

**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 September 30, 2003

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 1-13274

**Mack-Cali Realty Corporation**

(Exact name of registrant as specified in its charter)

**Maryland**  
(State or other jurisdiction of  
incorporation or organization)

**22-3305147**  
(I.R.S. Employer  
Identification Number)

**11 Commerce Drive, Cranford, New Jersey 07016-3501**  
(Address of principal executive office)  
(Zip Code)

**(908) 272-8000**  
(Registrant's telephone number, including area code)

**Not Applicable**  
(Former name, former address and former fiscal year, if changed since last report)

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 twelve (12) months (or for such shorter period that the Registrant was required to file such reports) YES  NO  and (2) has been subject to such filing requirements for the past ninety (90) days YES  NO .

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act). Yes  No

As of October 31, 2003, there were 58,290,557 shares of \$0.01 par value common stock outstanding.

**MACK-CALI REALTY CORPORATION**

**FORM 10-Q**

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**MACK-CALI REALTY CORPORATION**

**Part I—Financial Information**

**Item I. Financial Statements**

The accompanying unaudited consolidated balance sheets, statements of operations, of changes in stockholders' equity, and of cash flows and related notes thereto, have been prepared in accordance with generally accepted accounting principles ("GAAP") for interim financial information and in conjunction with the rules and regulations of the Securities and Exchange Commission ("SEC"). Accordingly, they do not include all of the disclosures required by GAAP for complete financial statements. The financial statements reflect all adjustments consisting only of normal, recurring adjustments, which are in the opinion of management, necessary for a fair presentation for the interim periods.

The aforementioned financial statements should be read in conjunction with the notes to the aforementioned financial statements and Management's Discussion and Analysis of Financial Condition and Results of Operations and the financial statements and notes thereto included in Mack-Cali Realty Corporation's Annual Report on Form 10-K for the fiscal year ended December 31, 2002.

The results of operations for the three and nine month periods ended September 30, 2003 are not necessarily indicative of the results to be expected for the entire fiscal year or any other period.

**MACK-CALI REALTY CORPORATION AND SUBSIDIARIES**

**CONSOLIDATED BALANCE SHEETS**

(in thousands, except per share amounts)

	September 30, 2003	December 31, 2002
	(unaudited)	
<b>ASSETS</b>		
Rental property		
Land and leasehold interests	\$ 551,280	\$ 544,176
Buildings and improvements	3,194,772	3,141,003
Tenant improvements	188,102	164,945
Furniture, fixtures and equipment	7,660	7,533
	<u>3,941,814</u>	<u>3,857,657</u>
Less—accumulated depreciation and amortization	(520,423)	(445,569)
	<u>3,421,391</u>	<u>3,412,088</u>
Net investment in rental property	3,421,391	3,412,088
Cash and cash equivalents	35,294	1,167
Investments in unconsolidated joint ventures, net	46,356	176,797
Unbilled rents receivable, net	70,599	64,759
Deferred charges and other assets, net	125,127	127,551
Restricted cash	7,780	7,777
Accounts receivable, net of allowance for doubtful accounts of \$1,516 and \$1,856	4,968	6,290

Total assets	\$	3,711,515	\$	3,796,429
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>				
Senior unsecured notes	\$	1,127,580	\$	1,097,346
Revolving credit facilities		—		73,000
Mortgages and loans payable		503,350		582,026
Dividends and distributions payable		46,034		45,067
Accounts payable, accrued expenses and other liabilities		48,147		50,774
Rents received in advance and security deposits		41,197		39,038
Accrued interest payable		10,707		24,948
<b>Total liabilities</b>		<b>1,777,015</b>		<b>1,912,199</b>
Minority interest in Operating Partnership		429,791		430,036
<b>Commitments and contingencies</b>				
<b>Stockholders' equity:</b>				
Preferred stock, \$0.01 par value, 5,000,000 shares authorized, 10,000 and no shares outstanding, at liquidation preference		25,000		—
Common stock, \$0.01 par value, 190,000,000 shares authorized, 58,182,631 and 57,318,478 shares outstanding		582		573
Additional paid-in capital		1,552,710		1,525,479
Dividends in excess of net earnings		(64,589)		(68,966)
Unamortized stock compensation		(8,994)		(2,892)
<b>Total stockholders' equity</b>		<b>1,504,709</b>		<b>1,454,194</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$</b>	<b>3,711,515</b>	<b>\$</b>	<b>3,796,429</b>

The accompanying notes are an integral part of these consolidated financial statements.

## MACK-CALI REALTY CORPORATION AND SUBSIDIARIES

### CONSOLIDATED STATEMENTS OF OPERATIONS

(in thousands, except per share amounts) (unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2003	2002	2003	2002
<b>REVENUES</b>				
Base rents	\$ 126,120	\$ 119,779	\$ 380,209	\$ 367,699
Escalations and recoveries from tenants	16,285	15,088	46,309	42,674
Parking and other	4,981	7,441	14,135	15,033
<b>Total revenues</b>	<b>147,386</b>	<b>142,308</b>	<b>440,653</b>	<b>425,406</b>
<b>EXPENSES</b>				
Real estate taxes	16,677	15,112	48,723	45,715
Utilities	11,658	10,016	32,095	29,350
Operating services	17,329	16,660	55,694	49,197
General and administrative	8,661	5,513	22,333	20,108
Depreciation and amortization	29,511	28,902	88,066	80,374
Interest expense	28,910	26,429	87,143	78,384
Interest income	(244)	(742)	(835)	(1,527)
Loss on early retirement of debt, net	—	—	2,372	—
<b>Total expenses</b>	<b>112,502</b>	<b>101,890</b>	<b>335,591</b>	<b>301,601</b>
Income from continuing operations before minority interest and equity in earnings of unconsolidated joint ventures	34,884	40,418	105,062	123,805
Minority interest in Operating Partnership	(7,535)	(8,301)	(22,762)	(25,347)
Equity in earnings of unconsolidated joint ventures (net of minority interest), net	3,151	1,941	11,250	9,030
Gain on sale of investment in unconsolidated joint venture (net of minority interest)	20,392	—	20,392	—
Income from continuing operations	50,892	34,058	113,942	107,488
Discontinued operations (net of minority interest):				
(Loss) income from discontinued operations	—	(227)	26	22
Realized gain on disposition of rental property	—	—	1,165	—
Total discontinued operations, net	—	(227)	1,191	22
Realized gains (losses) and unrealized losses on disposition of rental property (net of minority interest), net	—	401	—	2,376
<b>Net income</b>	<b>50,892</b>	<b>34,232</b>	<b>115,133</b>	<b>109,886</b>
Preferred stock dividends	(500)	—	(1,172)	—

Net income available to common shareholders	\$	50,392	\$	34,232	\$	113,961	\$	109,886
<b>Basic earnings per common share:</b>								
Income from continuing operations	\$	0.87	\$	0.60	\$	1.96	\$	1.92
Discontinued operations		—		—		0.02		—
Net income available to common shareholders	\$	0.87	\$	0.60	\$	1.98	\$	1.92
<b>Diluted earnings per common share:</b>								
Income from continuing operations	\$	0.84	\$	0.59	\$	1.94	\$	1.91
Discontinued operations		—		—		0.02		—
Net income available to common shareholders	\$	0.84	\$	0.59	\$	1.96	\$	1.91
Dividends declared per common share	\$	0.63	\$	0.63	\$	1.89	\$	1.87
Basic weighted average shares outstanding		57,870		57,534		57,545		57,194
Diluted weighted average shares outstanding		72,465		65,656		71,943		71,764

The accompanying notes are an integral part of these consolidated financial statements.

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**MACK-CALI REALTY CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENT OF CHANGES IN STOCKHOLDERS' EQUITY**  
**For the Nine Months Ended September 30, 2003**

(in thousands) (unaudited)

	Preferred Stock		Common Stock		Additional Paid-In Capital	Dividends in Excess of Net Earnings	Unamortized Stock Compensation	Total Stockholders' Equity
	Shares	Amount	Shares	Par Value				
Balance at January 1, 2003	—	—	57,318	\$ 573	\$ 1,525,479	\$ (68,966)	\$ (2,892)	\$ 1,454,194
Net income	—	—	—	—	—	115,133	—	115,133
Preferred stock dividends	—	—	—	—	—	(1,172)	—	(1,172)
Common stock dividends	—	—	—	—	—	(109,584)	—	(109,584)
Issuance of preferred stock	10	\$ 25,000	—	—	(164)	—	—	24,836
Redemption of common units for shares of common stock	—	—	31	—	936	—	—	936
Proceeds from stock options exercised	—	—	626	6	17,232	—	—	17,238
Proceeds from stock warrants exercised	—	—	68	1	2,226	—	—	2,227
Stock options expense	—	—	—	—	139	—	—	139
Deferred compensation plan for directors	—	—	—	—	169	—	—	169
Issuance of Restricted Stock Awards	—	—	175	2	5,250	—	(5,212)	40
Amortization of stock compensation	—	—	—	—	—	—	1,583	1,583
Adjustment to fair value of Restricted Stock Awards	—	—	—	—	2,488	—	(2,488)	—
Cancellation of Restricted Stock Awards	—	—	—	—	(15)	—	15	—
Repurchase of common stock	—	—	(35)	—	(1,030)	—	—	(1,030)
Balance at September 30, 2003	10	\$ 25,000	58,183	\$ 582	\$ 1,552,710	\$ (64,589)	\$ (8,994)	\$ 1,504,709

The accompanying notes are an integral part of these consolidated financial statements.

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**MACK-CALI REALTY CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(in thousands) (unaudited)

	Nine Months Ended September 30,	
	2003	2002
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Net income	\$ 115,133	\$ 109,886

Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	88,066	80,374
Stock options expense	139	—
Amortization of stock compensation	1,583	1,376
Amortization of deferred financing costs and debt discount	3,603	3,928
Write-off of unamortized interest rate contract	1,540	—
Discount on early retirement of debt	(2,008)	—
Equity in earnings of unconsolidated joint ventures (net of minority interest), net	(11,250)	(9,030)
Gain on sale of investment in unconsolidated joint venture (net of minority interest)	(20,392)	—
Realized (gains) losses and unrealized losses on disposition of rental property (net of minority interest), net	(1,165)	(2,376)
Minority interest in Operating Partnership	22,762	25,348
Minority interest in income from discontinued operations	4	4
Changes in operating assets and liabilities:		
Increase in unbilled rents receivable, net	(5,904)	(4,021)
Increase in deferred charges and other assets, net	(17,974)	(26,811)
Decrease in accounts receivable, net	1,322	346
Decrease in accounts payable and accrued expenses	(2,627)	(2,121)
Decrease in rents received in advance and security deposits	2,159	5,550
Decrease in accrued interest payable	(14,241)	(16,782)
	<u>          </u>	<u>          </u>
Net cash provided by operating activities	\$ 160,750	\$ 165,671
	<u>          </u>	<u>          </u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Additions to rental property	\$ (88,689)	\$ (127,546)
Proceeds from repayment of mortgage note receivable	3,542	3,813
Investments in unconsolidated joint ventures	(12,851)	(51,587)
Distributions from unconsolidated joint ventures	14,339	20,086
Proceeds from sale of investment in unconsolidated joint venture	164,867	—
Proceeds from sales of rental property	5,469	115,460
(Increase) decrease in restricted cash	(3)	485
	<u>          </u>	<u>          </u>
Net cash provided by (used in) investing activities	\$ 86,674	\$ (39,289)
	<u>          </u>	<u>          </u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>		
Proceeds from senior unsecured notes	\$ 124,714	—
Proceeds from revolving credit facilities	297,852	\$ 428,775
Repayments of revolving credit facilities	(370,852)	(369,275)
Repayment of senior unsecured notes	(95,284)	—
Repayments of mortgages and loans payable	(76,124)	(2,593)
Net proceeds from preferred stock issuance	24,836	—
Repurchase of common stock	(1,030)	(1,824)
Payment of financing costs	(577)	(4,986)
Proceeds from stock options exercised	17,238	16,866
Proceeds from stock warrants exercised	2,227	3,547
Payment of dividends and distributions	(136,297)	(132,908)
	<u>          </u>	<u>          </u>
Net cash used in financing activities	\$ (213,297)	\$ (62,398)
	<u>          </u>	<u>          </u>
Net increase in cash and cash equivalents	\$ 34,127	\$ 63,984
Cash and cash equivalents, beginning of period	1,167	12,835
	<u>          </u>	<u>          </u>
Cash and cash equivalents, end of period	\$ 35,294	\$ 76,819
	<u>          </u>	<u>          </u>

The accompanying notes are an integral part of these consolidated financial statements.

## MACK-CALI REALTY CORPORATION AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(dollars in thousands, except per share/unit amounts)

#### 1. ORGANIZATION AND BASIS OF PRESENTATION

##### ORGANIZATION

Mack-Cali Realty Corporation, a Maryland corporation, together with its subsidiaries (the "Company"), is a fully-integrated, self-administered, self-managed real estate investment trust ("REIT") providing leasing, management, acquisition, development, construction and tenant-related services for its properties. As of September 30, 2003, the Company owned or had interests in 265 properties plus developable land (collectively, the "Properties"). The Properties aggregate approximately 28.5 million square feet, which are comprised of 155 office buildings and 97 office/flex buildings, totaling approximately 28.0 million square feet (which include four office buildings and one office/flex building aggregating 1.2 million square feet owned by unconsolidated joint ventures in which the Company has investment interests), six industrial/warehouse buildings totaling approximately 387,400 square feet, three stand-alone retail properties totaling approximately 118,040 square feet (which includes one retail property totaling approximately 100,740 square feet owned by an unconsolidated joint venture in which the Company has an investment interest), one hotel (which is owned by an unconsolidated joint venture in which the Company has an investment interest) and three parcels of land leased to others. The Properties are located in eight states, primarily in the Northeast, plus the District of Columbia.

##### BASIS OF PRESENTATION

The accompanying consolidated financial statements include all accounts of the Company, its majority-owned and/or controlled subsidiaries, which consist principally of Mack-Cali Realty, L.P. ("Operating Partnership"). See Investments in Unconsolidated Joint Ventures in Note 2 for the Company's treatment of unconsolidated joint venture interests. All significant intercompany accounts and transactions have been eliminated.

The preparation of financial statements in conformity with generally accepted accounting principles ("GAAP") requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

## 2. SIGNIFICANT ACCOUNTING POLICIES

### *Rental Property*

Rental properties are stated at cost less accumulated depreciation and amortization. Costs directly related to the acquisition, development and construction of rental properties are capitalized. Capitalized development and construction costs include pre-construction costs essential to the development of the property, development and construction costs, interest, property taxes, insurance, salaries and other project costs incurred during the period of development. Included in total rental property is construction and development in-progress of \$60,247 and \$168,700 (including land of \$46,635 and \$50,481) as of September 30, 2003 and December 31, 2002, respectively. Ordinary repairs and maintenance are expensed as incurred; major replacements and betterments, which improve or extend the life of the asset, are capitalized and depreciated over their estimated useful lives. Fully-depreciated assets are removed from the accounts.

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The Company considers a construction project as substantially completed and held available for occupancy upon the completion of tenant improvements, but no later than one year from cessation of major construction activity (as distinguished from activities such as routine maintenance and cleanup). If portions of a rental project are substantially completed and occupied by tenants, or held available for occupancy, and other portions have not yet reached that stage, the substantially completed portions are accounted for as a separate project. The Company allocates costs incurred between the portions under construction and the portions substantially completed and held available for occupancy, and capitalizes only those costs associated with the portion under construction.

Properties are depreciated using the straight-line method over the estimated useful lives of the assets. The estimated useful lives are as follows:

Leasehold interests	Remaining lease term
Buildings and improvements	5 to 40 years
Tenant improvements	The shorter of the term of the related lease or useful life
Furniture, fixtures and equipment	5 to 10 years

Upon acquisition of rental property, the Company estimates the fair value of acquired tangible assets, consisting of land, building and improvements, and identified intangible assets and liabilities generally consisting of the fair value of (i) above and below market leases, (ii) in-place leases and (iii) tenant relationships. The Company allocates the purchase price to the assets acquired and liabilities assumed based on their relative fair values. In estimating the fair value of the tangible and intangible assets acquired, the Company considers information obtained about each property as a result of its due diligence and marketing and leasing activities, and utilizes various valuation methods, such as estimated cash flow projections utilizing appropriate discount and capitalization rates, estimates of replacement costs net of depreciation, and available market information. The fair value of the tangible assets of an acquired property considers the value of the property as if it were vacant.

Above-market and below-market lease values for acquired properties are recorded based on the present value (using a discount rate which reflects the risks associated with the leases acquired) of the difference between (i) the contractual amounts to be paid pursuant to each in-place lease and (ii) management's estimate of fair market lease rates for each corresponding in-place lease, measured over a period equal to the remaining term of the lease for above-market leases and the initial term plus the term of any below-market fixed rate renewal options for below-market leases. The capitalized above-market lease values are amortized as a reduction of base rental revenue over the remaining term of the respective leases, and the capitalized below-market lease values are amortized as an increase to base rental revenue over the remaining initial terms plus the terms of any below-market fixed rate renewal options of the respective leases.

Other intangible assets acquired include amounts for in-place lease values and tenant relationship values which are based on management's evaluation of the specific characteristics of each tenant's lease and the Company's overall relationship with the respective tenant. Factors to be considered by management in its analysis of in-place lease values include an estimate of carrying costs during hypothetical expected lease-up periods considering current market conditions, and costs to execute similar leases. In estimating carrying costs, management includes real estate taxes, insurance and other operating expenses and estimates of lost rentals at market rates during the expected lease-up periods, depending on local market conditions. In estimating costs to execute similar leases, management considers leasing commissions, legal and other related expenses. Characteristics considered by management in valuing tenant relationships include the nature and extent of the Company's existing business relationships with the tenant, growth prospects for developing new business with the tenant, the tenant's credit quality and expectations of lease renewals. The value of in-place leases are

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amortized to expense over the remaining initial terms of the respective leases. The value of tenant relationship intangibles are amortized to expense over the anticipated life of the relationships.

On a periodic basis, management assesses whether there are any indicators that the value of the Company's real estate properties may be impaired. A property's value is impaired only if management's estimate of the aggregate future cash flows (undiscounted and without interest charges) to be generated by the property is less than the carrying value of the property. To the extent impairment has occurred, the loss shall be measured as the excess of the carrying amount of the property over the fair value of the property. The Company's estimates of aggregate future cash flows expected to be generated by each property are based on a number of assumptions that are subject to economic and market uncertainties including, among others, demand for space, competition for tenants, changes in market rental rates, and costs to operate each property. As these factors are difficult to predict and are subject to future events that may alter management's assumptions, the future cash flows estimated by management in its impairment analyses may not be achieved. Management does not believe that the value of any of the Company's rental properties is impaired.

### *Rental Property Held for Sale and Discontinued Operations*

When assets are identified by management as held for sale, the Company discontinues depreciating the assets and estimates the sales price, net of selling costs, of such assets. If, in management's opinion, the net sales price of the assets which have been identified as held for sale is less than the net book value of the assets, a valuation allowance is established.

If circumstances arise that previously were considered unlikely and, as a result, the Company decides not to sell a property previously classified as held for sale, the property is reclassified as held and used. A property that is reclassified is measured and recorded individually at the lower of (a) its carrying amount before the property was

classified as held for sale, adjusted for any depreciation (amortization) expense that would have been recognized had the property been continuously classified as held and used, or (b) the fair value at the date of the subsequent decision not to sell.

Effective January 1, 2002, the Company adopted the provisions of Statement of Financial Accounting Standards ("FASB") No. 144, Accounting for the Impairment or Disposal of Long-Lived Assets, which supercedes FASB No. 121. FASB No. 144 requires that long-lived assets that are to be disposed of by sale be measured at the lower of book value or fair value less cost to sell. FASB No. 144 retains the requirements of FASB No. 121 regarding impairment loss recognition and measurement. In addition, it requires that one accounting model be used for long-lived assets to be disposed of by sale and broadens the presentation of discontinued operations to include more disposal transactions. As the statement requires implementation on a prospective basis, properties which were identified as held for sale by the Company prior to January 1, 2002 are presented in the accompanying financial statements in a manner consistent with the presentation prior to January 1, 2002. Properties identified as held for sale and/or sold from January 1, 2002 forward are presented in discontinued operations for all periods presented. See Note 6.

#### ***Investments in Unconsolidated Joint Ventures, Net***

The Company accounts for its investments in unconsolidated joint ventures under the equity method of accounting as the Company exercises significant influence, but does not control these entities. These investments are recorded initially at cost, as Investments in Unconsolidated Joint Ventures, and subsequently adjusted for equity in earnings and cash contributions and distributions.

On a periodic basis, management assesses whether there are any indicators that the value of the Company's investments in unconsolidated joint ventures may be impaired. An investment is impaired only if management's estimate of the value of the investment is less than the carrying value of the investment. To the extent impairment has occurred, the loss shall be measured as the excess of the

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carrying amount of the investment over the value of the investment. Management does not believe that the value of any of the Company's investments in unconsolidated joint ventures is impaired. See Note 4.

#### ***Cash and Cash Equivalents***

All highly liquid investments with a maturity of three months or less when purchased are considered to be cash equivalents.

#### ***Deferred Financing Costs***

Costs incurred in obtaining financing are capitalized and amortized on a straight-line basis, which approximates the effective interest method, over the term of the related indebtedness. Amortization of such costs is included in interest expense and was \$1,118 and \$1,176 for the three months ended September 30, 2003 and 2002, respectively, and \$3,603 and \$3,529 for the nine months ended September 30, 2003 and 2002, respectively.

#### ***Deferred Leasing Costs***

Costs incurred in connection with leases are capitalized and amortized on a straight-line basis over the terms of the related leases and included in depreciation and amortization. Unamortized deferred leasing costs are charged to amortization expense upon early termination of the lease. Certain employees of the Company are compensated for providing leasing services to the Properties. The portion of such compensation, which is capitalized and amortized, approximated \$821 and \$908 for the three months ended September 30, 2003 and 2002, respectively, and \$2,313 and \$2,604 for the nine months ended September 30, 2003 and 2002, respectively.

#### ***Restricted Cash***

Restricted cash includes tenant security deposits and escrow and reserve funds for debt service, real estate taxes, property insurance, capital improvements, tenant improvements, and leasing costs established pursuant to certain mortgage financing arrangements.

#### ***Derivative Instruments***

The Company measures derivative instruments, including certain derivative instruments embedded in other contracts, at fair value and records them as an asset or liability, depending on the Company's rights or obligations under the applicable derivative contract. For derivatives designated as fair value hedges, the changes in the fair value of both the derivative instrument and the hedged item are recorded in earnings. For derivatives designated as cash flow hedges, the effective portions of the derivative are reported in other comprehensive income ("OCI") and are subsequently reclassified into earnings when the hedged item affects earnings. Changes in fair value of derivative instruments not designated as hedging and ineffective portions of hedges are recognized in earnings in the affected period. See Note 9—Interest Rate Contract.

#### ***Revenue Recognition***

Base rental revenue is recognized on a straight-line basis over the terms of the respective leases. Unbilled rents receivable represents the amount by which straight-line rental revenue exceeds rents currently billed in accordance with the lease agreements. The capitalized above-market lease values for acquired properties are amortized as a reduction of base rental revenue over the remaining term of the respective leases, and the capitalized below-market lease values are amortized as an increase to base rental revenue over the remaining initial terms plus the terms of any below-market fixed rate renewal options of the respective leases. Parking and other revenue includes income from parking spaces leased

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to tenants, income from tenants for additional services provided by the Company, income from tenants for early lease terminations and income from managing and/or leasing properties for third parties.

Reimbursements are received from tenants for certain costs as provided in the lease agreements. These costs generally include real estate taxes, utilities, insurance, common area maintenance and other recoverable costs. See Note 13.

#### ***Allowance for Doubtful Accounts***

Management periodically performs a detailed review of amounts due from tenants to determine if accounts receivable balances are impaired based on factors affecting the collectibility of those balances. Management's estimate of the allowance for doubtful accounts requires management to exercise significant judgment about the timing, frequency and severity of collection losses, which affects the allowance and net income.

## Income and Other Taxes

The Company has elected to be taxed as a REIT under Sections 856 through 860 of the Internal Revenue Code of 1986, as amended (the "Code"). As a REIT, the Company generally will not be subject to corporate federal income tax on net income that it currently distributes to its shareholders, provided that the Company satisfies certain organizational and operational requirements including the requirement to distribute at least 90 percent of its REIT taxable income to its shareholders. The Company may elect to treat one or more of its corporate subsidiaries as a taxable REIT subsidiary ("TRS"). In general, a TRS of the Company may perform additional services for tenants of the Company and generally may engage in any real estate or non-real estate related business (except for the operation or management of health care facilities or lodging facilities or the providing to any person, under a franchise, license or otherwise, rights to any brand name under which any lodging facility or health care facility is operated). A TRS is subject to corporate federal income tax. The Company has elected to treat certain of its corporate subsidiaries as a TRS. If the Company fails to qualify as a REIT in any taxable year, the Company will be subject to federal income tax (including any applicable alternative minimum tax) on its taxable income at regular corporate tax rates. The Company is subject to certain state and local taxes.

## Earnings Per Share

The Company presents both basic and diluted earnings per share ("EPS"). Basic EPS excludes dilution and is computed by dividing net income available to common shareholders by the weighted average number of shares outstanding for the period. Diluted EPS reflects the potential dilution that could occur if securities or other contracts to issue common stock were exercised or converted into common stock, where such exercise or conversion would result in a lower EPS amount.

## Dividends and Distributions Payable

The dividends and distributions payable at September 30, 2003 represents dividends payable to preferred shareholders of record as of October 3, 2003 (1,000,000 depository shares), common shareholders of record on that same date (58,261,944 shares), distributions payable to minority interest common unitholders (7,795,498 common units) on that same date and preferred distributions payable to preferred unitholders (215,456 preferred units) for the third quarter 2003. The third quarter 2003 preferred stock dividends of \$0.50 per depository share, common stock dividends and common unit distributions of \$0.63 per common share and common unit, as well as the third quarter preferred unit distributions of \$18.1818 per preferred unit were approved by the Board of Directors on September 17, 2003. The preferred stock dividends payable were paid on October 15, 2003. The common stock dividends and common and preferred unit distributions payable were paid on October 20, 2003.

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The dividends and distributions payable at December 31, 2002 represents dividends payable to common shareholders of record as of January 6, 2003 (57,490,417 shares), distributions payable to minority interest common unitholders (7,813,806 common units) on that same date and preferred distributions payable to preferred unitholders (215,894 preferred units) for the fourth quarter 2002. The fourth quarter 2002 common stock dividends and common unit distributions of \$0.63 per share and per common unit, as well as the fourth quarter preferred unit distribution of \$18.1818 per preferred unit, were approved by the Board of Directors on December 19, 2002 and paid on January 17, 2003.

## Costs Incurred for Preferred Stock Issuances

Costs incurred in connection with the Company's preferred stock issuances are reflected as a reduction of additional paid-in capital.

## Stock Options

With respect to the Company's stock options which were granted prior to 2002, the Company accounted for stock-based compensation using the intrinsic value method prescribed in Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees," and related Interpretations ("APB No. 25"). Under APB No. 25, compensation cost is measured as the excess, if any, of the quoted market price of the Company's stock at the date of grant over the exercise price of the option granted. Compensation cost for stock options, if any, is recognized ratably over the vesting period. The Company's policy is to grant options with an exercise price equal to the quoted closing market price of the Company's stock on the business day preceding the grant date. Accordingly, no compensation cost has been recognized under the Company's stock option plans for the granting of stock options made prior to 2002. In 2002, the Company adopted the provisions of FASB No. 123, which requires, on a prospective basis, that the value of stock options at the grant date be amortized ratably into expense over the appropriate vesting period. The Company did not grant any stock options in 2002. For the three and nine month periods ended September 30, 2003, the Company recorded stock options expense of \$51 and \$139, respectively, for stock options granted in 2003. FASB No. 148, Accounting for Stock-Based Compensation—Transition and Disclosure, was issued in December 2002 and amends FASB No. 123, Accounting for Stock Based Compensation. FASB No. 148 provides alternative methods of transition for a voluntary change to the fair value based method of accounting for stock based compensation. In addition, this Statement amends the disclosure requirements of FASB No. 123 to require prominent disclosures in both annual and interim financial statements about the

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method of accounting for stock-based employee compensation and the effect of the method used on reported results. FASB No. 148 disclosure requirements are presented as follows:

The following table illustrates the effect on net income and earnings per share if the fair value based method had been applied to all outstanding and unvested stock awards in each period:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2003	2002	2003	2002
Net income available to common shareholders, as reported	\$ 50,392	\$ 34,232	\$ 113,961	\$ 109,886
Add: Stock-based employee compensation expense included in reported net income	51	—	139	—
Deduct: Total stock-based employee compensation expense determined under fair value based method for all awards	(421)	(602)	(1,247)	(1,801)
Pro forma net income available to common shareholders—basic	\$ 50,022	\$ 33,630	\$ 112,853	\$ 108,085
<b>Earnings Per Common Share:</b>				
Basic—as reported	\$ 0.87	\$ 0.60	\$ 1.98	\$ 1.92
Basic—pro forma	\$ 0.86	\$ 0.58	\$ 1.96	\$ 1.89



Diluted—as reported	\$	0.84	\$	0.59	\$	1.96	\$	1.91
Diluted—pro forma	\$	0.84	\$	0.58	\$	1.94	\$	1.88

### Reclassifications

Certain reclassifications have been made to prior period amounts in order to conform with current period presentation.

## 3. REAL ESTATE PROPERTY TRANSACTIONS

### Property Acquisitions

The Company acquired the following operating properties during the nine months ended September 30, 2003:

Acquisition Date	Property/Address	Location	# of Bldgs.	Rentable Square Feet	Investment by Company(a)
<b>Office:</b>					
09/12/03	4 Sentry Parkway	Blue Bell, Montgomery County, PA	1	63,930	\$ 10,395
09/23/03	14 Commerce Drive	Cranford, Union County, NJ	1	67,189	8,382
Total Office Property Acquisitions:			2	131,119	\$ 18,777
<b>Office/Flex</b>					
08/19/03	3 Odell Plaza	Yonkers, Westchester County, NY	1	71,065	6,047
Total Property Acquisitions:			3	202,184	\$ 24,824

(a) Transactions were funded primarily through borrowings on the Company's revolving credit facility, from net proceeds received in the sale or sales of rental property, and/or from the Company's cash reserves. Amounts are as of September 30, 2003.

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### Property Sales

On March 28, 2003, the Company sold 1770 St. James Place, a 103,689 square-foot office building located in Houston, Harris County, Texas, for net sales proceeds of approximately \$5,469. The Company recognized a gain of \$1,165 (net of minority interest of \$159) from the sale, which is presented in discontinued operations for the nine months ended September 30, 2003. See Note 6.

On October 31, 2003, the Company sold 111 Soledad, a 248,153 square foot office building located in San Antonio, Texas, for net sales proceeds of approximately \$10,780.

## 4. INVESTMENTS IN UNCONSOLIDATED JOINT VENTURES

The debt of the Company's unconsolidated joint ventures aggregating \$148,599 as of September 30, 2003 is non-recourse to the Company, except for customary exclusions pertaining to such matters as intentional misuse of funds, environmental conditions and material misrepresentations, and except as otherwise indicated below.

