAIVED. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS OWN CHOICE, KNOWINGLY, VOLUNTARILY, IRREVOCABLY, UNCONDITIONALLY AND FOR THE MUTUAL BENEFIT OF BOTH BORROWER AND**

LENDER, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS NOTE OR THE INDEBTEDNESS. THIS AGREEMENT OF BORROWER IS A MATERIAL INDUCEMENT TO LENDER TO PROVIDE THE FINANCING EVIDENCED BY THIS NOTE.

6.9 **NO ORAL AGREEMENTS.** THIS NOTE AND ALL OF THE OTHER LOAN DOCUMENTS EMBODY THE FINAL AND ENTIRE AGREEMENT OF BORROWER AND LENDER AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF BORROWER AND LENDER. THERE ARE NO ORAL AGREEMENTS BETWEEN BORROWER AND LENDER. THE PROVISIONS OF THIS NOTE AND THE OTHER LOAN DOCUMENTS MAY BE AMENDED OR REVISED ONLY BY AN INSTRUMENT IN WRITING SIGNED BY THE BORROWER AND LENDER. IN ACCORDANCE WITH SECTION 26.02 OF THE TEXAS BUSINESS AND COMMERCE CODE, BORROWER ACKNOWLEDGES THAT THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

6.10 This Note amends and restates in its entirety, and supersedes, that certain Promissory Note dated as of February 3, 2011 (the "**Original Note**"), executed by Borrower and payable to the order of Stratus Properties Operating Co., L.P. ("**Original Payee**"), in the stated principal amount of \$14,000,000, which Original Note was assigned from Original Payee to Payee pursuant to an Assignment of Note and Lien dated of even date herewith. The undersigned acknowledges and agrees that the indebtedness outstanding under the Original Note and the liens, security interests and assignments granted by the undersigned securing the Original Note are valid and subsisting and have been assigned to Payee, and that such liens, security interests, and assignments continue to secure the repayment of the indebtedness evidenced by this Note, and that as of the date of this Note, there are no offsets, claims or defenses existing in connection with the loan evidenced by this Note. This Note is entitled to all of the liens, security interests, benefits and priorities securing the Original Note, all of which have been assigned to Payee by Original Payee.

The remainder of this page is blank. The signature page follows.

EXECUTED to be effective as of the date and year first above written.

BORROWER:

TRACT 107, L.L.C.,
a Texas limited liability company

By: Circle C GP, L.L.C., a Delaware limited liability company, its Manager

By: Stratus Properties Inc., a Delaware corporation, Sole Member and Manager

By: /s/ Erin D. Pickens
Erin D. Pickens,
Senior Vice President

Certification

I, William H. Armstrong III, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Stratus Properties Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: August 15, 2011

/s/ William H. Armstrong III
William H. Armstrong III
Chairman of the Board,
President & Chief Executive Officer

Certification

I, Erin D. Pickens, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Stratus Properties Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: August 15, 2011

/s/ Erin D. Pickens
Erin D. Pickens
Senior Vice President &
Chief Financial Officer

Certification Pursuant to 18 U.S.C. Section 1350
(Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002)

In connection with the Quarterly Report on Form 10-Q of Stratus Properties Inc. (the "Company") for the quarter ending June 30, 2011, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), William H. Armstrong III, as Chairman of the Board, President & Chief Executive Officer of the Company, hereby certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: August 15, 2011

/s/ William H. Armstrong III
William H. Armstrong III
Chairman of the Board,
President & Chief Executive Officer

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

This certification shall not be deemed filed by the Company for purposes of § 18 of the Securities Exchange Act of 1934, as amended.

Certification Pursuant to 18 U.S.C. Section 1350
(Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002)

In connection with the Quarterly Report on Form 10-Q of Stratus Properties Inc. (the “Company”) for the quarter ending June 30, 2011, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), Erin D. Pickens, as Senior Vice President & Chief Financial Officer of the Company, hereby certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to the best of her knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: August 15, 2011

/s/ Erin D. Pickens
Erin D. Pickens
Senior Vice President &
Chief Financial Officer

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

This certification shall not be deemed filed by the Company for purposes of § 18 of the Securities Exchange Act of 1934, as amended.