### HPMC

On April 23, 1998, the Company entered into a joint venture agreement with HCG Development, L.L.C. and Summit Partners I, L.L.C. to form HPMC Development Partners, L.P. and, on July 21, 1998, entered into a second joint venture, HPMC Development Partners II, L.P. (formerly known as HPMC Lava Ridge Partners, L.P.), with these same parties. HPMC Development Partners, L.P.'s efforts focused on two development projects, commonly referred to as Continental Grand II and Summit Ridge. HPMC Development Partners II, L.P.'s efforts have focused on six development projects, commonly referred to as Lava Ridge, Pacific Plaza I & II and Stadium Gateway.

The Company has a 50 percent ownership interest and HCG Development, L.L.C. and Summit Partners I, L.L.C. (both of which are not affiliated with the Company) collectively have a 50 percent ownership interest in HPMC Development Partners, L.P. and HPMC Development Partners II, L.P. (the "HPMC Joint Ventures"). Significant terms of the applicable partnership agreements, among other things, call for the Company to provide 80 percent and HCG Development, L.L.C. and Summit Partners I, L.L.C. to collectively provide 20 percent of the development equity capital to the HPMC Joint Ventures. As the Company has agreed to fund development equity capital disproportionate to its ownership interest, it was granted a preferred return of 10 percent on its invested capital as a priority. Profits and losses of each of the HPMC Joint Ventures are allocated to the partners based upon the priority of distributions specified in the respective agreements and entitle the Company to a preferred return, as well as 50 percent of each of the HPMC Joint Ventures' residual profits above the preferred returns. Equity in earnings recognized by the Company consists of preferred returns and the Company's equity in the HPMC Joint Ventures' earnings (loss) after giving effect to the HPMC Joint Ventures' payment of such preferred returns.

#### Continental Grand II

Continental Grand II is a 239,085 square-foot office building located in El Segundo, Los Angeles County, California, which was constructed and placed in service by the venture. On June 29, 2001, the venture sold the office property for approximately \$67,000.

#### Summit Ridge

Summit Ridge is an office complex comprised of six one-story buildings, aggregating 133,841 square feet, located in San Diego, San Diego County, California, which was constructed and placed in service by the venture. On January 29, 2001, the venture sold the office complex for approximately \$17,450.

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### **Lava Ridge**

Lava Ridge is an office complex comprised of six two-story buildings, aggregating 183,200 square feet, located in Roseville, Placer County, California, which was constructed and placed in service by the venture. On May 30, 2002, the venture sold the office complex for approximately \$31,700.

### **Pacific Plaza I & II**

Pacific Plaza I & II is a two-phase development joint venture project, located in Daly City, San Mateo County, California between HPMC Development Partners II, L.P. and a third-party entity. Phase I of the project, which commenced initial operations in August 2001, consists of a nine-story office building, aggregating 364,384 square feet. Phase II comprises a six-story retail and theater complex. The theater portion of Phase II commenced initial operations in June 2002, with a portion of the retail space commencing operations in August 2002. The Company performs management services for these properties owned by the joint venture and recognized \$81 and \$91 in fees for such services for the three months ended September 30, 2003 and 2002, respectively, and \$234 and \$213 for the nine months ended September 30, 2003 and 2002, respectively.

### **Stadium Gateway**

Stadium Gateway is a development joint venture project, located in Anaheim, Orange County, California between HPMC Development Partners II, L.P. and a third-party entity. The venture has constructed a six-story, 273,194 square-foot office building, which commenced initial operations in January 2002. On April 1, 2003, the venture sold the office property for approximately \$52,500.

### **G&G MARTCO (Convention Plaza)**

On April 30, 1998, the Company acquired a 49.9 percent interest in an existing joint venture, G&G Martco, which owns Convention Plaza, a 305,618 square-foot office building, located in San Francisco, San Francisco County, California. A portion of the Company's initial investment was financed through the issuance of common units, as well as funds drawn from the Company's revolving credit facilities. On June 4, 1999, the Company acquired an additional 0.1 percent interest in G&G Martco through the issuance of common units. The venture has a mortgage loan with a \$42,559 balance at September 30, 2003 secured by its office property. The mortgage bears interest at a rate of the London Inter-Bank Offered Rate ("LIBOR") (1.12 percent at September 30, 2003) plus 162.5 basis points and matures in August 2006. The Company performs management and leasing services for the property owned by the joint venture and recognized \$54 and \$62 in fees for such services for the three months ended September 30, 2003 and 2002, respectively, and \$177 and \$188 for the nine months ended September 30, 2003 and 2002, respectively.

### **AMERICAN FINANCIAL EXCHANGE L.L.C./ PLAZA VIII AND IX ASSOCIATES, L.L.C.**

On May 20, 1998, the Company entered into a joint venture agreement with Columbia Development Company, L.L.C. ("Columbia") to form American Financial Exchange L.L.C. ("AFE"). The venture was formed to acquire land for future development, located on the Hudson River waterfront in Jersey City, Hudson County, New Jersey, adjacent to the Company's Harborside Financial Center office complex. Among other things, the partnership agreement provided for a preferred return on the Company's invested capital in the venture, in addition to the Company's proportionate share of the venture's profit, as defined in the agreement. The joint venture acquired land on which it initially constructed a parking facility, a portion of which is currently licensed to a parking operator. Such parking facility serves a ferry service between the Company's Harborside property and Manhattan. In the fourth quarter 2000, the joint venture started construction of Plaza 10, a 577,575 square-foot office building which was 100 percent pre-leased to Charles Schwab & Co. Inc. ("Schwab") for a 15-year

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term, on certain of the land owned by the venture. The lease agreement with Schwab obligated the venture, among other things, to deliver space to the tenant by required timelines and offers expansion options at the tenant's election. Such option may have obligated the venture to construct an additional building or, at the Company's option, to make space available in any of its existing Harborside properties. Had the venture been unable to, or choose not to, provide such expansion space, the venture would have been liable to Schwab for its actual damages, in no event to exceed \$15,000. The amount of Schwab's actual damages, up to \$15,000, had been guaranteed by the Company. AFE has an agreement with the City of Jersey City, New Jersey, in which it is required to make payments in lieu of property taxes ("PILOT"). The agreement is for a term of 20 years. The PILOT is equal to two percent of Total Project Costs, as defined, with periodic increases, as defined. Total Project Costs, per the agreement, are the greater of \$78,821 or actual Total Project Costs, as defined. The Company performed management, leasing and development services for the Plaza 10 property owned by the venture and recognized \$1,892 and \$19 in fees for such services for the three months ended September 30, 2003 and 2002, respectively, and \$2,194 and \$19 for the nine months ended September 30, 2003 and 2002, respectively.

On September 29, 2003, the Company sold its interest in AFE, in which it held a 50 percent interest, and received approximately \$162,145 in net sales proceeds from the transaction, which the Company used primarily to repay outstanding borrowings under its revolving credit facility. The Company recognized a gain on the sale of approximately \$23,140, which is recorded in gain on sale of investment in unconsolidated joint venture for the three and nine months ended September 30, 2003. Following completion of the sale of its interest, the Company no longer has any remaining obligations to Schwab.

In advance of the transaction, AFE distributed its interests in Plaza VIII and IX Associates, L.L.C., which owned the undeveloped land currently used as a parking facility, to its then partners, the Company and Columbia. The Company and Columbia subsequently entered into a new joint venture agreement to own and manage the undeveloped land and related parking operations through Plaza VIII and IX Associates, L.L.C. The Company and Columbia each hold a 50 percent interest in the new venture.

### **RAMLAND REALTY ASSOCIATES L.L.C. (One Ramland Road)**

On August 20, 1998, the Company entered into a joint venture agreement with S.B. New York Realty Corp. to form Ramland Realty Associates L.L.C. The venture was formed to own, manage and operate One Ramland Road, a 232,000 square-foot office/flex building and adjacent developable land, located in Orangeburg, Rockland County, New York. In August 1999, the joint venture completed redevelopment of the property and placed the office/flex building in service. The Company holds a 50 percent interest in the joint venture. The venture has a mortgage loan with a \$14,935 balance at September 30, 2003 secured by its office/flex property. The mortgage bears interest at a rate of LIBOR plus 175 basis points and matures in January 2005. In 2001, the property's then principal tenant, Superior Bank was closed by the Office of Thrift Supervision, and the Federal Deposit Insurance Corporation (FDIC) was named receiver. The tenant continued to meet its rental payment obligations through September 2002. In July 2002, the tenant vacated the premises and the FDIC notified the joint venture that it was rejecting the lease as of July 16, 2002. As a result of the uncertainty regarding the tenant's ability to meet its obligations through the remainder of the term of its lease, the joint venture wrote off unbilled rents receivable of \$1,573 and deferred leasing costs of \$705, which is included in the Company's equity in earnings for the nine months ended September 30, 2002. Following Superior Bank's closure in June 2002, the venture's management determined it was unlikely a prospective tenant would retain tenant improvements previously made to Superior Bank's space and, accordingly, the venture accelerated amortization of those tenant improvements and recorded a charge of \$3,586, which is included in the Company's equity in earnings for the nine months ended September 30, 2003. The

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Company performs management, leasing and other services for the property owned by the joint venture and recognized \$2 and \$4 in fees for such services for the three months

ended September 30, 2003 and 2002, respectively, and \$10 and \$53 for the nine months ended September 30, 2003 and 2002, respectively.

#### ASHFORD LOOP ASSOCIATES L.P. (1001 South Dairy Ashford/2100 West Loop South)

On September 18, 1998, the Company entered into a joint venture agreement with Prudential to form Ashford Loop Associates L.P. The venture was formed to own, manage and operate 1001 South Dairy Ashford, a 130,000 square-foot office building acquired on September 18, 1998, and 2100 West Loop South, a 168,000 square-foot office building acquired on November 25, 1998, both located in Houston, Harris County, Texas. The Company holds a 20 percent interest in the joint venture. The Company performed management and leasing services through March 2002 for the properties owned by the joint venture and recognized \$0 and \$45 in fees for such services for the three and nine month periods ended September 30, 2002, respectively. Under certain circumstances, Prudential has the right to convert its interest in the venture into common stock of the Company at a discount to the stock's fair market value, based on the underlying fair value of Prudential's interest in the venture at the time of conversion. The Company, at its option, can elect to exchange cash in lieu of stock in an amount equal to the fair value of Prudential's interest.

In May 2002, the Company sent a notice to Prudential electing to exercise its option under the buy-sell provisions of the joint venture agreement. Subsequently, Prudential sent notice to the Company that it was exercising its option to put its interest in the joint venture to the Company in exchange for common stock of the Company as described above. In November 2002, the Company and Prudential entered into a first amendment to their joint venture agreement pursuant to which: (i) the Company retracted its notice of exercise of the buy-sell provisions of the joint venture agreement, (ii) Prudential retracted its notice of exercise of its option to put its interest in the joint venture to the Company in exchange for common stock of the Company, as described above, (iii) the mechanics of the exercise by either party of their respective buy-sell, sale and exchange rights ("Exit Rights") were clarified and confirmed, and (iv) each party agreed to a one-year moratorium on the exercise of their respective Exit Rights while the parties attempt to reposition the assets of the joint venture.

#### ARCAP INVESTORS, L.L.C.

In 1999, the Company invested \$20,000 in ARCap Investors, L.L.C., a joint venture with several participants, which was formed to invest in sub-investment grade tranches of commercial mortgage-backed securities ("CMBS"). William L. Mack, Chairman of the Board of Directors of the Company, is a principal of an entity that owns approximately 28 percent of the venture and has nominated a member of its board of directors. As of December 31, 2001, the Company held a 20.1 percent interest in the common equity of ARCap Investors, L.L.C. On December 12, 2002, the Company sold its interest in the venture for \$20,225.

#### MC-SJP MORRIS V REALTY, LLC AND MC-SJP MORRIS VI REALTY, LLC

The Company had an agreement with SJP Properties ("Land Development Agreement"), which provided for a cooperative effort in seeking approvals to develop up to approximately 1.8 million square feet of office development on certain vacant land, which is located in Hanover and Parsippany, Morris County, New Jersey, owned by the Company and SJP Properties. The Land Development Agreement provided that the parties share equally in the costs associated with seeking such requisite approvals. Upon mutual consent, the Company and SJP Properties were able to enter into one or more joint ventures to construct on the vacant land, or seek to dispose of their respective vacant land parcels subject to the agreement. Pursuant to the Land Development Agreement, on August 24, 2000, the Company entered into a joint venture with SJP Properties to form MC-SJP Morris V Realty, LLC and

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MC-SJP Morris VI Realty, LLC (collectively the "Morris V and VI Venture"), which acquired developable land for approximately \$16,193. The acquired land is able to accommodate approximately 650,000 square feet of office space and is located in Parsippany, Morris County, New Jersey. The venture entered into an agreement pertaining to the acquired land and two other land parcels in Parsippany with an insurance company to provide for a guarantee on the funding of the development of four office properties, aggregating 850,000 square feet. Such agreement provided, if the venture elected to develop, that the insurance company would be admitted to the joint venture and provide all the equity required to fund the development, subject to certain conditions. The venture had a mortgage loan secured by its land and guaranteed by the insurance company, which carried an interest rate of LIBOR plus 125 basis points and was scheduled to mature in March 2004.

In October 2003, the Company and SJP Properties mutually agreed to terminate the Land Development Agreement and the related Morris V and VI Venture, including the agreement with the insurance company. In conjunction with the termination of the Land Development Agreement, the Company reimbursed SJP \$1,812 for its development costs incurred on the parcels of land owned by the Company. Additionally, the Company sold its interest to SJP in the Morris V and VI Venture for \$350, an amount equivalent to the costs contributed to such venture.

#### SOUTH PIER AT HARBORSIDE—HOTEL DEVELOPMENT

On November 17, 1999, the Company entered into an agreement with Hyatt Corporation ("Hyatt") to develop a 350-room hotel on the South Pier at Harborside Financial Center, Jersey City, Hudson County, New Jersey, which was completed and commenced initial operations in July 2002. The Company owns a 50 percent interest in the venture. The venture has a mortgage loan with a commercial bank with a \$62,868 balance at September 30, 2003 secured by its hotel property, which each partner, including the Company, has severally guaranteed repayment of approximately \$11,148. The debt bears interest at a rate of LIBOR plus 275 basis points and matures in December 2003. The loan provides for two one-year extension options upon payment of a fee and subject to certain conditions. As the venture currently does not expect to meet the conditions allowing it to exercise an extension option under the current loan, the venture is pursuing a new mortgage loan with other potential lenders, although no assurance can be given that such financing will be obtained. Additionally, the venture has an \$8,000 loan with the City of Jersey City, provided by the U.S. Department of Housing and Urban Development. The loan currently bears interest at fixed rates ranging from 6.09 percent to 6.62 percent and matures in August 2020. The Company has posted an \$8,000 letter of credit in support of this loan, \$4,000 of which is indemnified by Hyatt.

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#### SUMMARIES OF UNCONSOLIDATED JOINT VENTURES

The following is a summary of the financial position of the unconsolidated joint ventures in which the Company had investment interests as of September 30, 2003 and December 31, 2002:

	September 30, 2003									
	HPMC	G&G Martco	American Financial Exchange	Plaza VIII & IX Associates	Ramland Realty	Ashford Loop	ARCAP	MC-SJP Morris Realty	Harborside South Pier	Combined Total
<b>Assets:</b>										
Rental property, net	\$ —	\$ 7,481	\$ —	\$ 13,424	\$ 13,397	\$ 36,052	\$ —	\$ 16,636	\$ 87,144	\$ 174,134
Other assets	13,734	2,858	—	4,865	824	332	—	30	10,086	32,729

Total assets	\$ 13,734	\$ 10,339	\$ —	\$ 18,289	\$ 14,221	\$ 36,384	\$ —	\$ 16,666	\$ 97,230	\$ 206,863
<b>Liabilities and partners'/ members' capital (deficit):</b>										
Mortgages and loans payable	\$ —	\$ 42,559	\$ —	\$ —	\$ 14,935	\$ —	\$ —	\$ 17,983	\$ 73,122	\$ 148,599
Other liabilities	3	1,006	—	4,814	74	806	—	48	4,060	10,811
Partners'/members capital (deficit)	13,731	(33,226)	—	13,475	(788)	35,578	—	(1,365)	20,048	47,453
<b>Total liabilities and partners'/ members' capital (deficit)</b>	<b>\$ 13,734</b>	<b>\$ 10,339</b>	<b>\$ —</b>	<b>\$ 18,289</b>	<b>\$ 14,221</b>	<b>\$ 36,384</b>	<b>\$ —</b>	<b>\$ 16,666</b>	<b>\$ 97,230</b>	<b>\$ 206,863</b>
Company's investment in unconsolidated joint ventures, net	\$ 12,830	\$ 5,881	\$ —	\$ 6,708	\$ —	\$ 7,588	\$ —	\$ 316	\$ 13,033	\$ 46,356

**December 31, 2002**

	HPMC	G&G Martco	American Financial Exchange	Plaza VIII & IX Associates	Ramland Realty	Ashford Loop	ARCcap	MC-SJP Morris Realty	Harborside South Pier	Combined Total
<b>Assets:</b>										
Rental property, net	\$ —	\$ 8,329	\$ 105,195	\$ —	\$ 13,803	\$ 36,520	\$ —	\$ 17,364	\$ 90,407	\$ 271,618
Other assets	16,242	3,813	26,486	—	1,900	730	—	1,211	5,610	55,992
<b>Total assets</b>	<b>\$ 16,242</b>	<b>\$ 12,142</b>	<b>\$ 131,681</b>	<b>\$ —</b>	<b>\$ 15,703</b>	<b>\$ 37,250</b>	<b>\$ —</b>	<b>\$ 18,575</b>	<b>\$ 96,017</b>	<b>\$ 327,610</b>
<b>Liabilities and partners'/ members' capital (deficit):</b>										
Mortgages and loans payable	\$ —	\$ 50,000	\$ —	\$ —	\$ 15,282	\$ 87	\$ —	\$ 17,983	\$ 69,475	\$ 152,827
Other liabilities	18	1,789	6,243	—	97	942	—	48	4,084	13,221
Partners'/members' capital (deficit)	16,224	(39,647)	125,438	—	324	36,221	—	544	22,458	161,562
<b>Total liabilities and partners'/ members' capital (deficit)</b>	<b>\$ 16,242</b>	<b>\$ 12,142</b>	<b>\$ 131,681</b>	<b>\$ —</b>	<b>\$ 15,703</b>	<b>\$ 37,250</b>	<b>\$ —</b>	<b>\$ 18,575</b>	<b>\$ 96,017</b>	<b>\$ 327,610</b>
Company's investment in unconsolidated joint ventures, net	\$ 15,900	\$ 2,794	\$ 134,158	\$ —	\$ 1,232	\$ 7,652	\$ —	\$ 289	\$ 14,772	\$ 176,797

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The following is a summary of the results of operations of the unconsolidated joint ventures for the period in which the Company had investment interests during the three months ended September 30, 2003 and 2002:

**Three Months Ended September 30, 2003**

	HPMC	G&G Martco	American Financial Exchange	Plaza VIII & IX Associates	Ramland Realty	Ashford Loop	ARCcap	MC-SJP Morris Realty	Harborside South Pier	Minority Interest in Operating Partnership	Combined Total
Total revenues	\$ 11	\$ 2,950	\$ 5,614	\$ —	\$ 65	\$ 955	\$ —	\$ —	\$ 6,692	\$ —	\$ 16,287
Operating and other expenses	(244)	(1,033)	(1,156)	—	(220)	(800)	—	—	(4,278)	—	(7,731)
Depreciation and amortization	—	(380)	(1,111)	—	(139)	(244)	—	—	(1,614)	—	(3,488)
Interest expense	—	(350)	—	—	(107)	—	—	—	(761)	—	(1,218)
<b>Net income (loss)</b>	<b>\$ (233)</b>	<b>\$ 1,187</b>	<b>\$ 3,347</b>	<b>\$ —</b>	<b>\$ (401)</b>	<b>\$ (89)</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 39</b>	<b>\$ —</b>	<b>\$ 3,850</b>
Company's equity in earnings (loss) of unconsolidated joint ventures	\$ (77)	\$ 593	\$ 3,157	\$ —	\$ (100)	\$ (17)	\$ —	\$ —	\$ 19	\$ (424)	\$ 3,151

**Three Months Ended September 30, 2002**

	HPMC	G&G Martco	American Financial Exchange	Plaza VIII & IX Associates	Ramland Realty	Ashford Loop	ARCcap	MC-SJP Morris Realty	Harborside South Pier	Minority Interest in Operating Partnership	Combined Total
Total revenues	\$ 1	\$ 3,307	\$ 1,001	\$ —	\$ 63	\$ 1,113	\$ 48,913	\$ —	\$ 616	\$ —	\$ 55,014
Operating and other expenses	(442)	(1,170)	(176)	—	(220)	(728)	(7,510)	—	(1,296)	—	(11,542)
Depreciation and amortization	—	(407)	(138)	—	(223)	(244)	—	—	(1,248)	—	(2,260)
Interest expense	—	(475)	—	—	(181)	—	(6,739)	—	(804)	—	(8,199)
<b>Net income (loss)</b>	<b>\$ (441)</b>	<b>\$ 1,255</b>	<b>\$ 687</b>	<b>\$ —</b>	<b>\$ (561)</b>	<b>\$ 141</b>	<b>\$ 34,664</b>	<b>\$ —</b>	<b>\$ (2,732)</b>	<b>\$ —</b>	<b>\$ 33,013</b>
Company's equity in earnings (loss) of unconsolidated joint ventures	\$ (5)	\$ 592	\$ 687	\$ —	\$ (281)	\$ 28	\$ 2,670	\$ —	\$ (1,486)	\$ (264)	\$ 1,941

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The following is a summary of the results of operations of the unconsolidated joint ventures for the period in which the Company had investment interests during the nine months ended September 30, 2003 and 2002:

Nine Months Ended September 30, 2003

	HPMC	G&G Martco	American Financial Exchange	Plaza VIII & IX Associates	Ramland Realty	Ashford Loop	ARCcap	MC-SJP Morris Realty	Harborside South Pier	Minority Interest in Operating Partnership	Combined Total
Total revenues	\$ 4,660	\$ 9,680	\$ 17,398	\$ —	\$ 183	\$ 2,920	\$ —	\$ —	\$ 16,383	\$ —	\$ 51,224
Operating and other expenses	(315)	(2,995)	(3,040)	—	(737)	(2,528)	—	—	(11,726)	—	(21,341)
Depreciation and amortization	—	(1,215)	(2,912)	—	(416)	(731)	—	—	(4,711)	—	(9,985)
Interest expense	—	(1,199)	—	—	(343)	—	—	—	(2,356)	—	(3,898)
Net income (loss)	\$ 4,345	\$ 4,271	\$ 11,446	\$ —	\$ (1,313)	\$ (339)	\$ —	\$ —	\$ (2,410)	\$ —	\$ 16,000
Company's equity in earnings (loss) of unconsolidated joint ventures	\$ 2,346	\$ 2,012	\$ 11,342	\$ —	\$ (1,332)	\$ (39)	\$ —	\$ —	\$ (1,555)	\$ (1,524)	\$ 11,250

Nine Months Ended September 30, 2002

	HPMC	G&G Martco	American Financial Exchange	Plaza VIII & IX Associates	Ramland Realty	Ashford Loop	ARCcap	MC-SJP Morris Realty	Harborside South Pier	Minority Interest in Operating Partnership	Combined Total
Total revenues	\$ 12,106	\$ 10,067	\$ 1,181	\$ —	\$ 1,803	\$ 3,398	\$ 88,411	\$ —	\$ 616	\$ —	\$ 117,582
Operating and other expenses	(1,107)	(2,907)	(197)	—	(2,339)	(2,017)	(16,671)	—	(1,306)	—	(26,544)
Depreciation and amortization	(641)	(1,219)	(157)	—	(1,749)	(731)	—	—	(1,248)	—	(5,745)
Interest expense	(233)	(1,469)	—	—	(579)	—	(19,707)	—	(804)	—	(22,792)
Net income (loss)	\$ 10,125	\$ 4,472	\$ 827	\$ —	\$ (2,864)	\$ 650	\$ 52,033	\$ —	\$ (2,742)	\$ —	\$ 62,501
Company's equity in earnings (loss) of unconsolidated joint ventures	\$ 6,015	\$ 2,218	\$ 827	\$ —	\$ (1,432)	\$ 176	\$ 3,956	\$ —	\$ (1,486)	\$ (1,244)	\$ 9,030

5. DEFERRED CHARGES AND OTHER ASSETS

	September 30, 2003	December 31, 2002
Deferred leasing costs	130,770	119,520
Deferred financing costs	24,504	23,927
	155,274	143,447
Accumulated amortization	(52,123)	(40,477)
Deferred charges, net	103,151	102,970
Notes receivable	8,750	12,292
Prepaid expenses and other assets, net	13,226	12,289
Total deferred charges and other assets, net	\$ 125,127	\$ 127,551

6. DISCONTINUED OPERATIONS

Effective January 1, 2002, the Company adopted the provisions of FASB No. 144, Accounting for the Impairment or Disposal of Long-Lived Assets, which supercedes FASB No. 121. FASB No. 144 requires that long-lived assets that are to be disposed of by sale be measured at the lower of book value or fair value less cost to sell. FASB No. 144 retains the requirements of FASB No. 121 regarding impairment loss recognition and measurement. In addition, it requires that one accounting model be used for long-lived assets to be disposed of by sale and broadens the presentation of discontinued operations to include more disposal transactions. As the statement requires implementation on a prospective basis, properties which were identified as held for sale by the Company prior to January 1, 2002 are presented in the accompanying financial statements in a manner consistent with the presentation prior to January 1, 2002. As the Company sold 1770 St. James Place (see Note 3) during the nine months ended September 30, 2003, the Company has presented this property as discontinued operations in its statements of operations for the three and nine months ended September 30, 2003 and 2002.

The following tables summarize income from discontinued operations (net of minority interest) and the related realized gain on sale of rental property (net of minority interest) for the three and nine months ended September 30, 2003 and 2002:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2003	2002	2003	2002
Total revenues	—	\$ 357	\$ 254	\$ 1,062
Operating and other expenses	—	(218)	(168)	(636)
Depreciation and amortization	—	(397)	(56)	(400)
Minority interest	—	31	(4)	(4)
Income from discontinued operations (net of minority interest)	—	\$ (227)	\$ 26	\$ 22

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2003	2002	2003	2002
Realized gain on sale of rental property	—	—	\$ 1,324	—
Minority interest	—	—	(159)	—
Realized gain on sale of rental property (net of minority interest)	—	—	\$ 1,165	—

## 7. SENIOR UNSECURED NOTES

A summary of the Company's senior unsecured notes as of September 30, 2003 and December 31, 2002 is as follows:

	September 30, 2003	December 31, 2002	Effective Rate(a)
7.180%, \$95,283 Face Amount Notes, due December 31, 2003	—	\$ 95,283	7.23%
7.000%, \$300,000 Face Amount Notes, due March 15, 2004	\$ 299,963	299,904	7.27%
7.250%, \$300,000 Face Amount Notes, due March 15, 2009	298,718	298,542	7.49%
7.835%, \$15,000 Face Amount Notes, due December 15, 2010	15,000	15,000	7.95%
7.750%, \$300,000 Face Amount Notes, due February 15, 2011	298,732	298,602	7.93%
6.150%, \$94,914 Face Amount Notes, due December 15, 2012	90,384	90,015	6.89%
5.820%, \$26,105 Face Amount Notes, due March 15, 2013	25,061	—	6.45%
4.600%, \$100,000 Face Amount Notes, due June 15, 2013	99,722	—	4.74%
<b>Total Senior Unsecured Notes</b>	<b>\$ 1,127,580</b>	<b>\$ 1,097,346</b>	

(a) Includes the cost of terminated treasury lock agreements (if any), offering and other transaction costs and the discount on the notes, as applicable.

On March 14, 2003, the Company exchanged \$25,000 face amount of existing 7.18 percent senior unsecured notes due December 31, 2003, with interest payable monthly in arrears, for \$26,105 face amount of 5.82 percent senior unsecured notes due March 15, 2013, with interest payable semi-annually in arrears. The exchange was completed with Teachers Insurance and Annuity Association ("TIAA"). In addition, the Company also repurchased \$25,000 face amount of notes due December 31, 2003 from TIAA for \$26,105. The Company recorded \$1,402 in loss on early retirement of debt, net, for the nine months ended September 30, 2003 for costs incurred in connection with the notes transactions.

On June 12, 2003, the Company issued \$100,000 face amount of 4.60 percent senior unsecured notes due June 15, 2013 with interest payable semi-annually in arrears. The total proceeds from the issuance (net of selling commissions and discount) of approximately \$99,064 was used primarily to repay \$62,800 of mortgage debt at a discount of \$1,700 (recorded as a reduction in loss on early retirement of debt, net), and to reduce outstanding borrowings under the 2002 Unsecured Facility, as defined in Note 8. The Company recorded \$1,540 in loss on early retirement of debt, net, in the nine months ended September 30, 2003 for the write-off of the unamortized balance of an interest rate contract in conjunction with the repayment of mortgage debt (see Note 9: Mortgages and Loans Payable—Interest Rate Contract). The unsecured notes were issued at a discount of approximately \$286, which is being amortized over the term as an adjustment to interest expense.

On June 25, 2003, the Company repurchased \$45,283 face amount of existing 7.18 percent senior unsecured notes due December 31, 2003, with interest payable monthly in arrears, for \$46,707 from TIAA. The repurchase fully retired the 7.18 percent senior unsecured notes which were due

December 31, 2003. The Company recorded \$1,437 in loss on early retirement of debt, net, for the nine months ended September 30, 2003 for costs incurred in connection with the notes repurchase.

## 8. REVOLVING CREDIT FACILITIES

### 2002 UNSECURED FACILITY

On September 27, 2002, the Company obtained an unsecured revolving credit facility ("2002 Unsecured Facility") with a current borrowing capacity of \$600,000 from a group of 14 lenders. The interest rate on outstanding borrowings under the credit line is currently LIBOR plus 70 basis points. The Company may instead elect an interest rate representing the higher of the lender's prime rate or the Federal Funds rate plus 50 basis points. The 2002 Unsecured Facility also requires a 20 basis point facility fee on the current borrowing capacity payable quarterly in arrears. The 2002 Unsecured Facility matures in September 2005, with an extension option of one year, which would require upon exercise a payment of 25 basis points of the then borrowing capacity of the credit line.

In the event of a change in the Operating Partnership's unsecured debt rating, the interest and facility fee rates will be adjusted in accordance with the following table:

Operating Partnership's Unsecured Debt Ratings: S&P/Moody's/Fitch(a)	Interest Rate— Applicable Basis Points Above LIBOR	Facility Fee Basis Points
No rating or less than BBB-/Baa3/BBB-	120.0	30.0
BBB-/Baa3/BBB-	95.0	20.0
BBB/Baa2/BBB (current)	70.0	20.0
BBB+/Baa1/BBB+	65.0	15.0
A-/A3/A- or higher	60.0	15.0

- (a) If the Operating Partnership has debt ratings from two rating agencies, one of which is Standard & Poor's Rating Services ("S&P") or Moody's Investors Service ("Moody's"), the rates per the above table shall be based on the lower of such ratings. If the Operating Partnership has debt ratings from three rating agencies, one of which is S&P or Moody's, the rates per the above table shall be based on the lower of the two highest ratings. If the Operating Partnership has debt ratings from only one agency, it will be considered to have no rating or less than BBB-/Baa3/BBB- per the above table.

The Company previously had an unsecured revolving credit facility ("2000 Unsecured Facility") with a borrowing capacity of \$800,000 from a group of 24 lenders. The interest rate on outstanding borrowings under the credit line was LIBOR plus 80 basis points. The Company had the option to elect an interest rate representing the higher of the lender's prime rate or the Federal Funds rate plus 50 basis points. The 2000 Unsecured Facility also required a 20 basis point facility fee on the current borrowing capacity payable quarterly in arrears. In conjunction with obtaining the 2002 Unsecured Facility, the Company repaid in full and terminated the 2000 Unsecured Facility on September 27, 2002.

## SUMMARY

As of September 30, 2003 and December 31, 2002, the Company had outstanding borrowings of \$0 and \$73,000, respectively, under the 2002 Unsecured Facility.

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## 9. MORTGAGES AND LOANS PAYABLE

The Company has mortgages and loans payable collateralized by certain of the Company's rental properties. Payments on mortgages and loans payable are generally due in monthly installments of principal and interest, or interest only.

A summary of the Company's mortgages and loans payable as of September 30, 2003 and December 31, 2002 is as follows:

Property Name	Lender	Effective Interest Rate(a)	Principal Balance at		Maturity
			September 30, 2003	December 31, 2002	
Harborside—Plaza 1	U.S. West Pension Trust	4.36%	—	\$ 61,722	—
Mack-Cali Willowbrook	CIGNA	8.67%	—	7,658	—
1633 Littleton Road	First Union/Maher Partners	3.87%	—	3,504	—
400 Chestnut Ridge	Prudential Insurance Co.	9.44%	10,768	11,611	7/01/04
Mack-Cali Centre VI	Principal Life Insurance Co.	6.87%	35,000	35,000	4/01/05
Variou(b)	Prudential Insurance Co.	7.10%	150,000	150,000	5/15/05
Mack-Cali Bridgewater I	New York Life Ins. Co.	7.00%	23,000	23,000	9/10/05
Mack-Cali Woodbridge II	New York Life Ins. Co.	7.50%	17,500	17,500	9/10/05
Mack-Cali Short Hills	Prudential Insurance Co.	7.74%	23,870	24,470	10/01/05
500 West Putnam Avenue	New York Life Ins. Co.	6.52%	7,731	8,417	10/10/05
Harborside—Plazas 2 and 3	Northwestern/Principal	7.36%	155,038	158,140	1/01/06
Mack-Cali Airport	Allstate Life Insurance Co.	7.05%	10,092	10,226	4/01/07
Kemble Plaza I	Mitsubishi Tr & Bk Co.	LIBOR+0.65%	32,178	32,178	1/31/09
2200 Renaissance Boulevard	TIAA	5.89%	18,902	19,100	12/01/12
Soundview Plaza	TIAA	6.02%	19,271	19,500	1/01/13
Total Mortgages and Loans Payable			\$ 503,350	\$ 582,026	

(a) Effective interest rate for mortgages and loans payable reflects effective rate of debt, including deferred financing costs, comprised of the cost of terminated treasury lock agreements (if any), debt initiation costs and other transaction costs, as applicable.

(b) The Company has the option to convert the mortgage loan, which is secured by 10 properties, to unsecured debt, subject to, amongst other things, the Company having investment grade ratings from two rating agencies (at least one of which must be from S&P or Moody's) at the time of conversion.

## INTEREST RATE CONTRACT

On July 18, 2002, the Company entered into a forward treasury rate lock agreement with a commercial bank. The agreement was used to fix the index rate on \$61,525 of the Harborside—Plaza 1 mortgage at 3.285 percent per annum, for which the interest rate was re-set to the three-year U.S. Treasury Note plus 130 basis points for the three years beginning November 4, 2002. On November 4, 2002, the Company paid \$1,888 in settlement of the forward treasury rate lock agreement entered into in July 2002, which was being amortized to interest expense over a three-year period.

In conjunction with the repayment of the Harborside—Plaza 1 mortgage on June 12, 2003, the Company wrote off the unamortized balance of the interest rate contract of \$1,540, which was recorded in loss on early retirement of debt, net, for the nine months ended September 30, 2003.

## CASH PAID FOR INTEREST AND INTEREST CAPITALIZED

Cash paid for interest for the nine months ended September 30, 2003 and 2002 was \$103,593 and \$108,630 respectively. Interest capitalized by the Company for the nine months ended September 30, 2003 and 2002 was \$6,380 and \$17,171, respectively.

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## SUMMARY OF INDEBTEDNESS

As of September 30, 2003, the Company's total indebtedness of \$1,630,930 (weighted average interest rate of 7.10 percent) was comprised of \$32,178 of revolving credit facility borrowings and other variable rate mortgage debt (weighted average rate of 2.01 percent) and fixed rate debt of \$1,598,752 (weighted average rate of 7.21 percent).

As of December 31, 2002, the Company's total indebtedness of \$1,752,372 (weighted average interest rate of 7.03 percent) was comprised of \$105,178 of revolving credit facility borrowings and other variable rate mortgage debt (weighted average rate of 2.41 percent) and fixed rate debt of \$1,647,194 (weighted average rate of 7.33 percent).

## 10. MINORITY INTEREST



Minority interest in the accompanying consolidated financial statements relate to preferred units in the Operating Partnership ("Preferred Units") and common units in the Operating Partnership, held by parties other than the Company.

## Preferred Units

The Operating Partnership has two classes of preferred units—Series B and Series C, which are described as follows:

### Series B

The Series B Preferred Units have a stated value of \$1,000 per unit and are preferred as to assets over any class of common units or other class of preferred units of the Company, based on circumstances per the applicable unit certificates. The quarterly distribution on each Series B Preferred Unit is an amount equal to the greater of (i) \$16.875 (representing 6.75 percent of the Preferred Unit stated value of an annualized basis) or (ii) the quarterly distribution attributable to a Series B Preferred Unit determined as if such unit had been converted into common units, subject to adjustment for customary anti-dilution rights. Each of the Series B Preferred Units may be converted at any time into common units at a conversion price of \$34.65 per unit. Common units received pursuant to such conversion may be redeemed for an equal number of shares of common stock. At any time after June 11, 2005, the Company may cause the mandatory conversion of the Series B Preferred Units into common units at the conversion price of \$34.65 per unit if, for at least 20 of the prior consecutive 30 days, the closing price of the Company's common stock equals or exceeds \$34.65. The Company is prohibited from taking certain actions that would adversely affect the rights of the holders of Series B Preferred Units without the consent of at least 66<sup>2</sup>/<sub>3</sub> percent of the outstanding Series B Preferred Units, including authorizing, creating or issuing any additional preferred units ranking senior to or equal with the Series B Preferred Units; provided, however, that such consent is not required if the Company issues preferred units ranking equal (but not senior) to the Series B Preferred Units in an aggregate amount up to the greater of (a) \$200,000 in stated value or (b) 10 percent of the sum of (1) the combined market capitalization of the Company's common stock and the Operating Partnership's common units and Series B Preferred Units, as if converted into common stock, and (2) the aggregate liquidation preference on any of the Company's non-convertible preferred stock or the Operating Partnership's non-convertible preferred units. As of September 30, 2003, the calculation in the above clause (b) was \$285,509.

### Series C

In connection with the Company's issuance of \$25,000 of Series C cumulative redeemable perpetual preferred stock, the Company acquired from the Operating Partnership \$25,000 of Series C Preferred Units (the "Series C Preferred Units"), which have terms essentially identical to the Series C

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preferred stock and rank equal with the Series B Preferred Units. See Note 14: Stockholders' Equity—Preferred Stock.

## Common Units

Certain individuals and entities own common units in the Operating Partnership. A common unit and a share of common stock of the Company have substantially the same economic characteristics in as much as they effectively share equally in the net income or loss of the Operating Partnership. Common units are redeemable by the common unitholders at their option, subject to certain restrictions, on the basis of one common unit for either one share of common stock or cash equal to the fair market value of a share at the time of the redemption. The Company has the option to deliver shares of common stock in exchange for all or any portion of the cash requested. The common unitholders may not put the units for cash to the Company or the Operating Partnership. When a unitholder redeems a common unit, minority interest in the Operating Partnership is reduced and the Company's investment in the Operating Partnership is increased.

## Unit Transactions

The following table sets forth the changes in minority interest which relate to the Series B Preferred Units and common units in the Operating Partnership for the nine months ended September 30, 2003:

	Series B Preferred Units	Common Units	Series B Preferred Unitholders	Common Unitholders	Total
Balance at January 1, 2003	215,894	7,813,806	\$ 221,445	\$ 208,591	\$ 430,036
Net income	—	—	11,759	15,438	27,197
Distributions	—	—	(11,759)	(14,747)	(26,506)
Redemption of preferred units for common units	(438)	12,641	(449)	449	—
Redemption of common units for shares of common stock	—	(30,949)	—	(936)	(936)
Balance at September 30, 2003	215,456	7,795,498	\$ 220,996	\$ 208,795	\$ 429,791

## Minority Interest Ownership

As of September 30, 2003 and December 31, 2002, the minority interest common unitholders owned 11.8 percent (19.4 percent, including the effect of the conversion of Series B Preferred Units into common units) and 12.0 percent (19.7 percent including the effect of the conversion of Series B Preferred Units into common units) of the Company, respectively.

## 11. EMPLOYEE BENEFIT PLAN

All employees of the Company who meet certain minimum age and period of service requirements are eligible to participate in a 401(k) defined contribution plan (the "401(k) Plan"). The 401(k) Plan allows eligible employees to defer up to 15 percent of their annual compensation, subject to certain limitations imposed by federal law. The amounts contributed by employees are immediately vested and non-forfeitable. Under the 401(k) Plan, the Company, at management's discretion, may match employee contributions and/or make discretionary contributions. Total expense incurred by the Company for the three months ended September 30, 2003 and 2002 was \$100 and \$100, respectively, and for the nine months ended September 30, 2003 and 2002 was \$300 and \$300, respectively.

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## 12. COMMITMENTS AND CONTINGENCIES

### TAX ABATEMENT AGREEMENTS

#### Harborside Financial Center

Pursuant to an agreement with the City of Jersey City, New Jersey, the Company is required to make payments in lieu of property taxes ("PILOT") on its Harborside Plaza 2 and 3 properties. The agreement, which commenced in 1990, is for a term of 15 years. Such PILOT is equal to two percent of Total Project Costs, as defined, in year one and increases by \$75 per annum through year 15. Total Project Costs, as defined, are \$145,644. The PILOT totaled \$959 and \$945 for the three months ended September 30, 2003 and 2002, respectively, and \$2,866 and \$2,814 for the nine months ended September 30, 2003 and 2002, respectively.

The Company entered into a similar PILOT agreement with the City of Jersey City, New Jersey on its Harborside Plaza 4-A property. The agreement, which commenced in 2000, is for a term of 20 years. The PILOT is equal to two percent of Total Project costs, as defined, and increases by 10 percent in years 7, 10 and 13 and by 50 percent in year 16. Total Project costs, as defined, are \$45,497. The PILOT totaled \$227 and \$252 for the three months ended September 30, 2003 and 2002, respectively, and \$682 and \$749 for the nine months ended September 30, 2003 and 2002, respectively.

Additionally, the Company entered into a similar PILOT agreement with the City of Jersey City, New Jersey on its Harborside Plaza 5 property. The agreement, which commenced in 2002, is for a term of 20 years. The PILOT is equal to two percent of Total Project Costs, as defined, and increases by 10 percent in years 7, 10 and 13, and by 50 percent in year 16. Total Project Costs, per the agreement, are the greater of \$132,294 or actual Total Project Costs, as defined. The PILOT totaled \$774 and \$206 for the three months ended September 30, 2003 and 2002, respectively, and \$2,397 and \$206 for the nine months ended September 30, 2003 and 2002, respectively.

On February 12, 2003, the Meadowlands Xanadu proposal, presented by a joint venture to be formed between The Mills Corporation and the Company was selected by the New Jersey Sports and Exposition Authority (NJSEA), providing them with the exclusive right to negotiate a developer's agreement for the development of a \$1.5 billion family entertainment and recreation complex with an office and hotel component at the Continental Airlines Arena site in East Rutherford, New Jersey. Meadowlands Xanadu's 4.76-million-square-foot complex is expected to feature a family entertainment destination comprising three themed zones: sports/recreation, kids' activities and fashion. The project is expected to also include office and hotel space totaling 2.2 million square feet, consisting of four 14-story, 440,000 square-foot office buildings and a 520-room hotel with conference and exhibition facilities. No definitive documentation has been entered into between The Mills Corporation and the Company with respect to the Xanadu Project. However, it is the current understanding between Mills and the Company that the retail component will be shared 80 percent to Mills and 20 percent to the Company and the office and hotel components will be shared 80 percent to the Company and 20 percent to Mills. There can be no assurance that these will be the final economic arrangements.

On March 27, 2003, Hartz Mountain Industries, Inc. filed a lawsuit in the Superior Court of New Jersey, Law Division, for Bergen County, seeking to enjoin the NJSEA from entering into a contract with The Mills Corporation and the Company for the redevelopment of the Continental Arena site. The case was dismissed by the trial court but appealed. Hartz also appealed the NJSEA's final decision which denied Hartz's bid protest on October 23, 2003. Westfield America, Inc., has also protested the NJSEA decision, and has appealed the NJSEA's denial of its protest. Four citizens, Elliot Braha, Richard Delauro, George Perry and Carol Coronato, have also filed lawsuits challenging the NJSEA award to Mills and the Company. All of these cases are now pending unresolved in the Superior Court of New Jersey, Appellate Division. We believe that our proposal fully complied with applicable laws and the request for proposals, and we plan to vigorously enforce our rights concerning this project.

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On May 8, 2003, an adversary proceeding arising out of the bankruptcy of Broadband Office, Inc. ("BBO") was commenced by BBO and the Official Committee of Unsecured Creditors of BBO ("Plaintiffs") in the United States Bankruptcy Court for the District of Delaware. On August 25, 2003, the Plaintiffs filed an Amended Complaint. As amended, the Complaint names as defendants Mack-Cali Realty, L.P., the chief executive officer of the Company, and certain alleged affiliates of the Company (the "Mack-Cali Defendants"). Also named as defendants are seven other real estate investment trusts or partnerships ("REITs") that invested in BBO and the eight individuals designated by the REITs to serve on the Board of Directors of BBO. Plaintiffs assert, among other things, that the Defendants breached fiduciary duties to BBO, its minority shareholders (other than the REITs) and its creditors by approving a spin-off of BBO's assets to a newly created entity, and approving the sale of BBO's remaining assets to Yipes, Inc., both for allegedly inadequate consideration. Plaintiffs seek an unspecified amount of compensatory and punitive damages in connection with their fiduciary duty claims. In addition, Plaintiffs seek to avoid all payments and other transfers made to Defendants within one year of BBO's bankruptcy filing under various provisions of the Bankruptcy Code, and to obtain "turnover" of certain property under Section 542(b) of the Code. On July 8, 2003, the district court withdrew the reference of this proceeding to the bankruptcy court, and the action is now pending in the United States District Court for the District of Delaware. The Mack-Cali Defendants have denied the claims asserted in the Amended Complaint, and believe they have substantial defenses to the claims asserted against them. The Company does not believe that the ultimate resolution of this matter will have a material adverse effect on the Company's financial condition taken as a whole.

The Company is a defendant in other litigation arising in the normal course of business activities. Management does not believe that the ultimate resolution of these matters will have a materially adverse effect upon the Company.

### 13. TENANT LEASES

The Properties are leased to tenants under operating leases with various expiration dates through 2019. Substantially all of the leases provide for annual base rents plus recoveries and escalation charges based upon the tenant's proportionate share of and/or increases in real estate taxes and certain operating costs, as defined, and the pass through of charges for electrical usage.

### 14. STOCKHOLDERS' EQUITY

To maintain its qualification as a REIT, not more than 50 percent in value of the outstanding shares of the Company may be owned, directly or indirectly, by five or fewer individuals at any time during the last half of any taxable year of the Company, other than its initial taxable year (defined to include certain entities), applying certain constructive ownership rules. To help ensure that the Company will not fail this test, the Company's Articles of Incorporation provide for, among other things, certain restrictions on the transfer of common stock to prevent further concentration of stock ownership. Moreover, to evidence compliance with these requirements, the Company must maintain records that disclose the actual ownership of its outstanding common stock and demands written statements each year from the holders of record of designated percentages of its common stock requesting the disclosure of the beneficial owners of such common stock.

### PREFERRED STOCK

On March 14, 2003, in a publicly registered transaction with a single institutional buyer, the Company completed the sale and issuance of 10,000 shares of eight-percent Series C cumulative redeemable perpetual preferred stock ("Series C Preferred Stock") in the form of 1,000,000 depository shares (\$25 stated value per depository share). Each depository share represents 1/100th of a share of Series C Preferred Stock. The Company received net proceeds of approximately \$24,836 from the sale. See Note 10: Minority Interest—Preferred Units.

The Series C Preferred Stock has preference rights with respect to liquidation and distributions over the common stock. Holders of the Series C Preferred Stock, except under certain limited conditions, will not be entitled to vote on any matters. In the event of a cumulative arrearage equal to six quarterly dividends, holders of the Series C Preferred Stock will have the right to elect two additional members to serve on the Company's Board of Directors until dividends have been paid in full. At September 30, 2003, there were no dividends in arrears. The Company may issue unlimited additional preferred stock ranking on a parity with the Series C Preferred Stock but may not issue any preferred stock senior to the Series C Preferred Stock without the consent of two-thirds of its holders. The Series C Preferred Stock is essentially on an equivalent basis in priority with the Preferred Units.

Except under certain conditions relating to the Company's qualification as a REIT, the Series C Preferred Stock is not redeemable prior to March 14, 2008. On and after such date, the Series C Preferred Stock will be redeemable at the option of the Company, in whole or in part, at \$25 per depositary share, plus accrued and unpaid dividends.

## COMMON STOCK REPURCHASES

The Company has a share repurchase program which was authorized by its Board of Directors in September 2000 to purchase up to \$150,000 of the Company's outstanding common stock ("Repurchase Program"). During the nine months ended September 30, 2003, the Company purchased and retired 35,000 shares of its outstanding common stock for an aggregate cost of approximately \$1,030. The Company purchased and retired a total of 3,746,400 shares of its outstanding common stock for an aggregate cost of approximately \$104,512 from September 2000 through September 30, 2003, with a remaining authorization under the Repurchase Program of \$45,488.

## STOCK OPTION PLANS

In September 2000, the Company established the 2000 Employee Stock Option Plan ("2000 Employee Plan") and the 2000 Director Stock Option Plan ("2000 Director Plan"). In May 2002, shareholders of the Company approved amendments to both plans to increase the total shares reserved for issuance under both plans from 2,700,000 to 4,350,000 shares (subject to adjustment) of the Company's common stock (from 2,500,000 to 4,000,000 shares under the 2000 Employee Plan and from 200,000 to 350,000 shares under the 2000 Director Plan). In 1994, and as subsequently amended, the Company established the Mack-Cali Employee Stock Option Plan ("Employee Plan") and the Mack-Cali Director Stock Option Plan ("Director Plan") under which a total of 5,380,188 shares (subject to adjustment) of the Company's common stock have been reserved for issuance (4,980,188 shares under the Employee Plan and 400,000 shares under the Director Plan). Stock options granted under the Employee Plan in 1994 and 1995 have become exercisable over a three-year period and those options granted under both the 2000 Employee Plan and Employee Plan subsequent to 1995 become exercisable over a five-year period. All stock options granted under both the 2000 Director Plan and Director Plan become exercisable in one year. All options were granted at the fair market value at the dates of grant and have terms of ten years. As of September 30, 2003 and December 31, 2002, the stock options outstanding had a weighted average remaining contractual life of approximately 6.4 and 6.4 years, respectively.

Information regarding the Company's stock options activity for the nine months ended September 30, 2003 is summarized below:

	Shares Under Options	Weighted Average Exercise Price
Outstanding at January 1, 2003	3,585,930	\$ 32.19
Granted	954,800	\$ 28.50
Exercised	(626,365)	\$ 27.53
Lapsed or canceled	(104,860)	\$ 30.57
Outstanding at September 30, 2003	3,809,505	\$ 32.05
Options Exercisable at September 30, 2003	1,890,785	\$ 36.04
Available for grant at September 30, 2003	2,379,913	

The Company recognized stock options expense of \$51 and none for the three month periods ended September 30, 2003 and 2002, respectively, and \$139 and none for the nine month periods ended September 30, 2003 and 2002, respectively.

## STOCK WARRANTS

The Company has 185,000 warrants outstanding which enable the holders to purchase an equal number of shares of its common stock ("Stock Warrants") at \$33 per share (the market price at date of issuance). Such warrants are all currently exercisable and expire on January 31, 2007.

The Company also has 339,976 Stock Warrants outstanding which enable the holders to purchase an equal number of its shares of common stock at \$38.75 per share (the market price at date of issuance). Such warrants are all currently exercisable and expire on December 12, 2007.

Information regarding the Company's Stock Warrants activity for the nine months ended September 30, 2003 is summarized below:

	Warrants
Outstanding at January 1, 2003	642,476
Exercised	(67,500)
Lapsed or canceled	(50,000)
Outstanding at September 30, 2003	524,976
Exercisable at September 30, 2003	524,976

## STOCK COMPENSATION

The Company has granted stock awards to officers, directors, and certain other employees of the Company (collectively, "Restricted Stock Awards"), which allow each person to receive a certain amount of shares of the Company's common stock generally over a five-year vesting period. Certain Restricted Stock Awards are contingent upon the Company meeting certain performance objectives.

On January 2, 2003, the Company issued 168,000 shares of Restricted Stock Awards to its five executive officers (Mitchell E. Hersh, Timothy M. Jones, Barry Lefkowitz,

Roger W. Thomas and Michael Grossman) and entered into certain other agreements in connection therewith, as well as certain agreements amending the terms of the restricted share award agreements with such executive officers originally entered into in 1999 and 2001.

On June 27, 2003, the Company issued 5,500 shares of Restricted Stock Awards to its non-employee directors, which are scheduled to vest on January 1, 2004.

All Restricted Stock Awards provided to the officers, directors, and certain other employees were granted under the Employee Plan, the 2000 Employee Plan and the 2000 Director Plan.

Information regarding the Restricted Stock Awards activity for the nine months ended September 30, 2003 is summarized below:

	Shares
Outstanding at January 1, 2003	153,736
Granted	174,839
Vested	(58,206)
Canceled	(500)
Outstanding at September 30, 2003	269,869

#### DEFERRED STOCK COMPENSATION PLAN FOR DIRECTORS

The Deferred Compensation Plan for Directors, which commenced January 1, 1999, allows non-employee directors of the Company to elect to defer up to 100 percent of their annual retainer fee into deferred stock units. The deferred stock units are convertible into an equal number of shares of common stock upon the directors' termination of service from the Board of Directors or a change in control of the Company, as defined in the plan. Deferred stock units are credited to each director quarterly using the closing price of the Company's common stock on the applicable dividend record date for the respective quarter. Each participating director's account is also credited for an equivalent amount of deferred stock units based on the dividend rate for each quarter.

During the nine months ended September 30, 2003 and 2002, 4,816 and 3,861 deferred stock units were earned, respectively. As of September 30, 2003 and 2002, there were 21,659 and 15,453 director stock units outstanding, respectively.

#### EARNINGS PER SHARE

Basic EPS excludes dilution and is computed by dividing net income available to common stockholders by the weighted average number of shares outstanding for the period. Diluted EPS reflects the potential dilution that could occur if securities or other contracts to issue common stock were exercised or converted into common stock.

The following information presents the Company's results for the three months ended September 30, 2003 and 2002 in accordance with FASB No. 128:

	Three Months Ended September 30,	
	2003	2002
<b>Computation of Basic EPS</b>		
Income from continuing operations	\$ 50,892	\$ 34,058
Deduct: Preferred stock dividends	(500)	—
Add: Realized gains (losses) and unrealized losses on disposition of rental property (net of minority interest), net	—	401
Income from continuing operations available to common shares	50,392	34,459
Income from discontinued operations	—	(227)
Net income available to common shareholders	\$ 50,392	\$ 34,232
Weighted average common shares	57,870	57,534
<b>Basic EPS:</b>		
Income from continuing operations	\$ 0.87	\$ 0.60
Income from discontinued operations	—	—
Net income available to common shareholders	\$ 0.87	\$ 0.60
<b>Computation of Diluted EPS</b>		
Income from continuing operations available to common shareholders	\$ 50,392	\$ 34,459
Add: Income from continuing operations attributable to Operating Partnership—common units	6,790	4,725
Income from continuing operations attributable to Operating Partnership—Preferred Units	3,917	—
Income from continuing operations for diluted earnings per share	61,099	39,184

Income from discontinued operations for diluted earnings per share	—	(258)
<b>Net income available to common shareholders</b>	<b>\$ 61,099</b>	<b>\$ 38,926</b>
Weighted average shares	72,465	65,656
<b>Diluted EPS:</b>		
Income from continuing operations	\$ 0.84	\$ 0.59
Income from discontinued operations	—	—
<b>Net income available to common shareholders</b>	<b>\$ 0.84</b>	<b>\$ 0.59</b>

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The following information presents the Company's results for the nine months ended September 30, 2003 and 2002 in accordance with FASB No. 128:

	Nine Months Ended September 30,	
	2003	2002
<b>Computation of Basic EPS</b>		
Income from continuing operations	\$ 113,942	\$ 107,488
Deduct: Preferred stock dividends	(1,172)	—
Add: Realized gains (losses) and unrealized losses on disposition of rental property (net of minority interest), net	—	2,376
<b>Income from continuing operations available to common shares</b>	<b>112,770</b>	<b>109,864</b>
Income from discontinued operations	1,191	22
<b>Net income available to common shareholders</b>	<b>\$ 113,961</b>	<b>\$ 109,886</b>
Weighted average common shares	57,545	57,194
<b>Basic EPS:</b>		
Income from continuing operations	\$ 1.96	\$ 1.92
Income from discontinued operations	0.02	—
<b>Net income available to common shareholders</b>	<b>\$ 1.98</b>	<b>\$ 1.92</b>
<b>Computation of Diluted EPS</b>		
Income from continuing operations available to common shareholders	\$ 112,770	\$ 109,864
Add: Income from continuing operations attributable to Operating Partnership—common units	15,275	15,229
Income from continuing operations attributable to Operating Partnership—Preferred Units	11,760	11,731
<b>Income from continuing operations for diluted earnings per share</b>	<b>139,805</b>	<b>136,824</b>
Income from discontinued operations for diluted earnings per share	1,354	27
<b>Net income available to common shareholders</b>	<b>\$ 141,159</b>	<b>\$ 136,851</b>
Weighted average shares	71,943	71,764
<b>Diluted EPS:</b>		
Income from continuing operations	\$ 1.94	\$ 1.91
Income from discontinued operations	0.02	—
<b>Net income available to common shareholders</b>	<b>\$ 1.96</b>	<b>\$ 1.91</b>

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The following schedule reconciles the shares used in the basic EPS calculation to the shares used in the diluted EPS calculation:

Three Months Ended September 30,		Nine Months Ended September 30,	
2003	2002	2003	2002

Basic EPS Shares	57,870	57,534	57,545	57,194
Add: Operating Partnership—common units	7,798	7,838	7,804	7,905
Operating Partnership—Preferred Units (after conversion to common units)	6,218	—	6,223	6,307
Stock options	559	284	364	355
Stock Warrants	20	—	7	3
Diluted EPS Shares	72,465	65,656	71,943	71,764

Not included in the computations of diluted EPS were 3,250,203 and 3,397,229 stock options, 505,206 and 642,476 Stock Warrants, 0 and 6,230,707 Series B Preferred Units, and 0 and 2,000,000 Unit Warrants, as such securities were anti-dilutive during the three months ended September 30, 2003 and 2002, respectively. Also excluded from diluted EPS computations were 3,445,331 and 3,327,061 stock options, 517,494 and 639,423 Stock Warrants and 0 and 2,000,000 Unit Warrants, as such securities were anti-dilutive during the nine months ended September 30, 2003 and 2002, respectively. Unvested restricted stock outstanding as of September 30, 2003 and September 30, 2002 were 269,869 and 153,736, respectively.

Through September 30, 2003, under the Repurchase Program, the Company purchased and retired a total of 5,615,600 shares of its outstanding common stock for an aggregate cost of approximately \$157,074.

## 15. SEGMENT REPORTING

The Company operates in one business segment—real estate. The Company provides leasing, management, acquisition, development, construction and tenant-related services for its portfolio. The Company does not have any foreign operations. The accounting policies of the segments are the same as those described in Note 2, excluding straight-line rent adjustments, depreciation and amortization and non-recurring charges.

The Company evaluates performance based upon net operating income from the combined properties in the segment.

Selected results of operations for the three and nine months ended September 30, 2003 and 2002 and selected asset information as of September 30, 2003 and December 31, 2002 regarding the Company's operating segment are as follows:

	Total Segment	Corporate & Other(e)	Total Company
<b>Total contract revenues(a):</b>			
Three months ended:			
September 30, 2003	\$ 145,727	\$ 366	\$ 146,093(f)
September 30, 2002	139,794	402	140,196(g)
Nine months ended:			
September 30, 2003	\$ 431,939	\$ (168)	\$ 431,771(h)
September 30, 2002	420,041	330	420,371(i)
<b>Total operating and interest expenses(b):</b>			
Three months ended:			
September 30, 2003	\$ 45,785	\$ 37,206	\$ 82,991(j)
September 30, 2002	42,169	30,819	72,988(k)
Nine months ended:			
September 30, 2003	\$ 136,581	\$ 110,944	\$ 247,525(l)
September 30, 2002	124,815	96,412	221,227(m)
<b>Equity in earnings (net minority interest):</b>			
Three months ended:			
September 30, 2003	\$ 3,151	\$ —	\$ 3,151
September 30, 2002	(409)	2,350	1,941
Nine months ended:			
September 30, 2003	\$ 11,250	\$ —	\$ 11,250
September 30, 2002	5,554	3,476	9,030
<b>Gain on sale of investment (net minority interest):</b>			
Three months ended:			
September 30, 2003	\$ 20,392	\$ —	\$ 20,392
September 30, 2002	—	—	—
Nine months ended:			
September 30, 2003	\$ 20,392	\$ —	\$ 20,392
September 30, 2002	—	—	—
<b>Net operating income(c):</b>			
Three months ended:			
September 30, 2003	\$ 123,485	\$ (36,840)	\$ 86,645(f)(j)
September 30, 2002	97,216	(28,067)	69,149(g)(k)

Nine months ended:						
September 30, 2003	\$	327,000	\$	(111,112)	\$	215,888(h)(l)
September 30, 2002		300,780		(92,606)		208,174(i)(m)
<b>Total assets:</b>						
September 30, 2003	\$	3,656,833	\$	54,682	\$	3,711,515
December 31, 2002		3,761,665		34,764		3,796,429
<b>Total long-lived assets(d):</b>						
September 30, 2003	\$	3,536,411	\$	1,935	\$	3,538,346
December 31, 2002		3,648,390		5,254		3,653,644

See footnotes to the above schedule on page 38.

- (a) Total contract revenues represent all revenues during the period (including the Company's share of net income from unconsolidated joint ventures), excluding adjustments for straight-lining of rents and the Company's share of straight-line rent adjustments from unconsolidated joint ventures.
- (b) Total operating and interest expenses represent the sum of real estate taxes, utilities, operating services, general and administrative, interest expense (net of interest income) and loss on early retirement of debt, net. All interest income and expense and loss on early retirement of debt, net, (including for property-level mortgages) is excluded from segment amounts and classified in Corporate & Other for all periods.
- (c) Net operating income represents total contract revenues [as defined in Note (a)], equity in earnings (net of minority interest) and gain on sale of investment (net of minority interest), less total operating and interest expenses [as defined in Note (b)] for the period.
- (d) Long-lived assets are comprised of total rental property, unbilled rents receivable and investments in unconsolidated joint ventures.
- (e) Corporate & Other represents all corporate-level items (including interest and other investment income, interest expense and non-property general and administrative expense) as well as intercompany eliminations necessary to reconcile to consolidated Company totals.
- (f) Excludes \$342 of adjustments for straight-lining of rents and \$951 for the Company's share of straight-line rent adjustments from unconsolidated joint ventures.
- (g) Excludes \$1,988 of adjustments for straight-lining of rents and \$124 for the Company's share of straight-line rent adjustments from unconsolidated joint ventures.
- (h) Excludes \$5,979 of adjustments for straight-lining of rents and \$2,903 for the Company's share of straight-line rent adjustments from unconsolidated joint ventures.
- (i) Excludes \$5,864 of adjustments for straight-lining of rents and (\$829) for the Company's share of straight-line rent adjustments from unconsolidated joint ventures.
- (j) Excludes \$29,511 of depreciation and amortization.
- (k) Excludes \$28,902 of depreciation and amortization.
- (l) Excludes \$88,066 of depreciation and amortization.
- (m) Excludes \$80,374 of depreciation and amortization.

## 16. IMPACT OF RECENTLY-ISSUED ACCOUNTING STANDARDS

### *FASB No. 145*

In April 2002, the FASB issued FASB No. 145, Rescission of FASB No. 4, 44, and 64, Amendment of FASB No. 13 and Technical Corrections. This statement eliminates the requirement to report gains and losses from extinguishment of debt as extraordinary unless they meet the criteria of APB Opinion 30. Debt extinguishments that were classified as extraordinary in prior periods presented that do not meet the criteria of APB Opinion 30 shall be reclassified. FASB No. 145 is effective for fiscal years beginning after May 15, 2002. As of January 1, 2003, the Company adopted FASB No. 145, and recorded costs associated with the early retirement of debt in continuing operations as "loss on early retirement of debt, net" in 2003.

### *FASB Interpretation No. 45*

In November 2002, the FASB issued Interpretation No. 45 ("FIN 45"), Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others, which changes the accounting for, and disclosure of certain guarantees. Beginning with transactions entered into after December 31, 2002, certain guarantees are to be recorded at fair value, which is different from prior practice, under which a liability was recorded only when a loss was probable and reasonably estimable. In general, the change applies to contracts or indemnification agreements that contingently require the Company to make payments to a guaranteed third-party based on changes in an underlying asset, liability, or an equity security of the guaranteed party.

The accounting provisions apply for new or modified guarantees entered into after December 31, 2002. The Company has adopted the new disclosure requirements effective in the financial statements for the year ended December 31, 2002. The adoption of FIN 45 did not have a material adverse impact on the Company's financial position or results of operations.

### *FASB Interpretation No. 46*

On January 17, 2003, the FASB issued Interpretation No. 46 ("FIN 46"), Consolidation of Variable Interest Entities, the primary objective of which is to provide guidance

on the identification of entities for which control is achieved through means other than voting rights ("variable interest entities" or "VIEs") and to determine when and which business enterprise should consolidate the VIE (the "primary beneficiary"). This new model applies when either (1) the equity investors (if any) do not have a controlling financial interest or (2) the equity investment at risk is insufficient to finance that entity's activities without additional financial support. In addition, FIN 46 requires additional disclosures.

FIN 46 applies immediately to VIEs created after January 31, 2003, and to VIEs in which an enterprise obtains an interest after that date. Subsequent to January 31, 2003, the Company has not created or obtained an interest in a VIE. For variable interests in a VIE created before February 1, 2003, the FASB recently delayed the implementation date to the first interim or annual period ending after December 15, 2003. The Company is evaluating the potential impact of FIN 46 on the Company's financial position and results of operations for those interests held in VIEs created before February 1, 2003.

#### ***FASB No. 150***

In May 2003, the FASB issued FASB No. 150, Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity. This statement establishes standards for how an issuer classifies and measures in its balance sheet certain financial instruments with characteristics of both liabilities and equity. It requires that an issuer classify a financial instrument that is within its scope as a liability (or an asset in some circumstances) because that financial instrument embodies an obligation of the issuer. Many of those instruments were previously classified as equity.

This Statement is effective for financial instruments entered into or modified after May 31, 2003, and otherwise is effective at the beginning of the first interim period beginning after June 15, 2003. For financial instruments created before the issuance date of this Statement and still existing at the beginning of the interim period of adoption, transition shall be achieved by reporting the cumulative effect of a change in an accounting principle by initially measuring the financial instruments at fair value or other measurement attribute required by this Statement. Restatement is not permitted. The adoption of FASB No. 150 did not have a material adverse impact on the Company's financial position and results of operations. The FASB recently delayed the provisions of FASB No. 150 which apply to mandatorily redeemable non-controlling interests. The deferral of these provisions are expected to remain in effect while these interests are further evaluated by the FASB.

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## **ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

The following discussion should be read in conjunction with the Consolidated Financial Statements of Mack-Cali Realty Corporation and the notes thereto (collectively, the "Financial Statements"). Certain defined terms used herein have the meaning ascribed to them in the Financial Statements.

### ***Critical Accounting Policies***

#### ***Rental Property***

Rental properties are stated at cost less accumulated depreciation and amortization. Costs directly related to the acquisition, development and construction of rental properties are capitalized. Capitalized development and construction costs include pre-construction costs essential to the development of the property, development and construction costs, interest, property taxes, insurance, salaries and other project costs incurred during the period of development. Interest capitalized by the Company for the three months ended September 30, 2003 and 2002 was \$1.7 million and \$5.5 million, respectively, and \$6.4 million and \$17.2 million for the nine months ended September 30, 2003 and 2002, respectively. Ordinary repairs and maintenance are expensed as incurred; major replacements and betterments, which improve or extend the life of the asset, are capitalized and depreciated over their estimated useful lives. Fully-depreciated assets are removed from the accounts.

The Company considers a construction project as substantially completed and held available for occupancy upon the completion of tenant improvements, but no later than one year from cessation of major construction activity (as distinguished from activities such as routine maintenance and cleanup). If portions of a rental project are substantially completed and occupied by tenants, or held available for occupancy, and other portions have not yet reached that stage, the substantially completed portions are accounted for as a separate project. The Company allocates costs incurred between the portions under construction and the portions substantially completed and held available for occupancy and capitalizes only those costs associated with the portion under construction.

Upon acquisition of rental property, the Company estimates the fair value of acquired tangible assets, consisting of land, building and improvements, and identified intangible assets and liabilities generally consisting of the fair value of (i) above and below market leases, (ii) in-place leases and (iii) tenant relationships. The Company allocates the purchase price to the assets acquired and liabilities assumed based on their relative fair values. In estimating the fair value of the tangible and intangible assets acquired, the Company considers information obtained about each property as a result of its due diligence and marketing and leasing activities, and utilizes various valuation methods, such as estimated cash flow projections utilizing appropriate discount and capitalization rates, estimates of replacement costs net of depreciation, and available market information. The fair value of the tangible assets of an acquired property considers the value of the property as if it were vacant.

Above-market and below-market lease values for acquired properties are recorded based on the present value (using a discount rate which reflects the risks associated with the leases acquired) of the difference between (i) the contractual amounts to be paid pursuant to each in-place lease and (ii) management's estimate of fair market lease rates for each corresponding in-place lease, measured over a period equal to the remaining term of the lease for above-market leases and the initial term plus the term of any below-market fixed rate renewal options for below-market leases. The capitalized above-market lease values are amortized as a reduction of base rental revenue over the remaining term of the respective leases, and the capitalized below-market lease values are amortized as an increase to base rental revenue over the remaining initial terms plus the terms of any below-market fixed rate renewal options of the respective leases.

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Other intangible assets acquired include amounts for in-place lease values and tenant relationship values which are based on management's evaluation of the specific characteristics of each tenant's lease and the Company's overall relationship with the respective tenant. Factors to be considered by management in its analysis of in-place lease values include an estimate of carrying costs during hypothetical expected lease-up periods considering current market conditions, and costs to execute similar leases. In estimating carrying costs, management includes real estate taxes, insurance and other operating expenses and estimates of lost rentals at market rates during the expected lease-up periods, depending on local market conditions. In estimating costs to execute similar leases, management considers leasing commissions, legal and other related expenses. Characteristics considered by management in valuing tenant relationships include the nature and extent of the Company's existing business relationships with the tenant, growth prospects for developing new business with the tenant, the tenant's credit quality and expectations of lease renewals. The value of in-place leases are amortized to expense over the remaining initial terms of the respective leases. The value of tenant relationship intangibles will be amortized to expense over the anticipated life of the relationships.

On a periodic basis, management assesses whether there are any indicators that the value of the Company's rental properties may be impaired. A property's value is impaired only if management's estimate of the aggregate future cash flows (undiscounted and without interest charges) to be generated by the property is less than the carrying value of the property. To the extent impairment has occurred, the loss shall be measured as the excess of the carrying amount of the property over the fair value of the property. The Company's estimates of aggregate future cash flows expected to be generated by each property are based on a number of assumptions that are subject to economic and market uncertainties including, among others, demand for space, competition for tenants, changes in market rental rates, and costs to operate each property. As these factors are

difficult to predict and are subject to future events that may alter management's assumptions, the future cash flows estimated by management in its impairment analyses may not be achieved.

#### ***Rental Property Held for Sale***

When assets are identified by management as held for sale, the Company discontinues depreciating the assets and estimates the sales price, net of selling costs, of such assets. If, in management's opinion, the net sales price of the assets which have been identified as held for sale is less than the net book value of the assets, a valuation allowance is established.

If circumstances arise that previously were considered unlikely and, as a result, the Company decides not to sell a property previously classified as held for sale, the property is reclassified as held and used. A property that is reclassified is measured and recorded individually at the lower of (a) its carrying amount before the property was classified as held for sale, adjusted for any depreciation (amortization) expense that would have been recognized had the property been continuously classified as held and used, or (b) the fair value at the date of the subsequent decision not to sell.

Effective January 1, 2002, the Company adopted the provisions of FASB No. 144, Accounting for the Impairment or Disposal of Long-Lived Assets, which supercedes FASB No. 121. FASB No. 144 requires that long-lived assets that are to be disposed of by sale be measured at the lower of book value or fair value less cost to sell. SFAS No. 144 retains the requirements of FASB No. 121 regarding impairment loss recognition and measurement. In addition, it requires that one accounting model be used for long-lived assets to be disposed of by sale and broadens the presentation of discontinued operations to include more disposal transactions. As the statement requires implementation on a prospective basis, properties which were identified as held for sale by the Company prior to January 1, 2002 are presented in the accompanying financial statements in a manner consistent with the prior year's presentation. Properties identified as held for sale and/or sold from January 1, 2002 forward are presented in discontinued operations for all periods presented. See Note 6 to the Financial Statements.

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#### ***Investments in Unconsolidated Joint Ventures***

The Company accounts for its investments in unconsolidated joint ventures under the equity method of accounting as the Company exercises significant influence, but does not control these entities. These investments are recorded initially at cost, as Investments in Unconsolidated Joint Ventures, and subsequently adjusted for equity in earnings and cash contributions and distributions.

On a periodic basis, management assesses whether there are any indicators that the value of the Company's investments in unconsolidated joint ventures may be impaired. An investment is impaired only if management's estimate of the value of the investment is less than the carrying value of the investment. To the extent impairment has occurred, the loss shall be measured as the excess of the carrying amount of the investment over the value of the investment. See Note 4 to the Financial Statements.

#### ***Deferred Leasing Costs***

Costs incurred in connection with leases are capitalized and amortized on a straight-line basis over the terms of the related leases and included in depreciation and amortization. Unamortized deferred leasing costs are charged to amortization expense upon early termination of the lease. Certain employees of the Company provide leasing services to the Properties and receive compensation based on space leased. The portion of such compensation, which is capitalized and amortized, approximated \$0.8 million and \$0.9 million for the three months ended September 30, 2003 and 2002, respectively, and \$2.3 million and \$2.6 million for the nine months ended September 30, 2003 and 2002, respectively.

#### ***Derivative Instruments***

The Company measures derivative instruments, including certain derivative instruments embedded in other contracts, at fair value and records them as an asset or liability, depending on the Company's rights or obligations under the applicable derivative contract. For derivatives designated as fair value hedges, the changes in the fair value of both the derivative instrument and the hedged item are recorded in earnings. For derivatives designated as cash flow hedges, the effective portions of the derivative are reported in other comprehensive income ("OCI") and are subsequently reclassified into earnings when the hedged item affects earnings. Changes in fair value of derivative instruments not designated as hedging and ineffective portions of hedges are recognized in earnings in the affected period. See Note 9 to the Financial Statements—Interest Rate Contract.

#### ***Revenue Recognition***

Base rental revenue is recognized on a straight-line basis over the terms of the respective leases. Unbilled rents receivable represents the amount by which straight-line rental revenue exceeds rents currently billed in accordance with the lease agreements. Above-market and below-market lease values for acquired properties are recorded based on the present value (using a discount rate which reflects the risks associated with the leases acquired) of the difference between (i) the contractual amounts to be paid pursuant to each in-place lease and (ii) management's estimate of fair market lease rates for each corresponding in-place lease, measured over a period equal to the remaining term of the lease for above-market leases and the initial term plus the term of any below-market fixed rate renewal options for below-market leases. The capitalized above-market lease values are amortized as a reduction of base rental revenue over the remaining term of the respective leases, and the capitalized below-market lease values are amortized as an increase to base rental revenue over the remaining initial terms plus the terms of any below-market fixed rate renewal options of the respective leases. Parking and other revenue includes income from parking spaces leased to tenants, income from tenants for additional services provided by the Company, income from tenants for early lease terminations and income from managing properties for third parties. Escalations and recoveries are received from tenants for certain

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costs as provided in the lease agreements. These costs generally include real estate taxes, utilities, insurance, common area maintenance and other recoverable costs. See Note 13 to the Financial Statements.

#### ***Allowance for Doubtful Accounts***

Management periodically performs a detailed review of amounts due from tenants to determine if accounts receivable balances are impaired based on factors affecting the collectibility of those balances. Management's estimate of the allowance for doubtful accounts requires management to exercise significant judgment about the timing, frequency and severity of collection losses, which affects the allowance and net income.

#### ***Results from Operations***

As a result of the economic climate since 2001, substantially all of the real estate markets the Company operates in materially softened. Demand for office space declined significantly and vacancy rates increased in each of the Company's markets over the period. Through October 31, 2003, the Company's markets continued to be weak. The



percentage leased in the Company's consolidated portfolio of stabilized operating properties at September 30, 2003 decreased to 90.7 percent from 92.3 percent at December 31, 2002, and from 93.0 percent at September 30, 2002. Percentage leased includes all leases in effect as of the period end date, some of which have commencement dates in the future, and leases that expire at the period end date. 1.3 percent of the 1.6 percent decrease in the Company's percentage leased as of September 30, 2003 from December 31, 2002 was attributable to the addition of Harborside—Plaza 5 to the Company's consolidated portfolio of stabilized operating properties during the three months ended September 30, 2003. Market rental rates have declined in most markets from peak levels in late 2000 and early 2001. Rental rates on the Company's space that was re-leased (based on first rents payable) during the nine months ended September 30, 2003 decreased an average of 8.6 percent compared to rates that were in effect under expiring leases, as compared to a 2.4 percent increase for the same period in 2002. The Company believes that vacancy rates may continue to increase in most of its markets for the remainder of 2003 and into 2004. As a result, the Company's future earnings may be negatively impacted.

The Company has a focused strategy geared to attractive opportunities in high-barrier-to-entry markets, primarily predicated on the Company's strong presence in the Northeast region.

Consistent with its strategy, in the fourth quarter 2000, the Company started construction of a 977,225 square-foot office property, known as Plaza 5, at its Harborside Financial Center office complex in Jersey City, Hudson County, New Jersey. The project, which commenced initial operations in September 2002, is currently projected to cost approximately \$260 million, of which \$225.0 million has been incurred by the Company through September 30, 2003. Plaza 5 was approximately 56.2 percent leased as of September 30, 2003. The Company anticipates expending an additional approximately \$35.0 million for the completion of Plaza 5, which it expects to fund primarily through drawing on its revolving credit facility.

Additionally, in the fourth quarter 2000, the Company, through its joint venture with Columbia Development ("Columbia") known as American Financial Exchange ("AFE"), started construction of a 577,575 square-foot office property, known as Plaza 10, which was 100 percent pre-leased to Charles Schwab & Co. Inc. ("Schwab") for a 15-year term, on land owned by the joint venture located adjacent to the Company's Harborside complex. Among other things, the joint venture agreement provided for a preferred return on the Company's invested capital in the venture in addition to the Company's proportionate share of the venture's profit, as defined in the agreement.

On September 29, 2003, the Company sold its interest in AFE, in which the Company held a 50 percent interest, and received approximately \$162.1 million in net sales proceeds from the

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transaction, which the Company used primarily to repay outstanding borrowings under its revolving credit facility. The Company recognized a gain on the sale of approximately \$23.1 million, which is recorded in gain on sale of investment in unconsolidated joint venture for the three and nine months ended September 30, 2003. Following completion of the sale of its interest, the Company no longer has any remaining obligations to Schwab.

In advance of the transaction, AFE distributed its interests in Plaza VIII and IX Associates, L.L.C., which owned the undeveloped land currently used as a parking facility, to its then partners, the Company and Columbia. The Company and Columbia subsequently entered into a new joint venture agreement to own and manage the undeveloped land and related parking operations through Plaza VIII and IX Associates, L.L.C. The Company and Columbia each hold a 50 percent interest in the new venture.

The following comparisons for the three and nine month periods ended September 30, 2003 ("2003"), as compared to the three and nine month periods ended September 30, 2002 ("2002"), make reference to the following: (i) the effect of the "Same-Store Properties," which represents all in-service properties owned by the Company at June 30, 2002 (for the three-month period comparisons), and which represents all in-service properties owned by the Company at December 31, 2001 (for the nine-month period comparisons), excluding Dispositions as defined below; (ii) the effect of the "Acquired Properties," which represent all properties acquired by the Company or commencing initial operations from July 1, 2002 through September 30, 2003 (for the three-month period comparisons), and which represent all properties acquired by the Company or commencing initial operations from January 1, 2002 through September 30, 2003 (for the nine-month period comparisons), and; (iii) the effect of the "Dispositions", which represent results for each period for those rental properties sold by the Company during the respective periods.

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*Three Months Ended September 30, 2003 Compared to Three Months Ended September 30, 2002*

	Three Months Ended September 30,		Dollar Change	Percent Change
	2003	2002		
(dollars in thousands)				
<b>Revenue from rental operations:</b>				
Base rents	\$ 126,120	\$ 119,779	\$ 6,341	5.3%
Escalations and recoveries from tenants	16,285	15,088	1,197	7.9
Parking and other	4,981	7,441	(2,460)	(33.1)
<b>Total revenues</b>	<b>147,386</b>	<b>142,308</b>	<b>5,078</b>	<b>3.6</b>
<b>Property expenses:</b>				
Real estate taxes	16,677	15,112	1,565	10.4
Utilities	11,658	10,016	1,642	16.4
Operating services	17,329	16,660	669	4.0
<b>Sub-total</b>	<b>45,664</b>	<b>41,788</b>	<b>3,876</b>	<b>9.3</b>
General and administrative	8,661	5,513	3,148	57.1
Depreciation and amortization	29,511	28,902	609	2.1
Interest expense	28,910	26,429	2,481	9.4
Interest income	(244)	(742)	498	67.1
Loss on early retirement of debt, net	—	—	—	—

Total expenses	112,502	101,890	10,612	10.4
Income from continuing operations before minority interest and equity in earnings of unconsolidated joint ventures	34,884	40,418	(5,534)	(13.7)
Minority interest in Operating Partnership	(7,535)	(8,301)	766	9.2
Equity in earnings of unconsolidated joint ventures (net of minority interest), net	3,151	1,941	1,210	62.3
Gain on sale of investment in unconsolidated joint venture (net of minority interest)	20,392	—	20,392	100.0
Income from continuing operations	50,892	34,058	16,834	49.4
Discontinued operations (net of minority interest):				
Income from discontinued operations	—	(227)	227	100.0
Realized gain on disposition of rental property	—	—	—	—
Total discontinued operations, net	—	(227)	227	100.0
Realized gains (losses) and unrealized losses on disposition of rental property (net of minority interest), net	—	401	(401)	(100.0)
Net income	\$ 50,892	\$ 34,232	\$ 16,660	48.7
Preferred stock dividends	(500)	—	(500)	(100.0)
Net income available to common shareholders	\$ 50,392	\$ 34,232	\$ 16,160	47.2%

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The following is a summary of the changes in revenue from rental operations and property expenses divided into Same-Store Properties, Acquired Properties and Dispositions (dollars in thousands):

	Total Company		Same-Store Properties		Acquired Properties		Dispositions	
	Dollar Change	Percent Change	Dollar Change	Percent Change	Dollar Change	Percent Change	Dollar Change	Percent Change
<b>Revenue from rental operations:</b>								
Base rents	\$ 6,341	5.3	\$ (1,289)	(1.1)%	\$ 9,150	7.7	\$ (1,520)	(1.3)%
Escalations and recoveries from tenants	1,197	7.9	(577)	(3.8)	1,847	12.2	(73)	(0.5)
Parking and other	(2,460)	(33.1)	(2,154)	(29.0)	(279)	(3.7)	(27)	(0.4)
Total	\$ 5,078	3.6%	(4,020)	(2.8)	10,718	7.5	(1,620)	(1.1)%
<b>Property expenses:</b>								
Real estate taxes	\$ 1,565	10.4	\$ 871	5.8%	\$ 794	5.3%	\$ (100)	(0.7)%
Utilities	1,642	16.4	991	9.9	750	7.5	(99)	(1.0)
Operating services	669	4.0	(389)	(2.3)	1,269	7.6	(211)	(1.3)
Total	\$ 3,876	9.3%	\$ 1,473	3.5%	\$ 2,813	6.7%	\$ (410)	(1.0)%
<b>OTHER DATA:</b>								
Number of Consolidated Properties	258		246		12		29	
Square feet (in thousands)	27,208		25,188		2,020		4,799	

Base rents for the Same-Store Properties decreased \$1.3 million, or 1.1 percent, for 2003 as compared to 2002, due primarily to the effect of increased reserves for unbilled rents receivable for certain tenants in 2003. Escalations and recoveries from tenants for the Same-Store Properties decreased \$0.6 million, or 3.8 percent, for 2003 over 2002, due primarily to a reduction in the recovery of property expenses in 2003. Parking and other income for the Same-Store Properties decreased \$2.2 million, or 29.0 percent, due primarily to a decrease in lease termination fees in 2003.

Real estate taxes on the Same-Store Properties increased \$0.9 million, or 5.8 percent, for 2003 as compared to 2002 due primarily to increased rates in certain municipalities. Utilities for the Same-Store Properties increased \$1.0 million, or 9.9 percent, for 2003 as compared to 2002, due primarily to increased electric rates in 2003. Operating services for the Same-Store Properties decreased \$0.4 million, or 2.3 percent, due primarily to decreased repair and maintenance expenses in 2003.

Interest income decreased \$0.5 million, or 67.1 percent, for 2003 as compared to 2002. This decrease was due primarily to lower notes receivable balances in 2003.

General and administrative increased by \$3.1 million, or 57.1 percent, for 2003 as compared to 2002. This increase was due primarily to an increase in costs for transactions not consummated of \$1.7 million and salaries and related expenses of \$1.0 million for 2003 as compared to 2002.

Depreciation and amortization increased by \$0.6 million, or 2.1 percent, for 2003 over 2002. Of this increase, \$0.9 million, or 3.3 percent, is due to the Acquired Properties, which is partially offset by a decrease of \$0.3 million or 1.2 percent, attributable to the Same-Store Properties.

Interest expense increased \$2.5 million, or 9.4 percent, for 2003 as compared to 2002. This increase is due primarily to lower capitalized interest in 2003 on account of less development projects. See Note 7 to the Financial Statements.

Equity in earnings of unconsolidated joint ventures (net of minority interest) increased \$1.2 million, or 62.3 percent, for 2003 as compared to 2002. The increase was due primarily to initial

operations of a 577,575 square foot office property owned by the American Financial Exchange joint venture (in which the Company subsequently sold its interest) resulting in an increase in 2003 of \$2.5 million, as well as loss in 2002 for the initial operating of the Harborside—South Pier hotel of \$1.5 million, partially offset by the sale of the ARCap joint venture investment in late 2002 resulting in a reduction of \$2.7 million in 2003. See Note 4 to the Financial Statements.

Gain on sale of investment in unconsolidated joint venture (net of minority interest) amounted to \$20.4 million in 2003. This was due to the sale of the Company's investment in the American Financial Exchange joint venture. See Note 4 to the Financial Statements.

Income from continuing operations before minority interest and equity in earnings of unconsolidated joint ventures decreased to \$34.9 million in 2003 from \$40.4 million in 2002. The decrease of approximately \$5.5 million is due to the factors discussed above.

Net income available to common stockholders increased by \$16.2 million, from \$34.2 million in 2002 to \$50.4 million in 2003. This increase was a result of a gain on sale of investment in unconsolidated joint venture (net of minority interest) of \$20.4 million, an increase in equity in earnings of unconsolidated joint ventures, net, of \$1.2 million, a decrease in minority interest of \$0.8 million, and an increase in income from discontinued operations of \$0.2 million. This was partially offset by a decrease in income from continuing operations before minority interest and equity in earnings of unconsolidated joint ventures of \$5.5 million, preferred stock dividends of \$0.5 million in 2003, and a realized gain on disposition of rental property of \$0.4 million in 2002.

*Nine Months Ended September 30, 2003 Compared to Nine Months Ended September 30, 2002*

	Nine Months Ended September 30,		Dollar Change	Percent Change
	2003	2002		
	(dollars in thousands)			
<b>Revenue from rental operations:</b>				
Base rents	\$ 380,209	\$ 367,699	\$ 12,510	3.4%
Escalations and recoveries from tenants	46,309	42,674	3,635	8.5
Parking and other	14,135	15,033	(898)	(6.0)
<b>Total revenues</b>	<b>440,653</b>	<b>425,406</b>	<b>15,247</b>	<b>3.6</b>
<b>Property expenses:</b>				
Real estate taxes	48,723	45,715	3,008	6.6
Utilities	32,095	29,350	2,745	9.4
Operating services	55,694	49,197	6,497	13.2
<b>Sub-total</b>	<b>136,512</b>	<b>124,262</b>	<b>12,250</b>	<b>9.9</b>
General and administrative	22,333	20,108	2,225	11.1
Depreciation and amortization	88,066	80,374	7,692	9.6
Interest expense	87,143	78,384	8,759	11.2
Interest income	(835)	(1,527)	692	45.3
Loss on early retirement of debt, net	2,372	—	2,372	—
<b>Total expenses</b>	<b>335,591</b>	<b>301,601</b>	<b>33,990</b>	<b>11.3</b>
Income from continuing operations before minority interest and equity in earnings of unconsolidated joint ventures	105,062	123,805	(18,743)	(15.1)
Minority interest in Operating Partnership	(22,762)	(25,347)	2,585	10.2
Equity in earnings of unconsolidated joint ventures (net of minority interest), net	11,250	9,030	2,220	24.6
Gain on sale of investment in unconsolidated joint venture (net of minority interest)	20,392	—	20,392	100.0
<b>Income from continuing operations</b>	<b>113,942</b>	<b>107,488</b>	<b>6,454</b>	<b>6.0</b>
Discontinued operations (net of minority interest):				
Income from discontinued operations	26	22	4	18.2
Realized gain on disposition of rental property	1,165	—	1,165	—
<b>Total discontinued operations, net</b>	<b>1,191</b>	<b>22</b>	<b>1,169</b>	<b>5,313.6</b>
Realized gains (losses) and unrealized losses on disposition of rental property (net of minority interest), net	—	2,376	(2,376)	(100.0)
<b>Net income</b>	<b>\$ 115,133</b>	<b>\$ 109,886</b>	<b>\$ 5,247</b>	<b>4.8%</b>
Preferred stock dividends	(1,172)	—	(1,172)	(100.0)
<b>Net income available to common shareholders</b>	<b>\$ 113,961</b>	<b>\$ 109,886</b>	<b>\$ 4,075</b>	<b>3.7%</b>

The following is a summary of the changes in revenue from rental operations and property expenses divided into Same-Store Properties, Acquired Properties and Dispositions (dollars in thousands):

	Total Company		Same-Store Properties		Acquired Properties		Dispositions	
	Dollar Change	Percent Change	Dollar Change	Percent Change	Dollar Change	Percent Change	Dollar Change	Percent Change
<b>Revenue from rental operations:</b>								
Base rents	\$ 12,510	3.4%	\$ (3,130)	(0.9)%	\$ 28,498	7.8%	\$ (12,858)	(3.5)%
Escalations and recoveries from tenants	3,635	8.5	1,779	4.2	3,206	7.5	(1,350)	(3.2)
Parking and other	(898)	(6.0)	(2,053)	(13.7)	1,599	10.7	(444)	(3.0)
<b>Total</b>	<b>\$ 15,247</b>	<b>3.6%</b>	<b>\$ (3,404)</b>	<b>(0.8)%</b>	<b>\$ 33,303</b>	<b>7.8%</b>	<b>\$ (14,652)</b>	<b>(3.4)%</b>
<b>Property expenses:</b>								
Real estate taxes	\$ 3,008	6.6%	\$ 1,376	3.1%	\$ 2,900	6.3%	\$ (1,268)	(2.8)%
Utilities	2,745	9.4	1,238	4.3	2,815	9.6	(1,308)	(4.5)
Operating services	6,497	13.2	4,760	9.6	4,361	8.9	(2,624)	(5.3)
<b>Total</b>	<b>\$ 12,250</b>	<b>9.9%</b>	<b>\$ 7,374</b>	<b>6.0%</b>	<b>\$ 10,076</b>	<b>8.1%</b>	<b>\$ (5,200)</b>	<b>(4.2)%</b>
<b>OTHER DATA:</b>								
Number of Consolidated Properties	258		245		13		29	
Square feet (in thousands)	27,208		25,155		2,053		4,799	

Base rents for the Same-Store Properties decreased \$3.1 million, or 0.9 percent, for 2003 as compared to 2002, due primarily to decreases in space leased and rental rates at the properties in 2003. Escalations and recoveries from tenants for the Same-Store Properties increased \$1.8 million, or 4.2 percent, for 2003 over 2002, due primarily to the increased amount of total property expenses in 2003. Parking and other income for the Same-Store Properties decreased \$2.1 million, or 13.7 percent due primarily to a decrease in lease termination fees in 2003.

Real estate taxes on the Same-Store Properties decreased \$1.4 million, or 3.1 percent, for 2003 as compared to 2002, due primarily to lower assessments on certain properties, partially offset by increased rates in certain municipalities in 2003. Utilities for the Same-Store Properties increased \$1.2 million, or 4.3 percent, for 2003 as compared to 2002, due primarily to increased usage in 2003 on account of the harsh winter. Operating services for the Same-Store Properties increased \$4.8 million, or 9.6 percent, due primarily to increased snow removal costs from the harsh winter in 2003.

Interest income decreased \$0.7 million, or 45.3 percent, for 2003 as compared to 2002. This decrease was due primarily to lower notes receivable balances in 2003.

General and administrative increased by \$2.2 million, or 11.1 percent, for 2003 as compared to 2002. This increase was due primarily to increases in costs for transactions not consummated of \$1.7 million and in professional fees of approximately \$400,000 for 2003 as compared to 2002.

Depreciation and amortization increased by \$7.7 million, or 9.6 percent, for 2003 over 2002. Of this increase, \$0.7 million, or 0.9 percent, was attributable to the Same-Store Properties, primarily on account of properties previously held for sale in 2002 not being depreciated during the period held for sale, which were no longer being held for sale in 2003, and \$7.0 million, or 8.7 percent, was due to the Acquired Properties.

Interest expense increased \$8.8 million, or 11.2 percent, for 2003 as compared to 2002. This increase was due primarily to lower capitalized interest in 2003 on account of less development projects.

Loss on early retirement of debt, net, amounted to \$2.4 million in 2003, which consisted primarily of (a) \$1.4 million in costs in connection with the exchange and repurchase of \$50.0 million in 7.18 percent senior unsecured notes due December 31, 2003, (b) a write-off of the unamortized balance of \$1.5 million of an interest rate contract in conjunction with the repayment of mortgage debt, and (c) \$1.4 million of costs incurred in connection with the repurchase of \$45.3 million of 7.18 percent senior unsecured notes due December 31, 2003, partially offset by a discount of \$1.7 million taken in conjunction with the early retirement of the same mortgage debt referred to above. See Note 7 to the Financial Statements.

Equity in earnings of unconsolidated joint ventures (net of minority interest) increased \$2.2 million, or 24.6 percent, for 2003 as compared to 2002. The increase was due primarily to initial operations of a 577,575 square foot office property owned by the American Financial Exchange joint venture (in which the Company subsequently sold its interest) resulting in an increase in 2003 of \$10.5 million, partially offset by the sale of the ARCap joint venture investment in late 2002 resulting in a reduction of \$4.0 million in 2003 and the sale of properties owned by the HPMC joint ventures in late 2002 and 2003 resulting in a reduction of \$3.7 million in 2003. See Note 4 to the Financial Statements.

Gain on sale of investment in unconsolidated joint venture (net of minority interest) amounted to \$20.4 million in 2003. This was due to the sale of the Company's investment in the American Financial Exchange joint venture. See Note 4 to the Financial Statements.

Income from continuing operations before minority interest and equity in earnings of unconsolidated joint ventures decreased to \$105.1 million in 2003 from \$123.8 million in 2002. The decrease of approximately \$18.7 million is due to the factors discussed above.

Net income available to common shareholders increased by \$4.1 million, from \$109.9 million in 2002 to \$114.0 million in 2003. This increase was a result of a gain on sale of investment in unconsolidated joint venture (net of minority interest) of \$20.4 million, a decrease in minority interest of \$2.6 million, an increase in equity in earnings of unconsolidated joint ventures, net, of \$2.2 million, and a realized gain on disposition of rental property of \$1.2 million in 2003. This was partially offset by a decrease in income from continuing operations of \$18.7 million, a realized gain on disposition of rental property of \$2.4 million in 2002, and a preferred stock dividend of \$1.2 million.

#### *Liquidity and Capital Resources*

Historically, rental revenue has been the principal source of funds to pay operating expenses, debt service, capital expenditures and dividends, excluding non-recurring capital expenditures. To the extent that the Company's cash flow from operating activities is insufficient to finance its non-recurring capital expenditures such as property acquisition and development and construction costs and other capital expenditures, the Company has and expects to continue to finance such activities through borrowings under its revolving credit facility and other debt and equity financings.

The Company believes that with the current downturn in the economy in general, and the softening of the Company's markets specifically, it is reasonably likely that vacancy rates may continue to increase, effective rental rates on new and renewed leases may continue to decrease and tenant installation costs, including concessions, may continue to increase in most or all of its markets during the remainder of 2003 and into 2004. As a result of the potential negative effects on the Company's rental revenue from the overall reduced demand for office space, the Company's cash flow could be insufficient to cover increased tenant installation costs over the short-term. If this situation were to occur, the Company expects that it would finance any shortfalls through borrowings under its revolving credit facility and other debt and equity financings.

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The Company expects to meet its short-term liquidity requirements generally through its working capital, net cash provided by operating activities and from its revolving credit facility. The Company frequently examines potential property acquisitions and development projects and, at any given time, one or more of such acquisitions or development projects may be under consideration. Accordingly, the ability to fund property acquisitions and development projects is a major part of the Company's financing requirements. The Company expects to meet its financing requirements through funds generated from operating activities, proceeds from property sales, long-term and short-term borrowings (including draws on the Company's revolving credit facility) and the issuance of additional debt and/or equity securities.

On February 12, 2003, the Meadowlands Xanadu proposal, presented by a joint venture to be formed between The Mills Corporation and the Company was selected by the New Jersey Sports and Exposition Authority (NJSEA), providing them with the exclusive right to negotiate a developer's agreement for the development of a \$1.5 billion family entertainment and recreation complex with an office and hotel component at the Continental Airlines Arena site in East Rutherford, New Jersey. Meadowlands Xanadu's 4.76-million-square-foot complex is expected to feature a family entertainment destination comprising three themed zones: sports/recreation, kids' activities and fashion. The project is expected to also include office and hotel space totaling 2.2 million square feet, consisting of four 14-story, 440,000 square-foot office buildings and a 520-room hotel with conference and exhibition facilities. No definitive documentation has been entered into between The Mills Corporation and the Company with respect to the Xanadu Project. However, it is the current understanding between Mills and the Company that the retail component will be shared 80 percent to Mills and 20 percent to the Company and the office and hotel components will be shared 80 percent to the Company and 20 percent to Mills. There can be no assurance that these will be the final economic arrangements.

On March 27, 2003, Hartz Mountain Industries, Inc. filed a lawsuit in the Superior Court of New Jersey, Law Division, for Bergen County, seeking to enjoin the NJSEA from entering into a contract with The Mills Corporation and the Company for the redevelopment of the Continental Arena site. The case was dismissed by the trial court but appealed. Hartz also appealed the NJSEA's final decision which denied Hartz's bid protest on October 23, 2003. Westfield America, Inc., has also protested the NJSEA decision, and has appealed the NJSEA's denial of its protest. Four citizens, Elliot Braha, Richard Delauro, George Perry and Carol Coronato, have also filed lawsuits challenging the NJSEA award to Mills and the Company. All of these cases are now pending unresolved in the Superior Court of New Jersey, Appellate Division. We believe that our proposal fully complied with applicable laws and the request for proposals, and we plan to vigorously enforce our rights concerning this project.

On May 8, 2003, an adversary proceeding arising out of the bankruptcy of Broadband Office, Inc. ("BBO") was commenced by BBO and the Official Committee of Unsecured Creditors of BBO ("Plaintiffs") in the United States Bankruptcy Court for the District of Delaware. On August 25, 2003, the Plaintiffs filed an Amended Complaint. As amended, the Complaint names as defendants Mack-Cali Realty, L.P., the chief executive officer of the Company, and certain alleged affiliates of the Company (the "Mack-Cali Defendants"). Also named as defendants are seven other real estate investment trusts or partnerships ("REITs") that invested in BBO and the eight individuals designated by the REITs to serve on the Board of Directors of BBO. Plaintiffs assert, among other things, that the Defendants breached fiduciary duties to BBO, its minority shareholders (other than the REITs) and its creditors by approving a spin-off of BBO's assets to a newly created entity, and approving the sale of BBO's remaining assets to Yipes, Inc., both for allegedly inadequate consideration. Plaintiffs seek an unspecified amount of compensatory and punitive damages in connection with their fiduciary duty claims. In addition, Plaintiffs seek to avoid all payments and other transfers made to Defendants within one year of BBO's bankruptcy filing under various provisions of the Bankruptcy Code, and to obtain "turnover" of certain property under Section 542(b) of the Code. On July 8, 2003, the district court withdrew the reference of this proceeding to the bankruptcy court, and the action is now pending in

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the United States District Court for the District of Delaware. The Mack-Cali Defendants have denied the claims asserted in the Amended Complaint, and believe they have substantial defenses to the claims asserted against them. The Company does not believe that the ultimate resolution of this matter will have a material adverse effect on the Company's financial condition taken as a whole.

As of September 30, 2003, the Company's total indebtedness of \$1.6 billion (weighted average interest rate of 7.10 percent) was comprised of \$32.2 million of variable rate mortgage debt (weighted average rate of 2.01 percent) and fixed rate debt of \$1.6 billion (weighted average rate of 7.21 percent).

The Company has three investment grade credit ratings. Standard & Poor's Rating Services ("S&P") and Fitch, Inc. ("Fitch") have each assigned their BBB rating to existing and prospective senior unsecured debt of the Operating Partnership. S&P and Fitch have also assigned their BBB- rating to existing and prospective preferred stock offerings of the Company. Moody's Investors Service ("Moody's") has assigned its Baa2 rating to existing and prospective senior unsecured debt of the Operating Partnership and its Baa3 rating to its existing and prospective preferred stock offerings of the Company.

On September 27, 2002, the Company obtained an unsecured revolving credit facility with a current borrowing capacity of \$600.0 million from a group of 14 lenders, as described in Note 8 to the Financial Statements. As of September 30, 2003, the Company had no outstanding borrowings under its unsecured revolving credit facility, which resulted primarily from a paydown on the facility at period end from proceeds received in the Company's sale of its interest in the American Financial Center joint venture.

The interest rate on outstanding borrowings under the unsecured facility is currently LIBOR plus 70 basis points. The Company may instead elect an interest rate representing the higher of the lender's prime rate or the Federal Funds rate plus 50 basis points. The unsecured facility also currently requires a 20 basis point facility fee on the current borrowing capacity payable quarterly in arrears.

In the event of a change in the Operating Partnership's unsecured debt rating, the interest and facility fee rates will be adjusted in accordance with the following table:

Operating Partnership's Unsecured Debt Ratings: S&P/Moody's/Fitch(a)	Interest Rate— Applicable Basis Points Above LIBOR	Facility Fee Basis Points
No rating or less than BBB-/Baa3/BBB-	120.0	30.0
BBB-/Baa3/BBB-	95.0	20.0
BBB/Baa2/BBB (current)	70.0	20.0
BBB+/Baa1/BBB+	65.0	15.0
A-/A3/A- or higher	60.0	15.0

(a) If the Operating Partnership has debt ratings from two rating agencies, one of which is Standard & Poor's Rating Services ("S&P") or Moody's Investors Service ("Moody's"), the rates per the above table shall be based on the lower of such ratings. If the Operating Partnership has debt ratings from three rating agencies, one of



which is S&P or Moody's, the rates per the above table shall be based on the lower of the two highest ratings. If the Operating Partnership has debt ratings from only one agency, it will be considered to have no rating or less than BBB-/Baa3/BBB- per the above table.

The unsecured facility matures in September 2005, with an extension option of one year, which would require a payment of 25 basis points of the then borrowing capacity of the credit line upon exercise. The Company believes that the unsecured facility is sufficient to meet its revolving credit facility needs.

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The terms of the unsecured facility include certain restrictions and covenants which limit, among other things, the payment of dividends (as discussed below), the incurrence of additional indebtedness, the incurrence of liens and the disposition of real estate properties (to the extent that: (i) such property dispositions cause the Company to default on any of the financial ratios of the facility described below, or (ii) the property dispositions are completed while the Company is under an event of default under the facility, unless, under certain circumstances, such disposition is being carried out to cure such default), and which require compliance with financial ratios relating to the maximum leverage ratio, the maximum amount of secured indebtedness, the minimum amount of tangible net worth, the minimum amount of debt service coverage, the minimum amount of fixed charge coverage, the maximum amount of unsecured indebtedness, the minimum amount of unencumbered property debt service coverage and certain investment limitations. The dividend restriction referred to above provides that, except to enable the Company to continue to qualify as a REIT under the Code, the Company will not during any four consecutive fiscal quarters make distributions with respect to common stock or other equity interests in an aggregate amount in excess of 90 percent of funds from operations (as defined in the facility agreement) for such period, subject to certain other adjustments.

The terms of the Company's Senior Unsecured Notes, as defined in Note 7 to the Financial Statements (which totaled approximately \$1.1 billion as of September 30, 2003), include certain restrictions and covenants which require compliance with financial ratios relating to the maximum amount of debt leverage, the maximum amount of secured indebtedness, the minimum amount of debt service coverage and the maximum amount of unsecured debt as a percent of unsecured assets.

As of September 30, 2003, the Company had 236 unencumbered properties, totaling 21.6 million square feet, representing 79.3 percent of the Company's total portfolio on a square footage basis.

The debt of the Company's unconsolidated joint ventures aggregating \$148.6 million are non-recourse to the Company except for (i) customary exceptions pertaining to such matters as intentional misuse of funds, environmental conditions and material misrepresentations and (ii) approximately \$11.1 million of debt on the Harborside South Pier joint venture with Hyatt Corporation ("Hyatt"). Additionally, the Company has posted an \$8.0 million letter of credit in support of another loan to that joint venture, \$4.0 million of which is indemnified by Hyatt.

The following table outlines the timing of payment requirements related to the Company's debt, PILOT agreements, and ground lease agreements (in thousands):

	Payments Due by Period					
	Total	Less than 1 year	1 - 3 years	4 - 5 years	6 - 10 years	After 10 years
Senior unsecured notes	\$ 1,127,580	\$ 299,963	—	—	\$ 827,617	—
Revolving credit facility	—	—	—	—	—	—
Mortgages and loans payable	503,350	10,768	\$ 412,140	\$ 10,092	70,350	—
Payments in lieu of taxes (PILOT)	87,227	7,500	11,726	7,492	21,026	\$ 39,483
Ground lease payments	23,800	576	1,732	1,116	2,668	17,708

As of September 30, 2003, the Company's total debt had a weighted average term to maturity of approximately 4.6 years. The Company has a total of \$300.0 million of senior unsecured notes scheduled to mature in March 2004. The Company does not intend to reserve funds to retire the Company's senior unsecured notes or its mortgages and loans payable upon maturity. Instead, the Company will seek to refinance such debt at maturity or retire such debt through the issuance of additional equity or debt securities on or before the applicable maturity dates. If it cannot timely raise such proceeds, the Company may draw on its revolving credit facility to retire the maturing indebtedness, which would reduce the future availability of funds under such facility. As of September 30, 2003, the Company had no outstanding borrowings under its \$600 million unsecured revolving credit facility. The Company is reviewing various refinancing options, including the purchase

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of its senior unsecured notes in privately-negotiated transactions, the issuance of additional, or exchange of current, unsecured debt, preferred stock, and/or obtaining additional mortgage debt, some or all of which may be completed during the remainder of 2003. The Company anticipates that its available cash and cash equivalents and cash flows from operating activities, together with cash available from borrowings and other sources, will be adequate to meet the Company's capital and liquidity needs both in the short and long-term. However, if these sources of funds are insufficient or unavailable, the Company's ability to make the expected distributions discussed below may be adversely affected.

The Company has an effective shelf registration statement with the SEC for an aggregate amount of \$2.0 billion in equity securities of the Company. The Company and Operating Partnership also have an effective shelf registration statement with the SEC for an aggregate of \$2.0 billion in debt securities, preferred stock and preferred stock represented by depositary shares, under which the Operating Partnership has issued an aggregate of \$1.2 billion of senior unsecured notes and the Company has issued \$25 million of preferred stock.

On September 13, 2000, the Board of Directors authorized an increase to the Company's repurchase program under which the Company was permitted to purchase up to an additional \$150.0 million of the Company's outstanding common stock ("Repurchase Program"). From that date through October 31, 2003, the Company purchased and retired, under the Repurchase Program, 3.7 million shares of its outstanding common stock for an aggregate cost of approximately \$104.5 million. The Company has a remaining authorization to repurchase up to an additional \$45.5 million of its outstanding common stock, which it may repurchase from time to time in open market transactions at prevailing prices or through privately negotiated transactions.

The Company may not dispose of or distribute certain of its properties, currently comprising 140 properties with an aggregate net book value of approximately \$1.8 billion, which were originally contributed by members of either the Mack Group (which includes William L. Mack, Chairman of the Company's Board of Directors; Earle I. Mack, director; and Mitchell E. Hersh, chief executive officer and director), the Robert Martin Group (which includes Robert F. Weinberg, a former director; Martin S. Berger, director; and Timothy M. Jones, president), or the Cali Group (which includes John J. Cali, a former director and John R. Cali, director) without the express written consent of a representative of the Mack Group, the Robert Martin Group or the Cali Group, as applicable, except in a manner which does not result in recognition of any built-in-gain (which may result in an income tax liability) or which reimburses the appropriate Mack Group, Robert Martin Group or Cali Group members for the tax consequences of the recognition of such built-in-gains (collectively, the "Property Lock-Ups"). The aforementioned restrictions do not apply in the event that the Company sells all of its properties or in connection with a sale transaction which the Company's Board of Directors determines is reasonably necessary to satisfy a material monetary default on any unsecured debt, judgment or liability of the Company or to cure any material monetary default on any mortgage secured by a property. The Property Lock-Ups expire periodically through

2008. Upon the expiration of the Property Lock-Ups, the Company is required to use commercially reasonable efforts to prevent any sale, transfer or other disposition of the subject properties from resulting in the recognition of built-in gain to the appropriate Mack Group, Robert Martin Group or Cali Group members.

To maintain its qualification as a REIT, the Company must make annual distributions to its stockholders of at least 90 percent of its REIT taxable income, determined without regard to the dividends paid deduction and by excluding net capital gains. Moreover, the Company intends to continue to make regular quarterly distributions to its common stockholders which, based upon current policy, in the aggregate would equal approximately \$146.9 million on an annualized basis. However, any such distribution, whether for federal income tax purposes or otherwise, would only be paid out of available cash after meeting operating requirements, preferred stock dividends, and scheduled debt service on the Company's debt.

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### Off-Balance Sheet Arrangements

The Company's off-balance sheet arrangements are discussed in Note 4: "Investments in Unconsolidated Joint Ventures" to the Financial Statements. Additional information about the debt of the Company's unconsolidated joint ventures is included in "Liquidity and Capital Resources" herein.

### Funds from Operations

Funds from operations ("FFO") is defined as net income (loss) before minority interest of unitholders, computed in accordance with generally accepted accounting principles ("GAAP"), excluding gains (or losses) from extraordinary items and sales of depreciable rental property, plus real estate-related depreciation and amortization. The Company believes that FFO is helpful to investors as one of several measures of the performance of an equity REIT. The Company further believes that by excluding the effect of depreciation and gains (or losses) from sales of properties (all of which are based on historical costs which may be of limited relevance in evaluating current performance), FFO can facilitate comparison of operating performance between equity REITs. FFO should not be considered as an alternative to net income as an indication of the Company's performance or to cash flows as a measure of liquidity. FFO presented herein is not necessarily comparable to FFO presented by other real estate companies due to the fact that not all real estate companies use the same definition. However, the Company's FFO is comparable to the FFO of real estate companies that use the current definition of the National Association of Real Estate Investment Trusts ("NAREIT").

Effective with the filing of the Company's second quarter 2003 Form 10-Q, in order to best report FFO in accordance with the Securities and Exchange Commission's recent guidance in respect of Regulation G concerning non-GAAP financial measures and to disclose FFO on a comparable basis with the vast majority of other companies in the industry, the Company revised its definition of FFO to adhere to NAREIT's definition of FFO by including the effect of income arising from the straight-lining of rents in the periods presented. Income from the straight-lining of rents (including the Company's share from unconsolidated joint ventures) amounted to \$1,293 for the three months ended September 30, 2003, and \$8,882 for the nine months ended September 30, 2003. Such amounts are included in the reported FFO below.

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FFO available to common shareholders for the three and nine months ended September 30, 2003, as calculated in accordance with NAREIT's definition as published in October 1999, are summarized in the following table (*in thousands*):

	Three Months Ended September 30, 2003	Nine Months Ended September 30, 2003
Net income available to common shareholders	\$ 50,392	\$ 113,961
Add: Minority interest in Operating Partnership	7,535	22,762
Minority interest in equity in earnings of unconsolidated joint ventures	424	1,524
Minority interest in gain on sale of investment in unconsolidated joint venture	2,748	2,748
Minority interest in income from discontinued operations	—	4
Real estate-related depreciation and amortization on continuing operations(1)	31,623	94,911
Real estate-related depreciation and amortization on discontinued operations	—	56
(Deduct)/Add:		
Gain on sale of investment in unconsolidated joint venture	(23,140)	(23,140)
Discontinued Operations—realized (gains) losses and unrealized losses (net of minority interest), net	—	(1,165)
Equity in earnings from gain on sale	—	(2,427)
Funds from operations available to common shareholders	\$ 69,582	\$ 209,234
Deduct: Distributions to preferred unitholders	(3,917)	(11,759)
Funds from operations available to common shareholders, after distributions to preferred unitholders	\$ 65,665	\$ 197,475
Basic weighted average shares/units outstanding(2)	65,668	65,349
Diluted weighted average shares/units outstanding(2)	72,465	71,943

(1) Includes the Company's share from unconsolidated joint ventures of \$2,272 for the three months ended September 30, 2003 and \$7,344 for the nine months ended September 30, 2003.

(2) See calculations for the amounts presented in the following reconciliation.

The following schedule reconciles the Company's basic weighted average shares outstanding to the basic and diluted weighted average shares/units outstanding presented

above (in thousands):

	Three Months Ended September 30, 2003	Nine Months Ended September 30, 2003
Basic weighted average shares outstanding:	57,870	57,545
Add: Weighted average common units	7,798	7,804
Basic weighted average shares/units:	65,668	65,349
Add: Weighted average preferred units (after conversion to common units)	6,218	6,223
Stock options	559	364
Stock warrants	20	7
Diluted weighted average shares/units outstanding:	72,465	71,943

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### *Inflation*

The Company's leases with the majority of its tenants provide for recoveries and escalation charges based upon the tenant's proportionate share of, and/or increases in, real estate taxes and certain operating costs, which reduce the Company's exposure to increases in operating costs resulting from inflation.

### *Disclosure Regarding Forward-Looking Statements*

The Company considers portions of this information to be forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934. The Company intends such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in Section 21E of the Exchange Act. Such forward-looking statements relate to, without limitation, the Company's future economic performance, plans and objectives for future operations and projections of revenue and other financial items. Forward-looking statements can be identified by the use of words such as "may," "will," "should," "expect," "anticipate," "estimate," "continue" or comparable terminology. Forward-looking statements are inherently subject to risks and uncertainties, many of which the Company cannot predict with accuracy and some of which the Company might not even anticipate. Although the Company believes that the expectations reflected in such forward-looking statements are based upon reasonable assumptions at the time made, it can give no assurance that its expectations will be achieved. Future events and actual results, financial and otherwise, may differ materially from the results discussed in the forward-looking statements. Readers are cautioned not to place undue reliance on these forward-looking statements. Among the factors about which the Company has made assumptions are changes in the general economic climate; conditions, including those affecting industries in which the Company's principal tenants compete; any failure of the general economy to recover from the current economic downturn; the extent of any tenant bankruptcies; the Company's ability to lease or re-lease space at current or anticipated rents; changes in the supply of and demand for office, office/flex and industrial/warehouse properties; changes in interest rate levels; changes in operating costs; the Company's ability to obtain adequate insurance, including coverage for terrorist acts; the availability of financing; and other risks associated with the development and acquisition of properties, including risks that the development may not be completed on schedule, that the tenants will not take occupancy or pay rent, or that development or operating costs may be greater than anticipated. For further information on factors which could impact the Company and the statements contained herein, see the "Risk Factors" section contained in the Annual Report on Form 10-K for the year ended December 31, 2002. The Company assumes no obligation to update and supplement forward-looking statements that become untrue because of subsequent events.

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## ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Market risk is the exposure to loss resulting from changes in interest rates, foreign currency exchange rates, commodity prices and equity prices. In pursuing its business plan, the primary market risk to which the Company is exposed is interest rate risk. Changes in the general level of interest rates prevailing in the financial markets may affect the spread between the Company's yield on invested assets and cost of funds and, in turn, its ability to make distributions or payments to its investors.

Approximately \$1.6 billion of the Company's long-term debt bears interest at fixed rates and therefore the fair value of these instruments is affected by changes in market interest rates. The following table presents principal cash flows (in thousands) based upon maturity dates of the debt obligations and the related weighted-average interest rates by expected maturity dates for the fixed rate debt. The interest rate on the variable rate debt as of September 30, 2003 was LIBOR plus 65 basis points.

September 30, 2003 Debt, including current portion	10/1/03- 12/31/03	2004	2005	2006	2007	Thereafter	Total	Fair Value
Fixed Rate	\$ 1,743	\$ 316,654	\$ 259,523	\$ 144,595	\$ 9,199	\$ 867,038	\$ 1,598,752	\$ 1,745,965
Average Interest Rate	7.35%	7.33%	7.13%	7.36%	6.96%	7.07%	7.21%	
Variable Rate						\$ 32,178	\$ 32,178	\$ 32,178

While the Company has not experienced any significant credit losses, in the event of a significant rising interest rate environment and/or economic downturn, defaults could increase and result in losses to the Company which could adversely affect its operating results and liquidity.

## ITEM 4. CONTROLS AND PROCEDURES

*Disclosure Controls and Procedures.* The Company's management, with the participation of the Company's chief executive officer and chief financial officer, has evaluated the effectiveness of the Company's disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) as of the end of the period covered by this report. Based on such evaluation, the Company's chief executive officer and chief financial officer have concluded that, as of the end of such period, the Company's disclosure controls and procedures are effective in recording, processing, summarizing and reporting, on a timely basis, information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act.

*Internal Control Over Financial Reporting.* There have not been any changes in the Company's internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the fiscal quarter to which this report relates that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.



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## Part II—Other Information

### Item 1. Legal Proceedings

On February 12, 2003, the Meadowlands Xanadu proposal, presented by a joint venture to be formed between The Mills Corporation and the Company was selected by the New Jersey Sports and Exposition Authority (NJSEA), providing them with the exclusive right to negotiate a developer's agreement for the development of a \$1.5 billion family entertainment and recreation complex with an office and hotel component at the Continental Airlines Arena site in East Rutherford, New Jersey. Meadowlands Xanadu's 4.76-million-square-foot complex is expected to feature a family entertainment destination comprising three themed zones: sports/recreation, kids' activities and fashion. The project is expected to also include office and hotel space totaling 2.2 million square feet, consisting of four 14-story, 440,000 square-foot office buildings and a 520-room hotel with conference and exhibition facilities. No definitive documentation has been entered into between The Mills Corporation and the Company with respect to the Xanadu Project. However, it is the current understanding between Mills and the Company that the retail component will be shared 80 percent to Mills and 20 percent to the Company and the office and hotel components will be shared 80 percent to the Company and 20 percent to Mills. There can be no assurance that these will be the final economic arrangements.

On March 27, 2003, Hartz Mountain Industries, Inc. filed a lawsuit in the Superior Court of New Jersey, Law Division, for Bergen County, seeking to enjoin the NJSEA from entering into a contract with The Mills Corporation and the Company for the redevelopment of the Continental Arena site. The case was dismissed by the trial court but appealed. Hartz also appealed the NJSEA's final decision which denied Hartz's bid protest on October 23, 2003. Westfield America, Inc., has also protested the NJSEA decision, and has appealed the NJSEA's denial of its protest. Four citizens, Elliot Braha, Richard Delauro, George Perry and Carol Coronato, have also filed lawsuits challenging the NJSEA award to Mills and the Company. All of these cases are now pending unresolved in the Superior Court of New Jersey, Appellate Division. We believe that our proposal fully complied with applicable laws and the request for proposals, and we plan to vigorously enforce our rights concerning this project.

On May 8, 2003, an adversary proceeding arising out of the bankruptcy of Broadband Office, Inc. ("BBO") was commenced by BBO and the Official Committee of Unsecured Creditors of BBO ("Plaintiffs") in the United States Bankruptcy Court for the District of Delaware. On August 25, 2003, the Plaintiffs filed an Amended Complaint. As amended, the Complaint names as defendants Mack-Cali Realty, L.P., the chief executive officer of the Company, and certain alleged affiliates of the Company (the "Mack-Cali Defendants"). Also named as defendants are seven other real estate investment trusts or partnerships ("REITs") that invested in BBO and the eight individuals designated by the REITs to serve on the Board of Directors of BBO. Plaintiffs assert, among other things, that the Defendants breached fiduciary duties to BBO, its minority shareholders (other than the REITs) and its creditors by approving a spin-off of BBO's assets to a newly created entity, and approving the sale of BBO's remaining assets to Yipes, Inc., both for allegedly inadequate consideration. Plaintiffs seek an unspecified amount of compensatory and punitive damages in connection with their fiduciary duty claims. In addition, Plaintiffs seek to avoid all payments and other transfers made to Defendants within one year of BBO's bankruptcy filing under various provisions of the Bankruptcy Code, and to obtain "turnover" of certain property under Section 542(b) of the Code. On July 8, 2003, the district court withdrew the reference of this proceeding to the bankruptcy court, and the action is now pending in the United States District Court for the District of Delaware. The Mack-Cali Defendants have denied the claims asserted in the Amended Complaint, and believe they have substantial defenses to the claims asserted against them. The Company does not believe that the ultimate resolution of this matter will have a material adverse effect on the Company's financial condition taken as a whole.

There are no other material pending legal proceedings, other than ordinary routine litigation incidental to its business, to which the Company is a party or to which any of the Properties is subject.

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### Item 2. Changes in Securities and Use of Proceeds

Not Applicable.

### Item 3. Defaults Upon Senior Securities

Not Applicable.

### Item 4. Submission of Matters to a Vote of Security Holders

Not Applicable.

### Item 5. Other Information

Not Applicable.

### Item 6. Exhibits and Reports on Form 8-K

#### (a) Exhibits

The following exhibits are filed herewith or are incorporated by reference to exhibits previously filed:

Exhibit Number	Exhibit Title
3.1	Restated Charter of Mack-Cali Realty Corporation dated June 11, 2001 (filed as Exhibit 3.1 to the Company's Form 10-Q dated June 30, 2001 and incorporated herein by reference).
3.2	Amended and Restated Bylaws of Mack-Cali Realty Corporation dated June 10, 1999 (filed as Exhibit 3.2 to the Company's Form 8-K dated June 10, 1999 and incorporated herein by reference).
3.3	Amendment No. 1 to the Amended and Restated Bylaws of Mack-Cali Realty Corporation dated March 4, 2003, (filed as Exhibit 3.3 to the Company's Form 10-Q dated March 31, 2003 and incorporated herein by reference).

- 3.4 Second Amended and Restated Agreement of Limited Partnership of Mack-Cali Realty, L.P. dated December 11, 1997 (filed as Exhibit 10.110 to the Company's Form 8-K dated December 11, 1997 and incorporated herein by reference).
- 3.5 Amendment No. 1 to the Second Amended and Restated Agreement of Limited Partnership of Mack-Cali Realty, L.P. dated August 21, 1998 (filed as Exhibit 3.1 to the Company's and the Operating Partnership's Registration Statement on Form S-3, Registration No. 333-57103, and incorporated herein by reference).
- 3.6 Second Amendment to the Second Amended and Restated Agreement of Limited Partnership of Mack-Cali Realty, L.P. dated July 6, 1999 (filed as Exhibit 10.1 to the Company's Form 8-K dated July 6, 1999 and incorporated herein by reference).
- 3.7\* Third Amendment to the Second Amended and Restated Agreement of Limited Partnership of Mack-Cali Realty, L.P. dated September 30, 2003.
- 3.8 Certificate of Designation of Series B Preferred Operating Partnership Units of Limited Partnership Interest of Mack-Cali Realty, L.P. (filed as Exhibit 10.101 to the Company's Form 8-K dated December 11, 1997 and incorporated herein by reference).

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- 3.9 Articles Supplementary for the 8% Series C Cumulative Redeemable Perpetual Preferred Stock dated March 11, 2003 (filed as Exhibit 3.1 to the Company's Form 8-K dated March 14, 2003 and incorporated herein by reference).
- 3.10 Certificate of Designation for the 8% Series C Cumulative Redeemable Perpetual Preferred Operating Partnership Units dated March 14, 2003 (filed as Exhibit 3.2 to the Company's Form 8-K dated March 14, 2003 and incorporated herein by reference).
- 4.1 Amended and Restated Shareholder Rights Agreement, dated as of March 7, 2000, between Mack-Cali Realty Corporation and EquiServe Trust Company, N.A., as Rights Agent (filed as Exhibit 4.1 to the Company's Form 8-K dated March 7, 2000 and incorporated herein by reference).
- 4.2 Amendment No. 1 to the Amended and Restated Shareholder Rights Agreement, dated as of June 27, 2000, by and among Mack-Cali Realty Corporation and EquiServe Trust Company, N.A. (filed as Exhibit 4.1 to the Company's Form 8-K dated June 27, 2000 and incorporated herein by reference).
- 4.3 Indenture dated as of March 16, 1999, by and among Mack-Cali Realty, L.P., as issuer, Mack-Cali Realty Corporation, as guarantor, and Wilmington Trust Company, as trustee (filed as Exhibit 4.1 to the Operating Partnership's Form 8-K dated March 16, 1999 and incorporated herein by reference).
- 4.4 Supplemental Indenture No. 1 dated as of March 16, 1999, by and among Mack-Cali Realty, L.P., as issuer, and Wilmington Trust Company, as trustee (filed as Exhibit 4.2 to the Operating Partnership's Form 8-K dated March 16, 1999 and incorporated herein by reference).
- 4.5 Supplemental Indenture No. 2 dated as of August 2, 1999, by and among Mack-Cali Realty, L.P., as issuer, and Wilmington Trust Company, as trustee (filed as Exhibit 4.4 to the Operating Partnership's Form 10-Q dated June 30, 1999 and incorporated herein by reference).
- 4.6 Supplemental Indenture No. 3 dated as of December 21, 2000, by and among Mack-Cali Realty, L.P., as issuer, and Wilmington Trust Company, as trustee (filed as Exhibit 4.2 to the Operating Partnership's Form 8-K dated December 21, 2000 and incorporated herein by reference).
- 4.7 Supplemental Indenture No. 4 dated as of January 29, 2001, by and among Mack-Cali Realty, L.P., as issuer, and Wilmington Trust Company, as trustee (filed as Exhibit 4.2 to the Operating Partnership's Form 8-K dated January 29, 2001 and incorporated herein by reference).
- 4.8 Supplemental Indenture No. 5 dated as of December 20, 2002, by and between Mack-Cali Realty, L.P., as issuer, and Wilmington Trust Company, as trustee (filed as Exhibit 4.2 to the Operating Partnership's Form 8-K dated December 20, 2002 and incorporated herein by reference).
- 4.9 Supplemental Indenture No. 6 dated as of March 14, 2003, by and between Mack-Cali Realty, L.P., as issuer, and Wilmington Trust Company, as trustee (filed as Exhibit 4.2 to the Company's Form 8-K dated March 14, 2003 and incorporated herein by reference).
- 4.10 Supplemental Indenture No. 7 dated as of June 12, 2003, by and between Mack-Cali Realty, L.P., as issuer, and Wilmington Trust Company, as trustee (filed as Exhibit 4.2 to the Company's Form 8-K dated June 12, 2003 and incorporated herein by reference).

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- 4.11 Deposit Agreement dated March 14, 2003 by and among Mack-Cali Realty Corporation, EquiServe Trust Company, N.A., and the holders from time to time of the Depositary Receipts described therein (filed as Exhibit 4.1 to the Company's Form 8-K dated March 14, 2003 and incorporated herein by reference).
- 10.1 Amended and Restated Employment Agreement dated as of July 1, 1999 between Mitchell E. Hersh and Mack-Cali Realty Corporation (filed as Exhibit 10.2 to the Company's Form 10-Q dated June 30, 1999 and incorporated herein by reference).
- 10.2 Second Amended and Restated Employment Agreement dated as of July 1, 1999 between Timothy M. Jones and Mack-Cali Realty Corporation (filed as Exhibit 10.3 to the Company's Form 10-Q dated June 30, 1999 and incorporated herein by reference).
- 10.3 Second Amended and Restated Employment Agreement dated as of July 1, 1999 between Barry Lefkowitz and Mack-Cali Realty Corporation (filed as Exhibit 10.6 to the Company's Form 10-Q dated June 30, 1999 and incorporated herein by reference).
- 10.4 Second Amended and Restated Employment Agreement dated as of July 1, 1999 between Roger W. Thomas and Mack-Cali Realty Corporation (filed as Exhibit 10.7 to the Company's Form 10-Q dated June 30, 1999 and incorporated herein by reference).
- 10.5 Employment Agreement dated as of December 5, 2000 between Michael Grossman and Mack-Cali Realty Corporation (filed as Exhibit 10.5 to the Company's Form 10-K for the year ended December 31, 2000 and incorporated herein by reference).

- 10.6 Restricted Share Award Agreement dated as of July 1, 1999 between Mitchell E. Hersh and Mack-Cali Realty Corporation (filed as Exhibit 10.8 to the Company's Form 10-Q dated June 30, 1999 and incorporated herein by reference).
- 10.7 Restricted Share Award Agreement dated as of July 1, 1999 between Timothy M. Jones and Mack-Cali Realty Corporation (filed as Exhibit 10.9 to the Company's Form 10-Q dated June 30, 1999 and incorporated herein by reference).
- 10.8 Restricted Share Award Agreement dated as of July 1, 1999 between Barry Lefkowitz and Mack-Cali Realty Corporation (filed as Exhibit 10.12 to the Company's Form 10-Q dated June 30, 1999 and incorporated herein by reference).
- 10.9 Restricted Share Award Agreement dated as of July 1, 1999 between Roger W. Thomas and Mack-Cali Realty Corporation (filed as Exhibit 10.13 to the Company's Form 10-Q dated June 30, 1999 and incorporated herein by reference).
- 10.10 Restricted Share Award Agreement dated as of March 12, 2001 between Roger W. Thomas and Mack-Cali Realty Corporation (filed as Exhibit 10.10 to the Company's Form 10-Q dated March 31, 2001 and incorporated herein by reference).
- 10.11 Restricted Share Award Agreement dated as of March 12, 2001 between Michael Grossman and Mack-Cali Realty Corporation (filed as Exhibit 10.11 to the Company's Form 10-Q dated March 31, 2001 and incorporated herein by reference).
- 10.12 Restricted Share Award Agreement effective as of January 2, 2003 by and between Mack-Cali Realty Corporation and Mitchell E. Hersh (filed as Exhibit 10.1 to the Company's Form 8-K dated January 2, 2003 and incorporated herein by reference).
- 10.13 Tax Gross Up Agreement effective as of January 2, 2003 by and between Mack-Cali Realty Corporation and Mitchell E. Hersh (filed as Exhibit 10.2 to the Company's Form 8-K dated January 2, 2003 and incorporated herein by reference).

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- 10.14 First Amendment effective as of January 2, 2003 to the Restricted Share Award Agreement dated July 1, 1999 between Mack-Cali Realty Corporation and Mitchell E. Hersh (filed as Exhibit 10.3 to the Company's Form 8-K dated January 2, 2003 and incorporated herein by reference).
- 10.15 Restricted Share Award Agreement effective as of January 2, 2003 by and between Mack-Cali Realty Corporation and Timothy M. Jones (filed as Exhibit 10.4 to the Company's Form 8-K dated January 2, 2003 and incorporated herein by reference).
- 10.16 Tax Gross Up Agreement effective as of January 2, 2003 by and between Mack-Cali Realty Corporation and Timothy M. Jones (filed as Exhibit 10.5 to the Company's Form 8-K dated January 2, 2003 and incorporated herein by reference).
- 10.17 First Amendment effective as of January 2, 2003 to the Restricted Share Award Agreement dated July 1, 1999 between Mack-Cali Realty Corporation and Timothy M. Jones (filed as Exhibit 10.6 to the Company's Form 8-K dated January 2, 2003 and incorporated herein by reference).
- 10.18 Restricted Share Award Agreement effective as of January 2, 2003 by and between Mack-Cali Realty Corporation and Barry Lefkowitz (filed as Exhibit 10.7 to the Company's Form 8-K dated January 2, 2003 and incorporated herein by reference).
- 10.19 Tax Gross Up Agreement effective as of January 2, 2003 by and between Mack-Cali Realty Corporation and Barry Lefkowitz (filed as Exhibit 10.8 to the Company's Form 8-K dated January 2, 2003 and incorporated herein by reference).
- 10.20 First Amendment effective as of January 2, 2003 to the Restricted Share Award Agreement dated July 1, 1999 between Mack-Cali Realty Corporation and Barry Lefkowitz (filed as Exhibit 10.9 to the Company's Form 8-K dated January 2, 2003 and incorporated herein by reference).
- 10.21 Restricted Share Award Agreement effective as of January 2, 2003 by and between Mack-Cali Realty Corporation and Roger W. Thomas (filed as Exhibit 10.10 to the Company's Form 8-K dated January 2, 2003 and incorporated herein by reference).
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- 10.36 Amended and Restated 2000 Director Stock Option Plan (filed as Exhibit 10.2 to the Company's Post-Effective Amendment No. 1 to Registration Statement on Form S-8, Registration No. 333-100244, and incorporated herein by reference).

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- 10.37 Deferred Compensation Plan for Directors (filed as Exhibit 10.1 to the Company's Registration Statement on Form S-8, Registration No. 333-80081, and incorporated herein by reference).
  - 10.38 Warrant Agreement, dated December 12, 1997, executed in favor Mitchell E. Hersh to purchase shares of common stock, par value \$.01 per share, of the Company (filed as Exhibit 10.106 to the Company's Form 8-K dated December 11, 1997 and incorporated herein by reference).
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  - 31.2\* Certification of the Company's Chief Financial Officer, Barry Lefkowitz, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
  - 32.1\* Certification of the Company's Chief Executive Officer, Mitchell E. Hersh, and the Company's Chief Financial Officer, Barry Lefkowitz, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

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\* filed herewith

(b) *Reports on Form 8-K*

During the third quarter of 2003, the Company filed or furnished the following reports on Form 8-K:

- (1) Report on Form 8-K dated August 6, 2003 filing under Items 9 and 12 certain supplemental data regarding its operations, together with the Company's second quarter 2003 earnings release;
- (2) Report on Form 8-K dated September 11, 2003 filing under Item 5 certain information relating to the Company's revised definition and presentation of Funds From Operations for the fiscal years ended 2002, 2001, 2000, 1999 and 1998.

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**Signatures**

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.

MACK-CALI REALTY CORPORATION

(Registrant)

Date: November 5, 2003

By: /s/ MITCHELL E. HERSH

Mitchell E. Hersh  
*Chief Executive Officer*

Date: November 5, 2003

By: /s/ BARRY LEFKOWITZ

Barry Lefkowitz  
*Executive Vice President and  
Chief Financial Officer*

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## EXHIBIT INDEX

Exhibit Number	Exhibit Title
3.1	Restated Charter of Mack-Cali Realty Corporation dated June 11, 2001 (filed as Exhibit 3.1 to the Company's Form 10-Q dated June 30, 2001 and incorporated herein by reference).
3.2	Amended and Restated Bylaws of Mack-Cali Realty Corporation dated June 10, 1999 (filed as Exhibit 3.2 to the Company's Form 8-K dated June 10, 1999 and incorporated herein by reference).
3.3	Amendment No. 1 to the Amended and Restated Bylaws of Mack-Cali Realty Corporation dated March 4, 2003, (filed as Exhibit 3.3 to the Company's Form 10-Q dated March 31, 2003 and incorporated herein by reference).
3.4	Second Amended and Restated Agreement of Limited Partnership of Mack-Cali Realty, L.P. dated December 11, 1997 (filed as Exhibit 10.110 to the Company's Form 8-K dated December 11, 1997 and incorporated herein by reference).
3.5	Amendment No. 1 to the Second Amended and Restated Agreement of Limited Partnership of Mack-Cali Realty, L.P. dated August 21, 1998 (filed as Exhibit 3.1 to the Company's and the Operating Partnership's Registration Statement on Form S-3, Registration No. 333-57103, and incorporated herein by reference).
3.6	Second Amendment to the Second Amended and Restated Agreement of Limited Partnership of Mack-Cali Realty, L.P. dated July 6, 1999 (filed as Exhibit 10.1 to the Company's Form 8-K dated July 6, 1999 and incorporated herein by reference).
3.7*	Third Amendment to the Second Amended and Restated Agreement of Limited Partnership of Mack-Cali Realty, L.P. dated September 30, 2003.
3.8	Certificate of Designation of Series B Preferred Operating Partnership Units of Limited Partnership Interest of Mack-Cali Realty, L.P. (filed as Exhibit 10.101 to the Company's Form 8-K dated December 11, 1997 and incorporated herein by reference).
3.9	Articles Supplementary for the 8% Series C Cumulative Redeemable Perpetual Preferred Stock dated March 11, 2003 (filed as Exhibit 3.1 to the Company's Form 8-K dated March 14, 2003 and incorporated herein by reference).
3.10	Certificate of Designation for the 8% Series C Cumulative Redeemable Perpetual Preferred Operating Partnership Units dated March 14, 2003 (filed as Exhibit 3.2 to the Company's Form 8-K dated March 14, 2003 and incorporated herein by reference).
4.1	Amended and Restated Shareholder Rights Agreement, dated as of March 7, 2000, between Mack-Cali Realty Corporation and EquiServe Trust Company, N.A., as Rights Agent (filed as Exhibit 4.1 to the Company's Form 8-K dated March 7, 2000 and incorporated herein by reference).
4.2	Amendment No. 1 to the Amended and Restated Shareholder Rights Agreement, dated as of June 27, 2000, by and among Mack-Cali Realty Corporation and EquiServe Trust Company, N.A. (filed as Exhibit 4.1 to the Company's Form 8-K dated June 27, 2000 and incorporated herein by reference).
4.3	Indenture dated as of March 16, 1999, by and among Mack-Cali Realty, L.P., as issuer, Mack-Cali Realty Corporation, as guarantor, and Wilmington Trust Company, as trustee (filed as Exhibit 4.1 to the Operating Partnership's Form 8-K dated March 16, 1999 and incorporated herein by reference).

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| 4.4 | Supplemental Indenture No. 1 dated as of March 16, 1999, by and among Mack-Cali Realty, L.P., as issuer, and Wilmington Trust Company, as trustee (filed as Exhibit 4.2 to the Operating Partnership's Form 8-K dated March 16, 1999 and incorporated herein by reference).       |
| 4.5 | Supplemental Indenture No. 2 dated as of August 2, 1999, by and among Mack-Cali Realty, L.P., as issuer, and Wilmington Trust Company, as trustee (filed as Exhibit 4.4 to the Operating Partnership's Form 10-Q dated June 30, 1999 and incorporated herein by reference).       |
| 4.6 | Supplemental Indenture No. 3 dated as of December 21, 2000, by and among Mack-Cali Realty, L.P., as issuer, and Wilmington Trust Company, as trustee (filed as Exhibit 4.2 to the Operating Partnership's Form 8-K dated December 21, 2000 and incorporated herein by reference). |

- 4.7 Supplemental Indenture No. 4 dated as of January 29, 2001, by and among Mack-Cali Realty, L.P., as issuer, and Wilmington Trust Company, as trustee (filed as Exhibit 4.2 to the Operating Partnership's Form 8-K dated January 29, 2001 and incorporated herein by reference).
- 4.8 Supplemental Indenture No. 5 dated as of December 20, 2002, by and between Mack-Cali Realty, L.P., as issuer, and Wilmington Trust Company, as trustee (filed as Exhibit 4.2 to the Operating Partnership's Form 8-K dated December 20, 2002 and incorporated herein by reference).
- 4.9 Supplemental Indenture No. 6 dated as of March 14, 2003, by and between Mack-Cali Realty, L.P., as issuer, and Wilmington Trust Company, as trustee (filed as Exhibit 4.2 to the Company's Form 8-K dated March 14, 2003 and incorporated herein by reference).
- 4.10 Supplemental Indenture No. 7 dated as of June 12, 2003, by and between Mack-Cali Realty, L.P., as issuer, and Wilmington Trust Company, as trustee (filed as Exhibit 4.2 to the Company's Form 8-K dated June 12, 2003 and incorporated herein by reference).
- 4.11 Deposit Agreement dated March 14, 2003 by and among Mack-Cali Realty Corporation, EquiServe Trust Company, N.A., and the holders from time to time of the Depositary Receipts described therein (filed as Exhibit 4.1 to the Company's Form 8-K dated March 14, 2003 and incorporated herein by reference).
- 10.1 Amended and Restated Employment Agreement dated as of July 1, 1999 between Mitchell E. Hersh and Mack-Cali Realty Corporation (filed as Exhibit 10.2 to the Company's Form 10-Q dated June 30, 1999 and incorporated herein by reference).
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- 10.5 Employment Agreement dated as of December 5, 2000 between Michael Grossman and Mack-Cali Realty Corporation (filed as Exhibit 10.5 to the Company's Form 10-K for the year ended December 31, 2000 and incorporated herein by reference).
- 10.6 Restricted Share Award Agreement dated as of July 1, 1999 between Mitchell E. Hersh and Mack-Cali Realty Corporation (filed as Exhibit 10.8 to the Company's Form 10-Q dated June 30, 1999 and incorporated herein by reference).
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[MACK-CALI REALTY CORPORATION Part I—Financial Information](#)

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[MACK-CALI REALTY CORPORATION AND SUBSIDIARIES CONSOLIDATED STATEMENTS OF OPERATIONS \(in thousands, except per share amounts\) \(unaudited\)](#)  
[MACK-CALI REALTY CORPORATION AND SUBSIDIARIES CONSOLIDATED STATEMENT OF CHANGES IN STOCKHOLDERS' EQUITY For the Nine Months Ended September 30, 2003 \(in thousands\) \(unaudited\)](#)  
[MACK-CALI REALTY CORPORATION AND SUBSIDIARIES CONSOLIDATED STATEMENTS OF CASH FLOWS \(in thousands\) \(unaudited\)](#)  
[MACK-CALI REALTY CORPORATION AND SUBSIDIARIES NOTES TO CONSOLIDATED FINANCIAL STATEMENTS \(dollars in thousands, except per share/unit amounts\)](#)

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[ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK](#)  
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Third Amendment  
to the Second Amended and Restated  
Agreement of Limited Partnership  
of  
Mack-Cali Realty, L.P.

This Third Amendment to the Second Amended and Restated Agreement of Limited Partnership (hereinafter, the "Third Amendment") is made as of September 30, 2003 by Mack-Cali Realty Corporation, a Maryland Corporation, as General Partner (the "General Partner") of Mack-Cali Realty, L.P., a Delaware Limited Partnership (the "Partnership") for the purpose of amending the Second Amended and Restated Agreement of Limited Partnership of the Partnership dated as of the 11th day of December, 1997 as amended to the date hereof (the "Partnership Agreement").

WHEREAS, pursuant to Section 16.2 of the Partnership Agreement, the General Partner has the right to amend the Partnership Agreement without the consent of the Limited Partners to reflect a change of an inconsequential nature that does not adversely affect the Limited Partners in any material respect, or to cure any ambiguity, correct or supplement any provision in the Partnership Agreement not inconsistent with law or with other provisions, or make other changes to matters arising under the Partnership Agreement that will not be inconsistent with law or the provisions of the Partnership Agreement;

WHEREAS the General Partner believes that none of the actions taken pursuant to this Third Amendment will adversely affect the Limited Partners in any material respect or is inconsistent with the law or other provisions of the Partnership Agreement;

WHEREAS, the General Partner has the power to amend the Partnership Agreement under Section 16.1 thereof consistent with the foregoing to the extent it deems desirable, so long as it owns in excess of fifty percent (50%) of the Partnership Units, without the concurrence of any of the Limited Partners, and the General Partner does own in excess of fifty percent (50%) of the Partnership Units as of the date hereof, and does hereby exercise that prerogative; and

WHEREAS the General Partner of the Partnership believes it is desirable and in the best interest of the Partnership and the Limited Partners to amend the Partnership Agreement as set forth herein for the purpose of deleting the occurrence of December 31, 2093 as an event of dissolution of the Partnership.

NOW THEREFORE, in consideration of the foregoing, the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency which is hereby acknowledged, the General Partner on behalf of itself and the Limited Partners, intending to be legally bound, hereby agrees to make the following amendment to the Partnership Agreement, effective as of the date first written above:

Section 1 - Defined Terms. Unless otherwise specifically provided for herein, all capitalized terms shall have the same meaning given to such term in the Partnership Agreement.

Section 2 - Amendment.

- A. In Section 14.1(d) of the Partnership Agreement, the word "or" is hereby inserted at the end of the paragraph after the semi-colon.
- B. In Section 14.1(e) of the Partnership Agreement, the semi-colon and the word "or" at the end of the paragraph are hereby deleted and a period is hereby inserted after the word "law."
- C. Section 14.1(f) of the Partnership Agreement is hereby deleted in its entirety.

Section 3 - Miscellaneous.

- A. Effect of Amendment. Except as specifically modified hereby, all terms and provisions of the Partnership Agreement shall continue to remain in full force and effect and, except as the context otherwise requires, each reference to the Partnership Agreement in this Amendment shall be a reference to the Partnership Agreement as amended hereby.
- B. Successors and Assigns. This Amendment shall inure to the benefit of and be binding upon the successors and assigns of each of the Partners.
- C. Heading. The headings in this Amendment are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.
- D. Governing Law. THIS AMENDMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF DELAWARE.
- E. Severability. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired or affected, it being intended that each party's rights and privileges shall be enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the General Partner, on behalf of itself and the Limited Partners, has executed this Amendment as of the date first written above.

MACK-CALI REALTY, L.P.

BY: MACK-CALI REALTY CORPORATION,  
as its General Partner

By: /s/ MITCHELL E. HERSH  
Mitchell E. Hersh  
Chief Executive Officer



**AGREEMENT OF SALE AND PURCHASE**

between and among

**M-C HARSIMUS PARTNERS L.L.C.**

and

**COLUMBIA DEVELOPMENT COMPANY, L.L.C.,**

together, as Seller

and

**iSTAR HARBORSIDE LLC**

as Purchaser

Dated: August 12, 2003

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THIS AGREEMENT OF SALE AND PURCHASE ("**Agreement**") is made this 12<sup>th</sup> day of August, 2003 between and among **M-C HARSIMUS PARTNERS L.L.C.**, a limited liability company organized under the laws of the State of New Jersey having an address c/o Mack-Cali Realty Corporation, 11 Commerce Drive, Cranford, New Jersey 07016 ("**Harsimus**") and **COLUMBIA DEVELOPMENT COMPANY, L.L.C.**, a limited liability company organized under the laws of the State of New Jersey having an address at 30 Montgomery Street, 15<sup>th</sup> Floor, Jersey City, New Jersey 07302 ("**Columbia**," and together with Harsimus, "**Seller**;" Columbia and Harsimus are also sometimes referred to individually as a "**Seller Entity**") and **iSTAR HARBORSIDE LLC**, a limited liability company organized under the laws of the State of Delaware having an address at c/o iStar Financial, Inc., 1114 Avenue of the Americas, New York, New York 10036 ("**Purchaser**")

#### **RECITALS:**

WHEREAS, as of the date hereof, Columbia and Harsimus are the sole members of, and together own one hundred percent (100%) of the beneficial ownership interest in, American Financial Exchange L.L.C., a limited liability company organized under the laws of the State of New Jersey ("**AFE**");

WHEREAS, AFE is (i) the owner of that certain parcel or parcels of real property described on the legal description attached hereto and made a part hereof as **Schedule A**, together with all of AFE's right, title and interest, if any, in and to the appurtenances pertaining thereto, including but not limited to AFE's right, title and interest in and to the adjacent streets, alleys and right-of-ways, and any easement rights, air rights, subsurface development rights and water rights (but not including the Excluded Real Property (as hereinafter defined)) (collectively, the "**Real Property**"), and (ii) the landlord under that certain Ground Lease dated as of October 6, 2000 (the "**Ground Lease**"), pursuant to which the Real Property is leased to Plaza X Urban Renewal Associates L.L.C., a limited liability company organized under the laws of the State of New Jersey ("**PXURA**");

WHEREAS, AFE is the sole member of, and owns one hundred percent (100%) of the interest in, Plaza X Realty L.L.C., a limited liability company organized under the laws of the State of New Jersey ("**PXR**"), and PXR is the sole member of, and owns one hundred percent (100%) of the interest in, PXURA;

WHEREAS, PXURA constructed, and is the owner of, the Building (as hereinafter defined) constructed upon the Real Property and, as sublandlord, has further sublet the Real Property and the Building to Plaza X Leasing Associates L.L.C., a limited liability company organized under the laws of the State of New Jersey ("**PXLA**," and together with PXURA, PXR and AFE, collectively or individually as the context may require, "**Property Owner**"), as subtenant, pursuant to that certain Lease dated as of October 6, 2000 (the "**Sublease**");

WHEREAS, PXR is the sole member of, and owns one hundred percent (100%) of the interest in, PXLA;

WHEREAS, via its sole membership in, and one hundred percent (100%) ownership of, PXR, AFE indirectly owns all of both PXLA and PXURA;

WHEREAS, PXLA, as sub-sublandlord, has entered into that certain Amended and Restated Lease dated as of December 29, 2000, as supplemented and amended, and as is more particularly described on **Schedule 8.3(c)(i)-1** annexed hereto (collectively, the "**Schwab Lease**"), with Charles Schwab & Co., Inc. ("**Schwab**"), as sub-subtenant, for the entire rentable area of the Building, all as is more particularly set forth in the Schwab Lease;

WHEREAS, contemporaneously with the Closing (as hereinafter defined), but sequentially prior to all other actions taken at the Closing, (i) Columbia, pursuant to an assignment and assumption agreement will assign, transfer and convey a 4% membership interest in and to AFE pursuant to an assignment and assumption agreement in substantially the form attached hereto as Exhibit 10.3(a) (the "**Retained Interest**") to an entity entirely owned and controlled by certain owners of an indirect interest in Columbia (the "**Retained Entity**"), and (ii) the Retained Entity will assign, transfer and convey the Retained Interest to Purchaser pursuant to an assignment and assumption agreement in substantially the form attached hereto as **Exhibit 10.3(a)** (collectively, the "**Retained Interest Assignments**");

WHEREAS, at Closing, (i) Harsimus will assign, transfer and convey to Purchaser its entire membership interest in AFE (the "**Harsimus Interest**") and (ii) Columbia will assign, transfer and convey to Purchaser its entire membership interest in AFE (after the assignment, transfer and conveyance of the Retained Interest, the "**Columbia Interest**," and together with the Harsimus Interest, sometimes referred to as "**Seller's LLC Interest**"), all upon and subject to the terms and conditions set forth in this Agreement; and

WHEREAS, Seller desires to sell, and Purchaser desires to purchase, Seller's LLC Interest, all upon and subject to the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual promises, covenants, and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

#### **ARTICLE I**

##### **DEFINITIONS**

Section 1.1 **Definitions.** For purposes of this Agreement, the following capitalized terms have the meanings set forth in this **Section 1.1**:

"**Affiliate**" means, with respect to any entity, any other individual or entity which, directly or indirectly through one or more intermediaries, controls, is controlled

by, or is under common control with, such entity first mentioned, and the heirs, administrators, executors, personal or legal representatives and successors and assigns of any or all of the foregoing. With respect to any individual, such individual's parents, spouse, direct lineal or adoptive descendants, descendants by marriage, and/or one more trusts created for the benefit of such individual or any

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such family members. "**Control**" (including the correlative meaning of the terms "controlled by" and "under the common control with") means the possession, direct or indirect, of the power to direct or cause the direction of an entity, whether through the ownership of voting securities, by contract or otherwise.

"**Amended Financial Agreement**" means that certain amendment to the Financial Agreement (as hereinafter defined), entered into in accordance with the Ordinance (as hereinafter defined), between PXURA and the City (as hereinafter defined), which form of amendment is annexed hereto as **Exhibit 1.1(a)**; provided, however, that such form may be modified to include any non-material changes requested by the City and such other matters as may be approved by both Purchaser and Seller, which approval shall not be unreasonably withheld, conditioned or delayed.

"**Approvals**" means the collective reference to the Ordinance (as hereinafter defined), the Amended Financial Agreement and the approval by the New Jersey Department of Community Affairs to the amended Certificate of PXURA, as annexed to the Amended Financial Agreement.

"**Approvals shall have been obtained**" means the occurrence of the following: the Ordinance is obtained, the Amended Financial Agreement becomes effective, the approval by the New Jersey Department of Community Affairs to the amended Certificate of PXURA, as annexed to the Amended Financial Agreement, is obtained and the submission for filing with the Treasurer of the State of New Jersey of such amended Certificate of PXURA.

"**Authorities**" means the various federal, state and local governmental and quasi-governmental bodies or agencies having jurisdiction over the Real Property and Improvements (as hereinafter defined), or any portion thereof.

"**Building**" shall have the meaning ascribed to such term in the Schwab Lease.

"**Business Day**" means any day other than a Saturday, Sunday or a day on which national banking associations are authorized or required to close.

"**Certificate as to Foreign Status**" has the meaning ascribed to such term in Section 10.3(d).

"**Certifying Person**" has the meaning ascribed to such term in Section 4.3(a).

"**City**" means the City of Jersey City.

"**Closing**" means the consummation of the purchase and sale of the Seller's LLC Interest contemplated by this Agreement, as provided for in Article X.

"**Closing Date**" means the date on which the Closing of the transaction contemplated hereby actually occurs.

"**Closing Statement**" has the meaning ascribed to such term in Section 10.4(a).

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"**Closing Surviving Obligations**" means the rights, liabilities, obligations, covenants, and agreements set forth in Sections 4.3, 5.3, 5.4, 7.2, 7.3, 7.4, 7.5, 7.6, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 10.4, 10.5, 10.6, 10.7, 11.1, 12.1, 15.1, 16.1, Article XIV, Article XVII, Section 18.2, Article XIX and Article XX, and any other provisions (including, without limitation, guaranties and indemnities) which pursuant to their terms survive the Closing hereunder.

"**Code**" has the meaning ascribed to such term in Section 4.3.

"**Confidentiality Agreement**" means that certain Confidentiality Agreement, dated October 2, 2002, between AFE and iStar Financial Inc.

"**Construction Agreements**" means (i) the JMB Construction Contract and the JMB Cooling Tower Contract (as such terms are hereinafter defined), (ii) all other contracts and agreements entered into by PXURA or any other Property Owner in connection with the construction of the Building, including, without limitation, all written agreements, if any, with the architects (including architects' drawings), contractors, subcontractors and product manufacturers that provided services and/or materials in connection with the construction of the Building, and (iii) any and all warranties or guarantees issued under or pursuant to the JMB Construction Contract and the JMB Cooling Tower Contract (such warranties or guarantees, collectively, the "**Warranties**").

"**Contribution Agreement**" means that certain Contribution Agreement dated November 15, 2000 between AFE and the City.

"**CRA**" has the meaning ascribed to such term in Section 7.1(k).

"**CREA**" has the meaning ascribed to such term in Section 7.1(j).

"**Dedication**" has the meaning ascribed to such term in Section 7.1(f)(ii).

"**Delinquent Rental**" has the meaning ascribed to such term in Section 10.4(b).

"**Documents**" has the meaning ascribed to such term in Section 5.2(a).

"**Earnest Money Deposit**" has the meaning ascribed to such term in Section 4.1.

"**Effective Date**" means the date of this Agreement.

"**8/9 Transferee**" means Plaza VIII & IX Associates L.L.C., a New Jersey limited liability company, the successor-in-interest to AFE to the fee title to the Excluded Real Property (as hereinafter defined).

"**Environmental Laws**" means each and every federal, state, county and municipal statute, ordinance, rule, regulation, code, order, requirement, directive, binding written interpretation and binding written policy pertaining to Hazardous Substances (as hereinafter defined) issued by any Authorities and in effect as of the date of this Agreement which affects the Real Property or the Improvements (as hereinafter defined), or any portion thereof, the use,



ownership, occupancy or operation of the Real Property or the Improvements, or any portion thereof, and as same have been amended, modified or supplemented from time to time prior to the Effective Date, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 *et seq.*) (the “**Superfund Act**”), the Hazardous Substances Transportation Act (49 U.S.C. § 1802 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*), as amended by the Hazardous and Solid Wastes Amendments of 1984, the Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Safe Drinking Water Act (42 U.S.C. § 300f *et seq.*), the Clean Water Act (33 U.S.C. § 1321 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Solid Waste Disposal Act (42 U.S.C. § 6901 *et seq.*), the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. § 11001 *et seq.*), the Radon and Indoor Air Quality Research Act (42 U.S.C. § 7401 note, *et seq.*), the National Environmental Policy Act (42 U.S.C. § 4321 *et seq.*), the Superfund Amendment Reauthorization Act of 1986 (42 U.S.C. § 9601 *et seq.*), the Occupational Safety and Health Act (29 U.S.C. § 651 *et seq.*); the New Jersey Environmental Rights Act, N.J.S.A. 2A:35A-1 *et seq.*; the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 *et seq.*; the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C-1 *et seq.*; the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 *et seq.*; the Hazardous Substances Discharge: Reports and Notices Act, N.J.S.A. 13:1K-15 *et seq.*; the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 *et seq.*; the New Jersey Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 *et seq.* (collectively, the “**Environmental Statutes**”), and any and all rules and regulations which have become effective prior to the date of this Agreement under any and all of the Environmental Statutes.

“**Escrow Agent**” means First American Title Insurance Company, with an office at 633 Third Avenue, New York, New York 10017.

“**Excluded Real Property**” means (i) those certain parcels of land adjacent to the Real Property and designated as Block 15, Lot 50 commonly referred to as Plaza VIII (“**Plaza VIII**”) and Plaza IX (“**Plaza IX**”) and that certain publicly accessible open space adjacent thereto and designated as Block 15, Lot 49 at the Harborside Financial Center, Jersey City, New Jersey, (ii) the portion of Block 15, Lot 18 described on Schedule A-1 attached hereto and (iii) all unutilized air and subsurface development rights, if any, set forth in the Licenses and Permits (as hereinafter defined) the Financial Agreement (as hereinafter defined), and the Redevelopment Agreement (as hereinafter defined); provided, however, if the Waterfront Development Permit is bifurcated prior to Closing in the manner set forth in Section 7.1(b)(ii) of this Agreement, then the term “Excluded Real Property” shall also include the 8/9 Bifurcated Waterfront Permit, and all of the rights and privileges granted therein. In no event shall “Excluded Real Property” include the development rights set forth in the Waterfront Development Permit which pertained to the development of the Building, which development rights are to be set forth in the Plaza X Bifurcated Waterfront Permit.

“**Existing Survey**” means that certain survey of the Real Property November 23, 2002, updated as of June 24, 2003, prepared by John Zanetakos Associates, Inc.

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“**Financial Agreement**” means that certain Financial Agreement, together with all exhibits and schedules annexed thereto, made as of November 15, 2000 between Plaza X Urban Renewal Associates, LLC and the City, as amended by the Addendum to Financial Agreement made as of November 15, 2000.

“**Financial Statements**” means the consolidated financial statements of AFE and its subsidiaries as of and for the year ended December 31, 2002 and as of and for the six month period ended June 30, 2003, each prepared in accordance with GAAP (as hereinafter defined).

“**GAAP**” means United States generally accepted accounting principles, consistently applied.

“**Governmental Regulations**” means all statutes, ordinances, rules and regulations of the Authorities applicable to Seller or the use or operation of the Real Property or the Improvements or any portion thereof.

“**Hazardous Substances**” means (a) asbestos, radon gas and urea formaldehyde foam insulation, (b) any solid, liquid, gaseous or thermal contaminant, including smoke vapor, soot, fumes, acids, alkalis, chemicals, petroleum products or byproducts, PCB’s, phosphates, lead or other heavy metals and chlorine, (c) any solid or liquid waste (including, without limitation, hazardous waste), hazardous air pollutant, hazardous substance, hazardous chemical substance and mixture, toxic substance, pollutant, pollution, regulated substance and contaminant, as such terms are defined in any of the Environmental Laws, and (d) any other chemical, material or substance, the use or presence of which, or exposure to the use or presence of which, is prohibited, limited or regulated by any Environmental Laws.

“**Improvements**” means all buildings (including, without limitation, the Building), structures, fixtures, parking areas and other improvements, together with the tenements, hereditaments and appurtenances thereto belonging, located on the Real Property.

“**IRS**” means the Internal Revenue Service.

“**JCRA Approval**” means the issuance of a Certificate of Substantial Completion from Jersey City Redevelopment Agency, a New Jersey public body corporate, which confirms that all obligations of the Redevelopment (as defined in the Redevelopment Agreement (as hereinafter defined)) under the Redevelopment Agreement have been substantially completed with respect to the Real Property, and that the Jersey City Redevelopment Agency’s right of reverter with respect to the Real Property has been terminated.

“**JMB Construction Contract**” means that certain construction agreement between PXURA and Jeffrey M. Brown, Inc. (“**Contractor**”), with respect to the construction of the Building, dated July 15, 2000.

“**JMB Cooling Tower Contract**” means that certain construction agreement between PXURA and Contractor with respect to construction of the fourth cooling tower at the Building dated December 11, 2002.

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“**Leasing Commission Agreements**” means the leasing commission agreements affecting the Property, and which are more particularly set forth on Schedule 8.3(k) attached hereto.

“**Licensee Parties**” has the meaning ascribed to such term in Section 5.1.

“**Licenses and Permits**” means, collectively, all of the Property Owner’s right, title and interest, in and to licenses, permits, certificates of occupancy, approvals, dedications, zoning approvals, warranties, lien waivers, utility arrangements, subdivision maps and entitlements now existing or hereafter issued, approved or granted by the Authorities in connection with the Real Property and the Improvements, together with all renewals and modifications thereof.

“**Losses**” has the meaning ascribed to such term in Section 17.17.

“**Monetary Objections**” has the meaning ascribed to such term in Section 6.2.

“**NJDEP**” means the New Jersey Department of Environmental Protection.

“**Operating Expenses**” has the meaning ascribed to such term in Section 10.4(c).

“**Ordinance**” means a validly adopted, effective and non-appealable Ordinance of the Municipal Council of the City in the form annexed hereto as **Exhibit 7.3**; provided, however, that such form may be modified to include any non-material changes requested by the City and such other matters as may be approved by both Purchaser and Seller, which approval shall not be unreasonably withheld, conditioned or delayed by either party. The parties hereto hereby agree that the Ordinance shall be deemed non-appealable after the expiration of the applicable 45-day appeal period.

“**Outside Closing Date**” has the meaning ascribed to such term in Section 10.1.

“**PECA**” means that certain Project Employment and Contracting Agreement between the City and PXURA, dated as of November 15, 2000, as amended through the Closing Date.

“**Permitted Exceptions**” has the meaning ascribed to such term in Section 6.2(a).

“**Permitted Outside Parties**” has the meaning ascribed to such term in Section 5.2(b).

“**Permitted Transfers**” means transfers, whether directly or indirectly, of all or any portion of Seller’s LLC Interest between all or any of the Seller Entities and/or Seller’s Affiliates; provided, however, that such transferee (to the extent not already a party hereto) shall automatically be bound by the provisions of this Agreement to the same extent as the transferor of its interest.

“**Personal Property**” means that certain equipment, appliances, tools, supplies, machinery, artwork, furnishings and other tangible personal property attached to, appurtenant to, located in and used in connection with the ownership or operation of the Improvements and situated at the Real Property more particularly identified on Schedule B annexed hereto.

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“**Property**” means, collectively, the following: (i) the Real Property; (ii) the Improvements and all of the Property Owner’s right, title and interest in and to any land lying in the bed of any street, road, avenue or alley, open or proposed, in front of or adjoining the Land to the center line thereof, and any strips or gores adjacent to the Real Property, and all right, title and interest of Property Owner in and to any award made or to be made for damages by reason of any change in grade of any street; (iii) the Personal Property; (iv) the Schwab Lease, the Ground Lease and the Sublease; (v) the Licenses and Permits; (vi) the Leasing Commission Agreements; (vii) the Construction Agreements; (viii) the Owner Controlled Insurance Program for the construction of the Building (the “**OCIP**”) consisting of the General Liability Policy issued by St. Paul Fire and Marine Insurance Company, policy number KG0290072 and the Workers Compensation Policy issued by St. Paul Fire and Marine Insurance Company under policy number WVW2989000, but specifically excluding any savings, refunds or other amounts payable under the OCIP; and (ix) all other plans, specifications, approvals, tax abatements and all other intangible rights, titles, interests, privileges and appurtenances owned by Property Owner and related to or used in connection with the ownership, use or operation of the Real Property or the Improvements, but specifically excluding any property owned by Tenants or others and the Excluded Real Property.

“**Proration Items**” has the meaning ascribed to such term in Section 10.4(a).

“**Purchase Price**” has the meaning ascribed to such term in Section 3.1.

“**Purchaser has actual knowledge**” (and variations thereon used herein) means the actual (as opposed to constructive or imputed) knowledge solely of H. Cabot Lodge III, as Executive Vice President of iStar Financial Inc, Joe Welsh, as Vice President of iStar Financial Inc., and Christopher Miculis, as Associate of iStar Financial Inc., without any independent investigation or inquiry whatsoever, other than the due diligence conducted by Purchaser in connection with this transaction.

“**Purchaser’s Affiliates**” means all of the Affiliates of Purchaser.

“**Purchaser’s Information**” has the meaning ascribed to such term in Section 5.3(c).

“**Redevelopment Agreement**” means that certain Redevelopment Agreement dated as of April 12, 1985 between Jersey City Redevelopment Agency, a New Jersey public body corporate, and A-S-H Management Corporation, a Delaware corporation, and recorded in the Hudson County Register of Deeds on November 27, 1985 in Book 3485, at Page 1, as subsequently amended, modified, supplemented and assigned.

“**Rental**” has the meaning ascribed to such term in Section 10.4(b), and same are “**Delinquent**” in accordance with the meaning ascribed to such term in Section 10.4(b).

“**Scheduled Closing Date**” means the date that is ten (10) Business Days following the satisfaction, or waiver in writing of, the conditions set forth in Sections 9.1(j) and (o), and 9.2(g) hereof, or such later date to which the Closing may be adjourned in accordance with the express

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terms of this Agreement or such earlier or later date to which Purchaser and Seller may hereafter agree in writing.

“**Schwab’s Expansion Options**” means the First Expansion Option (as such term is defined in the Schwab Lease) and Second Expansion Option (as such term is defined in the Schwab Lease) granted to Schwab under the Schwab Lease.

“**Seller’s Affiliates**” means all of the Affiliates of Seller.

“**Significant Portion**” means, for purposes of the casualty provisions set forth in Article XI hereof, damage by fire or other casualty to the Real Property and the Improvements or a portion thereof, such that Schwab is entitled to terminate the Schwab Lease pursuant to Section 10.05(d) thereof.

“**Termination Surviving Obligations**” means the rights, liabilities and obligations set forth in Sections 5.2, 5.3, 5.4, 12.1, and 16.1, and Articles XIII, XIV and XVII, and any other provisions which pursuant to their terms survive any termination of this Agreement.

“**Title Company**” means First American Title Insurance Company and Fidelity National Title Company as equal co-insurers.

“**Title Policy**” means the title policy, if any, obtained by Purchaser from the Title Company at Closing.

“**Title Report**” has the meaning ascribed to such term in Section 6.2(a).

“**To Columbia’s Knowledge**” (and variations thereon used herein) means the present actual (as opposed to constructive or imputed) knowledge solely of Joseph A. Panepinto, Peter Mangin and Frank Guarini without any independent investigation or inquiry whatsoever.

**“To Harsimus’ Knowledge”** (and variations thereon used herein) means the present actual (as opposed to constructive or imputed) knowledge solely of Mitchell Hersh, as Chief Executive Officer of Mack-Cali Realty Corporation, Roger Thomas, as General Counsel of Mack-Cali Realty Corporation, Gary Wagner, as Associate General Counsel of Mack-Cali Realty Corporation, John Crandall, as Senior Vice President – Development of Mack-Cali Realty Corporation and John Marazzo, as Senior Director – Property Management of Mack-Cali Realty Corporation, without any independent investigation or inquiry whatsoever.

**“To Seller’s Knowledge”** (and variations thereon used herein) means, collectively, To Columbia’s Knowledge and To Harsimus’ Knowledge.

**“Treasury Regulations”** means the regulations prescribed under the Code.

**“Updated Deed Notice”** has the meaning ascribed to such term in Section 7.1(h).

Section 1.2 **References: Exhibits and Schedules.** Except as otherwise specifically indicated, all references in this Agreement to Articles or Sections refer to Articles or Sections of

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this Agreement, and all references to Exhibits or Schedules refer to Exhibits or Schedules attached hereto, all of which Exhibits and Schedules are incorporated into, and made a part of, this Agreement by reference. The words “herein,” “hereof,” “hereinafter” and words and phrases of similar import refer to this Agreement as a whole and not to any particular Section or Article.

## ARTICLE II

### AGREEMENT OF PURCHASE AND SALE

Section 2.1 **Purchase and Sale.** Subject to the conditions and on the terms contained in this Agreement, Purchaser agrees to purchase and acquire from Seller, and Seller agrees to sell and transfer to Purchaser, Seller’s LLC Interest. By acquiring Seller’s LLC Interest pursuant hereto, the Retained Interest pursuant to the Retained Interest Assignments, Purchaser shall indirectly own one hundred percent (100%) of the beneficial ownership interest in and to the Property and Property Owner. Anything to the contrary contained herein notwithstanding, Seller is not transferring to Purchaser any bank accounts or funds therein maintained by AFE or any Property Owner and Seller shall have the right, at any time on or prior to Closing, to transfer any such bank accounts or withdraw any such funds and keep the same for its own benefit; provided, that this sentence shall not affect the pro rations under Section 10.4.

Section 2.2 **Indivisible Economic Package.** Purchaser has no right to purchase, and Seller has no obligation to sell, less than all of Seller’s LLC Interest, it being the express agreement and understanding of Purchaser and Seller that, as a material inducement to Seller and Purchaser to enter into this Agreement, Purchaser has agreed to purchase, and Seller has agreed to sell, all of Seller’s LLC Interest, subject to and in accordance with the terms and conditions hereof

Section 2.3 **Full Performance.** The execution and delivery of the LLC Assignment and Assumption (as hereinafter defined) and the other documents to be executed and/or delivered by Seller to Purchaser pursuant to this Agreement shall be deemed to be a full performance and discharge of every agreement and obligation on the part of Seller to be performed under this Agreement, except those agreements, obligations, covenants, representations, warranties and indemnifications of Seller which are specifically stated to survive the closing of the transaction contemplated in this Agreement.

## ARTICLE III

### CONSIDERATION

Section 3.1 **Purchase Price.** The purchase price for Seller’s LLC Interest shall be the sum of One Hundred Eighty Six Million One Hundred Ninety Two Thousand and 00/100 Dollars (\$186,192,000.00) all in lawful currency of the United States of America, payable as provided in Section 3.2, and subject to adjustments and credits as expressly contemplated by this Agreement (the “**Purchase Price**”).

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Section 3.2 **Method of Payment of Purchase Price.** No later than 1:00 p.m. Eastern Time on the Scheduled Closing Date, Purchaser shall pay to Escrow Agent (on behalf of Seller) the Purchase Price (less the Earnest Money Deposit), together with all other costs and amounts to be paid by Purchaser at the Closing pursuant to the terms of this Agreement (such other costs and amounts, “**Purchaser’s Costs**”), by Federal Reserve wire transfer of immediately available funds to the account of Escrow Agent pursuant to and in accordance with the wiring instructions supplied by Seller to Purchaser one (1) Business Day prior to the Scheduled Closing Date. Escrow Agent, following authorization and instruction by the parties at Closing, shall (i) pay to each of Harsimus (or its designee) and Columbia (or its designee) by separate Federal Reserve wire transfers of immediately available funds to the account designated by each of them, the amount of the Purchase Price, less any costs or other amounts to be paid by Seller at Closing pursuant to the terms of this Agreement, to which each of them are entitled, as set forth in a writing executed by both Harsimus and Columbia (the “**Allocation Letter**”) and which shall be furnished to Escrow Agent, (ii) pay to the appropriate payees out of the proceeds of Closing payable to Seller all costs and amounts to be paid by Seller at Closing pursuant to the terms of this Agreement, and (iii) pay Purchaser’s Costs to the appropriate payees at Closing pursuant to the terms of this Agreement. A Closing Statement will be prepared by Seller and submitted to Purchaser in accordance with the terms of Section 10.4.

## ARTICLE IV

### EARNEST MONEY DEPOSIT AND ESCROW INSTRUCTIONS

Section 4.1 **The Earnest Money Deposit and Independent Contract Consideration.** Simultaneously with the execution and delivery of this Agreement by Purchaser, Purchaser shall deposit with the Escrow Agent, by Federal Reserve wire transfer of immediately available funds, the sum of Two Million and 00/100 Dollars (\$2,000,000.00) as the earnest money deposit on account of the Purchase Price (such amount, together with all interest accrued thereon, the “**Earnest Money Deposit**”).

Section 4.2 **Escrow Instructions.** The Earnest Money Deposit shall be held in escrow by the Escrow Agent in an interest-bearing account, in accordance with the provisions of Article XVI. The Earnest Money Deposit is non-refundable to Purchaser, except as otherwise expressly provided in this Agreement.

Section 4.3 **Designation of Certifying Person.** In order to assure compliance with the requirements of Section 6045 of the Internal Revenue Code of 1986, as amended (the “**Code**”), and any related reporting requirements of the Code, the parties hereto agree as follows:

(a) Provided the Escrow Agent shall execute a statement in writing (in form and substance reasonably acceptable to the parties hereunder) pursuant to which it agrees to assume all responsibilities for information reporting required under Section 6045(e) of the Code, Seller and Purchaser shall designate the Escrow Agent as the person to be responsible for all information reporting under Section 6045(e) of the Code (the “**Certifying Person**”). If the

Escrow Agent refuses to execute a statement pursuant to which it agrees to be the Certifying Person, Seller and Purchaser shall agree to appoint another third party as the Certifying Person.

(b) Seller and Purchaser each hereby agree:

(i) to provide to the Certifying Person all information and certifications regarding such party, as reasonably requested by the Certifying Person or otherwise required to be provided by a party to the transaction described herein under Section 6045 of the Code; and

(ii) to provide to the Certifying Person such party's taxpayer identification number and a statement (on Internal Revenue Service Form W-9 or an acceptable substitute form, or on any other form the applicable current or future Code sections and regulations might require and/or any form requested by the Certifying Person), signed under penalties of perjury, stating that the taxpayer identification number supplied by such party to the Certifying Person is correct.

## ARTICLE V

### INSPECTION OF PROPERTY

Section 5.1 **Completion of Due Diligence** Anything to the contrary contained in this Agreement notwithstanding, Purchaser acknowledges and agrees that it has completed all of its due diligence with respect to the Property and Seller's LLC Interests and Purchaser has no right to terminate this Agreement by reason of any due diligence matters (but this sentence shall not affect any other termination right of Purchaser expressly provided herein). Notwithstanding the foregoing, Purchaser and its authorized agents, partners, lenders, officers, employees, advisors, attorneys, accountants, architects, engineers and other representatives (for purposes of this Article V, the "**Licensee Parties**") shall have the right, subject to the provisions of this Article V, including, without limitation, the provisions of Section 5.3, and the rights of Schwab and its subtenants (Schwab and such subtenants are collectively referred to herein as, the "**Schwab Parties**"), to enter upon the Real Property at all reasonable times during normal business hours to perform inspections and to otherwise evaluate the Property, including, without limitation, physical testing and invasive sampling. Purchaser will provide to Seller notice (for purposes of this Section 5.1, an "**Entry Notice**") of the intention of Purchaser or the other Licensee Parties to enter the Real Property at least 24 hours prior to such intended entry and specify the intended purpose therefor and the inspections and examinations contemplated to be made and with whom any Licensee Party will communicate. At Seller's option, Seller may be present for any such entry and inspection. Purchaser shall not communicate with or contact any of the Schwab Parties or any of the Authorities without the prior written consent of Seller, which consent shall not be unreasonably withheld, conditioned (other than to permit Seller or its representative to participate in any meetings or calls between Schwab and Purchaser) or delayed.

### Section 5.2 **Document Review**

(a) Notwithstanding that Purchaser has completed its due diligence review, Purchaser and the Licensee Parties shall have the continuing right to review and inspect, at Purchaser's sole cost and expense, any and all of the following which, to the extent the same are in Seller's and/or the Property Owner's possession or control (collectively, the "**Documents**"): all final environmental, engineering or consulting reports and studies of the Real Property that have been prepared for Property Owner, and/or Seller, real estate tax bills (and all agreement(s) relating to payments in lieu of real estate taxes), together with assessments (special or otherwise), ad valorem and personal property tax bills, covering the period of Property Owner's ownership of the Property; the Schwab Lease and related lease and sublease files; current operating statements; the Licenses and Permits; the Leasing Commission Agreements; and such other documents, files and items as Purchaser shall reasonably request, including, without limitation, all documents relating to Seller's LLC Interests. Such inspections shall occur at a location reasonably selected by Seller, which may be at the office of Seller, Seller's counsel, Property Owner's property manager, at the Real Property or any of them. Unless otherwise expressly set forth herein, Purchaser shall not have the right to review or inspect materials not directly related to the leasing, maintenance, operation, ownership and/or management of the Property, including, without limitation, all of Seller's and/or Property Owner's internal memoranda, financial projections, budgets, appraisals, proposals for work not actually undertaken, and other proprietary and confidential information.

(b) Purchaser acknowledges that any and all of the Documents may be proprietary and confidential in nature and have been provided to Purchaser solely to assist Purchaser in evaluating the Property, obtaining financing for the transaction contemplated herein and consummating the transactions contemplated herein. Subject only to the provisions of Article XII, Purchaser agrees not to disclose the contents of the Documents or any of the provisions, terms or conditions contained therein, to any party outside of Purchaser's organization other than its attorneys, partners or other investors, accountants, lenders and lenders' advisors, title agents, or any other Licensee Parties (collectively, the "**Permitted Outside Parties**"). Purchaser further agrees that within its organization, or as to the Permitted Outside Parties, the Documents will be disclosed and exhibited only to those persons within Purchaser's organization or to those Permitted Outside Parties who are responsible for evaluating the Property, providing financing for the transaction contemplated herein and consummating the transaction contemplated hereby or otherwise involved in performing Purchaser's obligations under this Agreement. Purchaser further acknowledges that the Documents and other information relating to the leasing arrangements between Seller and the Schwab Parties are proprietary and confidential in nature. Purchaser agrees not to divulge the contents of such Documents and other information except in accordance with the confidentiality standards set forth in this Section 5.2 and Article XII. In permitting Purchaser and the Permitted Outside Parties to review the Documents and other information to assist Purchaser, Seller and Property Owner have not waived any privilege or claim of confidentiality with respect thereto, and no third party benefits or relationships of any kind, either express or implied, have been offered, intended or created by Seller and Property Owner, and any such claims are expressly rejected by Seller and Property Owner and waived by Purchaser and the Permitted Outside Parties, for

whom, by its execution of this Agreement, Purchaser is acting as an agent for the Permitted Outside Parties with regard to such waiver.

(c) Purchaser acknowledges that some of the Documents may have been prepared by third parties and may have been prepared prior to Property Owner's ownership of the Property. **PURCHASER HEREBY ACKNOWLEDGES THAT, EXCEPT AS EXPRESSLY SET FORTH IN SECTIONS 8.1, 8.2 AND 8.3, SELLER OR SELLER ENTITY HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION OR WARRANTY REGARDING THE TRUTH, ACCURACY OR COMPLETENESS OF THE DOCUMENTS OR THE SOURCES THEREOF. SELLER HAS NOT UNDERTAKEN ANY INDEPENDENT INVESTIGATION AS TO THE TRUTH, ACCURACY OR COMPLETENESS OF THE DOCUMENTS AND IS PROVIDING THE DOCUMENTS SOLELY AS AN ACCOMMODATION TO PURCHASER.**

### Section 5.3 **Entry and Inspection Obligations; Termination of Agreement**

(a) Purchaser agrees that in entering upon and inspecting or examining the Property, Purchaser and the other Licensee Parties will not: materially disturb any of the Schwab Parties, or materially interfere with the use of the Property pursuant to the Schwab Lease; materially interfere with the operation and maintenance of the Real Property or Improvements; damage any part of the Property or any personal property owned or held by any of the Schwab Parties, or any other person or entity; injure or otherwise cause bodily harm to Seller, Property Owner or any of the Schwab Parties, or to any of their respective agents, guests, invitees, contractors and employees, or to any other person or entity; permit any liens to attach to the Real Property by reason of the exercise of Purchaser's inspection rights under this Article V; or reveal or

disclose any information obtained concerning the Property and the Documents to anyone outside Purchaser's organization, except in accordance with the confidentiality standards set forth in Section 5.2(b) and Article XII. Purchaser shall: (i) maintain (or cause the appropriate Licensee Parties to maintain) comprehensive general liability (occurrence) insurance on terms and in amounts reasonably satisfactory to Seller and Workers' Compensation insurance in statutory limits, and if Purchaser or any Licensee Party performs any invasive physical testing or invasive sampling in accordance with Section 5.1 of this Agreement, errors and omissions insurance and contractor's pollution liability insurance on terms and in amounts acceptable to Seller, covering any accident or event arising in connection with the presence of Purchaser or any other Licensee Party on the Real Property or Improvements, and deliver evidence of insurance verifying such coverage to Seller prior to entry upon the Real Property or Improvements; (ii) promptly pay when due the costs of all entry and inspections and examinations done with regard to the Property; (iii) cause any inspection to be conducted in accordance with standards customarily employed in the industry and in compliance with all Governmental Regulations and the Existing Deed Notice (as such term is hereinafter defined); (iv) furnish to Seller copies of any studies, reports or test results received by Purchaser regarding the Property, promptly after such receipt, in connection with such inspection; and (v) repair any damage to the Real Property and Improvements caused by any inspection or examination by Purchaser or its agents. Notwithstanding the foregoing or subsection (b) below to the contrary, Purchaser shall not be required to restore nor to be liable for any damage to the Property

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resulting from the negligence or willful misconduct of Seller, AFE, PXURA, PXR, PXLA (or any of their respective members, partners, officers, directors, employees, agents or other authorized representatives) or any of the Schwab Parties. In addition, Purchaser shall not be liable to restore any damage to the Real Property or the Improvements to the extent relating to existing conditions at the Property which are revealed by Purchaser's investigations permitted hereunder.

(b) Except as stated to the contrary in the last sentence of Section 5.3(a) above, Purchaser hereby indemnifies, defends and holds Seller and Property Owner and their respective partners, agents, directors, officers, employees, successors and assigns (collectively, the "Seller Indemnified Parties") harmless from and against any and all liens, claims, causes of action, damages, liabilities, demands, suits, and obligations to third parties, together with all losses, penalties, costs and expenses relating to any of the foregoing (including but not limited to court costs and reasonable attorneys' fees), arising out of any disclosure(s) of confidential information in violation of the provisions of Section 5.2(b) and any inspections, investigations, examinations, sampling or tests conducted by Purchaser or any of the Licensee Parties, whether prior to or after the date hereof, pursuant to the provisions of Article V of this Agreement.

(c) Promptly following the time that this Agreement is terminated for any reason, Purchaser shall return to Seller all copies Purchaser has made of the Documents and all copies of any studies, reports or test results regarding any part of the Property obtained by Purchaser, before or after the execution of this Agreement, in connection with Purchaser's inspection of the Property (collectively, "Purchaser's Information"). Purchaser's Information shall not include Purchaser's internal memoranda, financial projections, budgets, appraisals or other proprietary and confidential information. Purchaser's Information shall be delivered without any representation or warranty, express or implied, as to the accuracy or completeness (other than that Purchaser has returned all of the items it is required to return) of Purchaser's Information, or any other representation or warranty; neither Seller nor any other person or party shall have any right to rely on Purchaser's Information nor shall Purchaser shall have any liability or obligation with regard to Purchaser's Information.

(d) The terms and provisions of Section 5.3(b) and Section 5.3(c) above shall supercede, in its entirety, the terms and provisions of that certain Right of Access Agreement dated November , 2002 (the "Access Agreement"), between AFE and iStar Financial Inc. ("iStar"), and such agreement shall, from and after the date hereof, be of no further force and effect and no obligations set forth therein shall survive the Effective Date; provided, however, if iStar shall have incurred any liability under the Access Agreement on account of any inspections, investigations, examinations, sampling or tests conducted prior to the Effective Date by iStar, Purchaser or any of the Licensee Parties, then any liability of iStar under the Access Agreement shall survive the Effective Date but the obligations with respect thereto shall be governed by the provisions of this Agreement, and not by the provisions of the Access Agreement.

Section 5.4 **Sale "As Is". THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT HAS BEEN NEGOTIATED BETWEEN SELLER AND PURCHASER. THIS AGREEMENT REFLECTS THE MUTUAL AGREEMENT OF SELLER AND**

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**PURCHASER, AND PURCHASER HAS HAD AND HAS THE RIGHT TO CONDUCT ITS OWN INDEPENDENT EXAMINATION OF THE PROPERTY AND SELLER'S LLC INTEREST. OTHER THAN THE MATTERS REPRESENTED IN SECTIONS 8.1, 8.2 AND 8.3 HEREOF AND ANY CLOSING CERTIFICATION OF SELLER AS TO THE TRUTH AND ACCURACY OF THE REPRESENTATIONS AND WARRANTIES AS OF THE CLOSING DATE AND THE REPRESENTATIONS IN SELLER'S (AND PROPERTY OWNER'S) TITLE AFFIDAVIT, NON-IMPUTATION ENDORSEMENT AFFIDAVIT AND ALL OTHER CLOSING DOCUMENTS, BY WHICH ALL OF THE FOLLOWING PROVISIONS OF THIS SECTION 5.4 ARE MODIFIED AND LIMITED AS IF SUCH EXCEPTION WERE FULLY SET FORTH HEREIN IN EACH INSTANCE, PURCHASER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF SELLER OR ANY OF SELLER'S AGENTS OR REPRESENTATIVES, AND PURCHASER HEREBY ACKNOWLEDGES THAT NO SUCH REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE.**

**SELLER SPECIFICALLY DISCLAIMS, AND NEITHER SELLER NOR ANY OF SELLER'S AFFILIATES NOR ANY OTHER PERSON (INCLUDING, WITHOUT LIMITATION, PROPERTY OWNER) IS MAKING, ANY REPRESENTATION, WARRANTY OR ASSURANCE WHATSOEVER TO PURCHASER, AND NO WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EITHER EXPRESS OR IMPLIED, ARE MADE BY SELLER OR ANY OF SELLER'S AFFILIATES OR RELIED UPON BY PURCHASER WITH RESPECT TO THE STATUS OF TITLE TO OR THE MAINTENANCE, REPAIR, CONDITION, DESIGN OR MARKETABILITY OF THE PROPERTY, OR ANY PORTION THEREOF, INCLUDING BUT NOT LIMITED TO (a) ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, (b) ANY IMPLIED OR EXPRESS WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (c) ANY IMPLIED OR EXPRESS WARRANTY OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS, (d) ANY RIGHTS OF PURCHASER UNDER APPROPRIATE STATUTES TO CLAIM DIMINUTION OF CONSIDERATION, (e) ANY CLAIM BY PURCHASER FOR DAMAGES BECAUSE OF DEFECTS, WHETHER KNOWN OR UNKNOWN, WITH RESPECT TO THE IMPROVEMENTS OR THE PERSONAL PROPERTY, (f) THE FINANCIAL CONDITION OR PROSPECTS OF THE PROPERTY OR THE PROPERTY OWNER AND (g) THE COMPLIANCE OR LACK THEREOF OF THE REAL PROPERTY OR THE IMPROVEMENTS WITH GOVERNMENTAL REGULATIONS, INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL LAWS, NOW EXISTING OR HEREINAFTER ENACTED OR PROMULGATED, IT BEING THE EXPRESS INTENTION OF SELLER AND PURCHASER THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PROPERTY (THROUGH THE TRANSFER OF SELLER'S LLC INTEREST) WILL BE CONVEYED AND TRANSFERRED TO PURCHASER IN ITS PRESENT CONDITION AND STATE OF REPAIR, "AS IS" AND "WHERE IS," WITH ALL FAULTS. PURCHASER REPRESENTS THAT IT IS A KNOWLEDGEABLE, EXPERIENCED AND SOPHISTICATED PURCHASER OF REAL ESTATE, AND THAT IT IS RELYING**

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**SOLELY ON ITS OWN EXPERTISE AND THAT OF PURCHASER'S CONSULTANTS IN PURCHASING THE PROPERTY THROUGH THE TRANSFER OF SELLER'S LLC INTEREST. PURCHASER HAS BEEN GIVEN A SUFFICIENT OPPORTUNITY PRIOR TO THE EFFECTIVE DATE TO CONDUCT AND HAS CONDUCTED SUCH INSPECTIONS, INVESTIGATIONS AND OTHER INDEPENDENT EXAMINATIONS OF THE PROPERTY, SELLER'S LLC INTEREST AND RELATED MATTERS AS PURCHASER DEEMS NECESSARY, INCLUDING BUT NOT LIMITED TO THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AND WILL RELY UPON SAME AND NOT UPON ANY STATEMENTS OF SELLER OR SELLER ENTITIES (EXCLUDING THE LIMITED MATTERS REPRESENTED BY SELLER IN SECTIONS 8.1, 8.2 AND 8.3 HEREOF AND ANY CLOSING CERTIFICATION OF SELLER AS TO THE TRUTH AND ACCURACY OF THE REPRESENTATIONS AND WARRANTIES AS OF THE CLOSING DATE AND THE**

REPRESENTATIONS IN SELLER'S (AND PROPERTY OWNER'S) TITLE AFFIDAVIT, NON-IMPUTATION ENDORSEMENT AFFIDAVIT AND ALL OTHER CLOSING DOCUMENTS) NOR OF ANY OFFICER, DIRECTOR, EMPLOYEE, AGENT OR ATTORNEY OF SELLER. PURCHASER ACKNOWLEDGES THAT ALL INFORMATION OBTAINED BY PURCHASER WAS OBTAINED FROM A VARIETY OF SOURCES, AND SELLER WILL NOT BE DEEMED TO HAVE REPRESENTED OR WARRANTED THE COMPLETENESS, TRUTH OR ACCURACY OF ANY OF THE DOCUMENTS OR OTHER SUCH INFORMATION HERETOFORE OR HEREAFTER FURNISHED TO PURCHASER. UPON CLOSING, SUBJECT TO THE EXPRESS PROVISIONS OF THIS AGREEMENT, PURCHASER WILL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY PURCHASER'S INSPECTIONS AND INVESTIGATIONS. PURCHASER ACKNOWLEDGES AND AGREES THAT, UPON CLOSING, SELLER WILL SELL AND CONVEY TO PURCHASER, AND PURCHASER WILL ACCEPT THE PROPERTY THROUGH THE TRANSFER OF SELLER'S LLC INTEREST, "AS IS, WHERE IS," WITH ALL FAULTS. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS COLLATERAL TO OR AFFECTING SELLER'S LLC INTEREST OR THE PROPERTY BY SELLER, ANY AGENT OF SELLER OR ANY THIRD PARTY. SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR SELLER'S LLC INTEREST FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON, UNLESS THE SAME ARE SPECIFICALLY SET FORTH HEREIN. PURCHASER ACKNOWLEDGES THAT THE PURCHASE PRICE REFLECTS THE "AS IS, WHERE IS" NATURE OF THIS SALE AND ANY FAULTS, LIABILITIES, DEFECTS OR OTHER ADVERSE MATTERS THAT MAY BE ASSOCIATED WITH THE PROPERTY AND SELLER'S LLC INTEREST. PURCHASER, WITH PURCHASER'S COUNSEL, HAS FULLY REVIEWED THE DISCLAIMERS AND WAIVERS SET FORTH IN THIS AGREEMENT AND UNDERSTANDS THEIR SIGNIFICANCE AND AGREES THAT THE DISCLAIMERS AND OTHER

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AGREEMENTS SET FORTH HEREIN ARE AN INTEGRAL PART OF THIS AGREEMENT, AND THAT SELLER WOULD NOT HAVE AGREED TO SELL SELLER'S LLC INTEREST TO PURCHASER FOR THE PURCHASE PRICE WITHOUT THE DISCLAIMERS AND OTHER AGREEMENTS SET FORTH IN THIS AGREEMENT.

PURCHASER AND PURCHASER'S AFFILIATES FURTHER COVENANT AND AGREE NOT TO SUE SELLER AND SELLER'S AFFILIATES AND RELEASE SELLER AND SELLER'S AFFILIATES OF AND FROM AND WAIVE ANY CLAIM OR CAUSE OF ACTION, INCLUDING, WITHOUT LIMITATION, ANY STRICT LIABILITY CLAIM OR CAUSE OF ACTION, THAT PURCHASER OR PURCHASER'S AFFILIATES MAY HAVE AGAINST SELLER OR SELLER'S AFFILIATES UNDER ANY ENVIRONMENTAL LAW, NOW EXISTING OR HEREAFTER ENACTED OR PROMULGATED, RELATING TO ENVIRONMENTAL MATTERS OR ENVIRONMENTAL CONDITIONS EXISTING AS OF THE CLOSING (WHETHER KNOWN OR UNKNOWN) IN, ON, UNDER, ABOUT OR MIGRATING FROM OR ONTO THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, OR BY VIRTUE OF ANY COMMON LAW RIGHT (NOW EXISTING OR HERINAFTER CREATED) RELATED TO ENVIRONMENTAL CONDITIONS OR ENVIRONMENTAL MATTERS IN, ON, UNDER, ABOUT OR MIGRATING FROM OR ONTO THE REAL PROPERTY. THE FOREGOING SENTENCE SHALL NOT RELIEVE (A) SELLER OF ANY LIABILITY IT MAY HAVE WITH RESPECT TO ITS REPRESENTATION MADE IN SECTION 8.3(f) OF THIS AGREEMENT, SUBJECT, HOWEVER, IN ALL RESPECTS, TO THE PROVISIONS SET FORTH IN SECTION 8.5 HEREOF, AND (B) 8/9 TRANSFEREE OF ANY LIABILITY IT MAY HAVE WITH RESPECT TO ANY ENVIRONMENTAL MATTER OR ENVIRONMENTAL CONDITION IN, ON, UNDER, ABOUT, OR MIGRATING FROM, THE EXCLUDED REAL PROPERTY OR WITH RESPECT TO THE ACTS OR OMISSIONS OF 8/9 TRANSFEREE AT THE EXCLUDED REAL PROPERTY.

THE TERMS AND CONDITIONS OF THIS SECTION 5.4 WILL EXPRESSLY SURVIVE THE TERMINATION OF THIS AGREEMENT OR THE CLOSING, AS THE CASE MAY BE, AND, IF THE CLOSING OCCURS, WILL NOT MERGE WITH THE PROVISIONS OF ANY CLOSING DOCUMENTS AND ARE HEREBY DEEMED INCORPORATED INTO THE LLC ASSIGNMENT AND ASSUMPTION AS FULLY AS IF SET FORTH AT LENGTH THEREIN.

NOTHING IN THIS SECTION 5.4 SHALL NEGATE THE PRORATIONS UNDER SECTION 10.4.

Section 5.5 iStar Financial Guaranty. iStar is executing this Agreement for the sole purpose of guaranteeing to the Seller Indemnified Parties any and all liability of Purchaser under Section 5.3(b). By its signature annexed to this Agreement, iStar acknowledges that its guaranty is a guaranty of payment, and not of collection.

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## ARTICLE VI

### TITLE AND SURVEY MATTERS

Section 6.1 Survey. Purchaser acknowledges receipt of the Existing Survey. Any modification, update or re-certification of the Existing Survey shall be at Purchaser's election and sole cost and expense. The Existing Survey together with any re-certification thereof and/or update Purchaser has elected to obtain, if any, is herein referred to as the "Survey".

Section 6.2 Title Report.

(a) Purchaser acknowledges receipt from the Title Company of a current title insurance report for the Property (the "Title Report"), together with copies of the title exceptions listed thereon. All (i) exceptions to title set forth in the Title Report and/or matters revealed by the Existing Survey, (ii) matters which are the obligations of Schwab under the Schwab Lease, (iii) documents and agreements contemplated by this Agreement to be recorded against the Real Property on or prior to the Closing Date, including, without limitation, the CRA, the CRA and the Updated Deed Notice, and (iv) title exceptions caused or created (whether directly or indirectly) by Purchaser or any Licensee Parties will be referred to herein as "Permitted Exceptions". In no event shall any of the Permitted Exceptions constitute Title Defects (as hereinafter defined).

(b) All taxes, water rates or charges, sewer rents and special assessments, plus interest and penalties thereon, which on the Closing Date are due and payable and/or are liens against the Real Property and which the Property Owner is obligated to pay and discharge will be credited against the Purchase Price (subject to the provision for apportionment of taxes, water rates and sewer rents herein contained) and without the need for Purchaser to raise as a Title Defect.

(c) If on the Closing Date the Real Property shall be affected by any lien which, pursuant to the provisions of this Agreement, is required to be discharged or satisfied by Seller, Seller shall not be required to discharge or satisfy the same of record provided the money necessary to satisfy the lien is retained by the Title Company at Closing (with authority to pay in the event of enforcement of such lien), and the Title Company either omits the lien as an exception from the Title Policy or insures against collection thereof from or out of the Real Property and/or the Improvements, and a credit is given to Purchaser for the recording charges for a satisfaction or discharge of such lien. Seller shall have no obligation to remove any lien affecting the Real Property which is the obligation of Schwab to remove pursuant to the provisions of the Schwab Lease.

(d) No franchise, transfer, inheritance, income, corporate or other tax open, levied or imposed against Seller, the Property Owner or any former owner of the Property, that may be a lien against the Property on the Closing Date, shall be an objection to title if the Title Company insures against collection thereof from or out of

thereof (with authority to pay in the event of enforcement of such lien). If a search of title discloses judgments, bankruptcies, or other returns against other persons having names the same as or similar to that of Seller or the Property Owner, Seller will deliver (or cause the Property Owner to deliver) to the Title Company an affidavit stating that such judgments, bankruptcies or other returns do not apply to Seller or the Property Owner, as the case may be, and such search results shall not be deemed Title Defects.

(e) Notwithstanding anything to the contrary contained herein, except for Permitted Exceptions, Seller shall be obligated to cure and/or satisfy or cause to be deleted as an exception to title: (x) any standard exceptions (to the extent that the Title Company is willing to delete the same based solely upon receipt of the Survey and a customary affidavit from Seller or the Property Owner); (y) any of the following exceptions and encumbrances to the title to the Property as may be disclosed by the Title Report, all of which shall be referred to herein as "**Monetary Objections**": (i) any deed of trust, mortgage, or other security title, assignment of leases, negative pledge, financing statement or similar security instrument entered into by Seller, the Property Owner or any of Seller's Affiliates (including, without limitation, PXR) and encumbering all or any portion of the Property (and excluding any such instrument placed upon the Property against an interest of any Schwab Party and which encumbers such Schwab Party's interest therein); (ii) mechanics liens affecting the Property and (iii) any other liens affecting the Property which can be satisfied by the payment of a specific, liquidated amount not to exceed Five Hundred Thousand and 00/100 Dollars (\$500,000.00) in the aggregate. To the extent any Monetary Objection which Seller is obligated to remove has not been removed at or prior to Closing, Purchaser shall be entitled to apply a portion of the purchase proceeds reasonably necessary to effectuate such removal (or withhold such portion as may be reasonably necessary to remove such Monetary Objection) and Purchaser shall receive a credit against the Purchase Price for any such amounts so applied or withheld. Notwithstanding the foregoing to the contrary, if on the Closing Date there shall be security interests filed against the Property, such items shall not be Monetary Objections if (A) the personal property covered by such security interests are no longer in or on the Real Property and will not be conveyed as part of the Personal Property hereunder, and the Title Company either omits the lien or security interest as an exception from the Title Policy or insures against collection thereof from all of the Real Property and improvements erected thereon, or (B) such personal property is the property of any Schwab Party and Seller executes and delivers an affidavit to such effect. At Closing, Seller will deliver (or cause to be delivered by Property Owner) such affidavits as reasonably required by the Title Company to enable the Title Company to issue a non-imputation endorsement to the Title Policy, which endorsement is at Purchaser's sole cost and expense and, without limiting the foregoing, any affidavits reasonably required by the Title Company to omit any exception or provide affirmative insurance for any mechanics' liens in connection with the JMB Construction Contract and the JMB Cooling Tower Contract. In addition, Columbia shall cause its affiliates to execute such affidavits and other documentation reasonably required by Title Company with respect to the Retained Interest in connection with the issuance of the Title Policy and the endorsements thereto.

Section 6.3 **Title Defect.**

(a) In the event Seller receives any written objections to matters disclosed by an update to the Title Report or an update to the Existing Survey (collectively and individually, a "**Title Defect**") within the time periods required under Sections 6.3(b) below, Seller may elect (but shall not be obligated) to attempt to remove, or cause to be removed at its expense, any such Title Defect, and shall provide Purchaser with notice, within five (5) Business Days of its receipt of any such objection, of its intention to cure or not to cure any such Title Defect. If Seller elects to attempt to cure any Title Defect, the Scheduled Closing Date may be extended by written notice from Seller to Purchaser at any time on or prior to the Scheduled Closing Date, for a period up to but not to exceed sixty (60) days in the aggregate (but in no event shall Seller have the right to extend the Scheduled Closing Date beyond the Outside Closing Date), for the purpose of such removal. In the event that (i) Seller elects not to attempt to cure any such Title Defect, or (ii) Seller fails to cure any such Title Defect within the period elected by Seller but not to exceed sixty (60) days in the aggregate (but in no event shall Seller have the right to extend the Scheduled Closing Date beyond the Outside Closing Date), Seller shall so advise Purchaser and Purchaser shall have the right to terminate this Agreement and receive a refund of the Earnest Money Deposit, or to waive such Title Defect and proceed to the Closing without any reduction or abatement of the Purchase Price. Purchaser shall make such election within ten (10) days of receipt of Seller's notice. If Purchaser elects to proceed to the Closing, any Title Defects waived by Purchaser shall be deemed Permitted Exceptions. This provision is subject in all respects to Seller's obligations, and Purchaser's rights, under Section 6.2(e). In any such event of termination, Purchaser shall promptly return Purchaser's Information to Seller, after which neither party shall have any further obligation to the other under this Agreement except for the Termination Surviving Obligations.

(b) Notwithstanding the foregoing, in the event further updates are made to the Title Report or Survey which reveal new matters which are not Permitted Exceptions and are not shown on the previous version of the Title Report or Survey, Purchaser may give Seller notice of any such new matters disclosed by such update which Purchaser deems unacceptable. Purchaser must object in writing to any such new matters, if at all, before 5:00 p.m. Eastern Standard Time on the fifth (5th) Business Day after receipt of any such updated Title Report or Survey first disclosing said new matters. In the event Purchaser so timely notifies Seller, such items shall be subject to the process for Title Defects set forth above. If Purchaser fails to timely deliver such notice, all of such new matters shall be deemed Permitted Exceptions.

**ARTICLE VII**

**INTERIM OPERATING COVENANTS AND POST-CLOSING MATTERS**

Section 7.1 **Interim Operating Covenants.**

(a) **Operations.** From the Effective Date until Closing, Seller shall, and shall cause Property Owner, to continue to operate, manage and maintain the Real Property, Ground Lease, Sublease, Improvements and other Property in the ordinary course of its business and substantially in accordance with its present practice, subject to ordinary wear and tear and

damage caused by any Schwab Party and further subject to Article XI of this Agreement. In addition, from the Effective Date until Closing, unless required by any Authorities or Governmental Regulations, or the Schwab Lease, or in the case of an emergency or on account of a casualty at the Property (in which case the provisions of Section 11.1 of this Agreement shall apply), Seller shall not, and shall cause Property Owner not to, make any capital expenditure (or commitments therefor) at the Property (x) that aggregate in excess of \$500,000, and (y) the payment for which shall be the obligation of Property Owner after the Closing.

(b) **Compliance with Governmental Regulations/Waterfront Development Permit**

(i) From the Effective Date until Closing, Seller shall not, and shall cause Property Owner not to, knowingly take any action that would result in a failure to comply in all material respects with all Governmental Regulations applicable to the Property Ground Lease, Sublease, Schwab Lease, Seller's LLC Interest and with any covenants, conditions, restrictions, encumbrances and other title exception documents affecting the Property, it being understood and agreed that prior to Closing, Seller will have the right to contest any such Governmental Regulations and any such title exception documents.

(ii) Purchaser acknowledges that NJDEP has issued that certain Waterfront Development Permit, issued July 1, 1999, as modified by Modification to Waterfront Development Permit #0906-92-0005.4 (Modification file #0906-92-0005.5) dated as of December 5, 2000 (the "**Waterfront Development**

**Permit**”), a copy of which Purchaser has reviewed as part of the Documents, which grants to AFE, and its successors and assigns, the right to develop the Real Property, Plaza VIII and Plaza IX, in accordance with and pursuant to the provisions thereof. Purchaser acknowledges that the Building fully utilizes the development rights attributable to the Real Property, and that it is the intention of the parties that all remaining development rights accruing under the Waterfront Development Permit (as well as any other development rights accruing under all other of the Documents) are not being transferred to Purchaser on the Closing Date, but are instead being transferred to 8/9 Transferee as part of the Excluded Real Property. In connection therewith, it is a condition (the **“Permit Condition”**) to Closing that either (x) the Waterfront Development Permit is bifurcated by NJDEP prior to Closing such that after such bifurcation there shall be two permits, one relating to Plaza X (the **“Plaza X Bifurcated Waterfront Permit”**) and one relating to Plazas VIII and IX (the **“8/9 Bifurcated Waterfront Permit”**), which permits must also comply with the remaining provisions of this **Section 7.1(b)(ii)**, or (y) 8/9 Transferee, in the 8/9 Transferee Guaranty (as hereinafter defined), (I) use commercially reasonable efforts to obtain such bifurcation following the Closing, (II) satisfy any obligations of Property Owner (as reconstituted on the Closing Date with Purchaser as the indirect or direct owner thereof) (**“Post-Transfer AFE”**) following the Closing under the Waterfront Development Permit until such time as the Waterfront Development Permit is bifurcated in accordance with the provisions of this **Section 7.1(b)(ii)**, including, without limitation, the completion of any traffic mitigation studies, but specifically excluding the maintenance of the Waterfront Walkway located on the Real Property, which shall from and after the Closing be maintained by Post-Transfer AFE at its sole cost and expense. If the Waterfront Development Permit is not bifurcated and 8/9 Transferee is to guaranty the

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foregoing obligations, then the form of the 8/9 Transferee Guaranty shall be modified (in form reasonably satisfactory to both Purchaser and Seller) at Closing to reflect the addition of such guaranty, and provided the 8/9 Transferee Guaranty is executed at Closing, then the Permit Condition shall be deemed satisfied. If Seller and Purchaser are unable to reasonably agree upon the modifications to the 8/9 Transferee Guaranty for the performance of 8/9 Transferee’s obligations under this **Section 7.1(b)(ii)**, then such failure shall merely constitute the failure of a condition precedent to Purchaser’s obligation to close this transaction and shall not be deemed a breach or default on the part of Seller. The provisions of the 8/9 Transferee Guaranty with respect to the Waterfront Development Permit shall automatically terminate upon the final satisfaction of such obligations and liabilities. Seller will advise Purchaser in advance of any meetings or discussions with any applicable agency involved in the review of the bifurcation of the Waterfront Development Permit and Purchaser shall have the right to participate in any such conversations or meetings. Purchaser and Post-Transfer AFE have no obligation to seek or obtain the bifurcation of the Waterfront Development Permit from and after the Closing. In order for the Plaza X Bifurcated Waterfront Permit to comply with the provisions of this **Section 7.1(b)(ii)**, it shall not contain any obligation on the part of Post-Transfer AFE to undertake any traffic mitigation program or impose any new obligations or liabilities on the part of Post-Transfer AFE other than those that pertain to the Building and the Real Property (unless Purchaser consents thereto, which consent shall not be unreasonably withheld), it being acknowledged by Purchaser that the obligation to maintain the Waterfront Walkway located on the Real Property is not a new obligation or liability.

(c) **Service Contracts.** From the Effective Date until Closing, Seller shall not, and shall cause Property Owner to not, amend, modify or renew any existing service contracts or enter into any new service contracts unless (i) such amended, modified, renewed or new service contract will expire on or prior to the Closing Date or is terminable on not more than thirty (30) days notice without penalty or (ii) unless Purchaser consents thereto in writing, which approval will not be unreasonably withheld, conditioned or delayed. In addition to the foregoing, from the Effective Date until Closing, Seller shall provide Purchaser with notice and copies of any such amendments, modifications or renewals of any existing service contracts or any new service contracts.

(d) **Notices.** From the Effective Date until Closing, to the extent received by Property Owner, Seller shall, and shall cause Property Owner to, promptly deliver to Purchaser copies of written default notices, written notices of lawsuits, arbitrations, administrative proceedings and other material hearings and written notices of violations affecting the Ground Lease, the Sublease, the Schwab Lease, Seller’s LLC Interest and/or the other Property.

(e) **Schwab Lease, Sublease and Ground Lease.** (i) From the Effective Date until Closing, Seller shall not, and shall cause Property Owner and PXR to not, amend, modify, extend or terminate the Schwab Lease, the Sublease and the Ground Lease or enter into any consent or other agreement with respect to the Schwab subleases (except, in each instance, to the extent required pursuant to the terms of the applicable document or to the extent that any such required consent sought by Schwab pursuant to the provisions of any of the foregoing documents must be given by PXLA prior to the then Scheduled Closing Date, in which case

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Seller shall consult with Purchaser and provide Purchaser with copies of the relevant documentation prior to granting such consent (but Seller shall have the right to grant or deny such consent in its sole discretion)). Seller hereby expressly consents to Purchaser, at any time prior to or at Closing, negotiating and entering into amendments and modifications to the Schwab Lease, the Sublease and the Ground Lease and to enter into any other consents or other agreements with respect to such leases so long as any such amendment, modification, consent or other agreement is not effective unless and until the Closing occurs, and Seller receives copies of any such amendments, modifications, consents and other agreements promptly after Purchaser’s execution thereof (but in all events prior to or at Closing). Seller will reasonably cooperate in any escrow arrangements in connection with any amendments and modifications to the Schwab Lease negotiated by Purchaser in accordance with this **Section 7.1(c)(i)**. The amendment between Purchaser and Schwab which is in escrow on the date hereof is called the **“Existing Escrow Schwab Amendment”**.

(ii) Attached hereto as **Schedule 7.1(c)(ii)** is a true and correct itemization of Operating Expenses for the partial Operating Years from the Commencement Date (as such terms are defined in the Schwab Lease) through May 31, 2003.

(f) **Standstill.**

(i) From the Effective Date until Closing, Seller shall not (and Seller shall cause Property Owner not to): (i) market Seller’s LLC Interest, the Ground Lease, the Sublease, the Schwab Lease or the other Property for sale or disposition to any other party, or sell, encumber, or grant any interest in or to Seller’s LLC Interest, the Ground Lease, Sublease, Schwab Lease or the Property, (ii) solicit, negotiate or accept offers or otherwise enter into any binding or non-binding agreement for a purchase, financing or joint venture involving the Property or any interest therein with any other person or entity, and (iii) other than Permitted Transfers, encumber, dispose of, sell, convey, assign or pledge any interest in the Property or any tax abatement or other tax relief benefits applicable to the Property, or any interest therein or otherwise enter into any agreement, other than any Permitted Exceptions, affecting or encumbering or agreeing to dispose of, sell, convey, assign or pledge any interest in the Property, the Ground Lease, the Sublease, the Schwab Lease or any interest therein, which agreement would be consummated prior to or otherwise the survive the Closing. Notwithstanding the foregoing, from and after the date that the Approvals shall have been obtained and after the conveyance of the Excluded Real Property to 8/9 Transferee, Seller shall have the right to record (x) an agreement which amends the Ground Lease in the form annexed hereto as **Exhibit 7.1(f)(i)-1** (the **“Amendment to Ground Lease”**) and (y) an agreement which amends the Sublease in the form annexed hereto as **Exhibit 7.1(f)(i)-2** (the **“Amendment to Sublease”**; the Amendment to Ground Lease and the Amendment to Sublease are collectively referred to herein as the **“Amended Leases”**) in order to remove the Excluded Real Property from the scope of the Ground Lease and the Sublease, and to remove the Ground Lease and the Sublease as encumbrances upon the Excluded Real Property. Purchaser hereby consents to the recordation of the Amended Leases against the Real Property, and acknowledges that the Amended Leases constitute Permitted Exceptions.

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(ii) Seller shall have the right to grant an easement for that portion of the Real Property, more particularly described on **Schedule 7.1(f)(ii)** annexed hereto, to the City (the **“Dedication”**). Purchaser hereby consents to the Dedication in the form annexed hereto as **Exhibit 7.1(f)(ii)** being recorded against the Real Property, and acknowledges that the Dedication shall constitute a Permitted Exception.



(iii) Purchaser agrees that (i) Harsimus (and its Affiliates) shall have the right, at their sole cost and expense, to erect a memorial upon the Real Property in the location and of a type more particularly identified and described on **Exhibit 7.1(f)(iii)** annexed hereto (the "**Memorial**"), and (ii) the obligation to maintain the Memorial from and after the Closing Date shall be as is set forth in the CREA.

(iv) Purchaser agrees that AFE shall have the right to, and shall, transfer all of its right, title and interest in and to the Excluded Real Property to 8/9 Transferee.

(g) **Further Encumbrances.** Except for the Permitted Exceptions and as may otherwise be permitted pursuant to the express provisions of this Agreement, Seller shall not (and Seller shall cause Property Owner and PXR to not) voluntarily alter or encumber in any way Seller's title to Seller's LLC Interest and Property Owner's title to the Property or the Ground Lease or the Sublease or the Schwab Lease after the Effective Date without the prior written consent of Purchaser. In addition to the foregoing, from the Effective Date until Closing, Seller shall provide Purchaser with notice and copies of any such alterations to or encumbrances on Seller's title to Seller's LLC Interest and Property Owner's title to the Property or the Ground Lease or the Sublease or the Schwab Lease.

(h) **Updated Deed Notice.** Purchaser acknowledges that a Declaration of Environmental Restrictions, a copy of which Purchaser has reviewed during its due diligence as part of the Documents, is currently recorded in the title records of the Real Property (the "**Existing Deed Notice**"). The Existing Deed Notice reflects that contaminated historic fill exists at the Real Property, which must be contained as provided in the Existing Deed Notice and which cannot be disturbed without the prior consent of NJDEP. Prior to the commencement of the construction of the Building, AFE notified the NJDEP that it intended to disturb the two feet of clean fill acting as an "engineering control" (as that term is defined in Environmental Laws) over the historic fill at the Real Property, in connection with its construction activities. AFE also sought the consent of NJDEP to do so. As a condition to NJDEP's consent to the construction activities and the disturbance of the engineering control, AFE agreed to record an updated Deed Notice reflecting the current site conditions after the construction activities have been completed (the "**Updated Deed Notice**"). In order to complete the foregoing, Seller entered into a Memorandum of Agreement ("**MOA**") with the NJDEP (a copy of which has been delivered to Purchaser as part of the Documents) in order to obtain its approval to record the Updated Deed Notice in the title records of the Real Property and to request a termination of the Existing Deed Notice and Seller recorded the Updated Deed Notice and termination of Existing Deed Notice, in the title records of the Real Property in accordance with N.J.S.A. 58:10B-13. Purchaser hereby consents to the Updated Deed Notice and termination of Existing Deed Notice being recorded

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against the Real Property, and acknowledges that the Updated Deed Notice and termination of Existing Deed Notice constitutes a Permitted Exception.

(i) **Approvals.** From and after the Effective Date, Seller and Purchaser shall act in good faith and cooperate with each other in connection with Seller's efforts to timely obtain the Approvals, which shall include, without limitation, executing documents, providing information as to the direct and indirect beneficial interest holders in Purchaser, and providing such other information as the applicable party may request. The costs in connection with obtaining the Approvals shall be borne in the manner more particularly set forth in Section 10.5 of this Agreement. Purchaser acknowledges that a Certificate of Substantial Completion will be recorded against the Real Property and will constitute a Permitted Exception. Seller will use good faith efforts to obtain such additional consents from JCRA as Purchaser may reasonably request, but such additional consents shall not be conditions to Purchaser's obligation to close hereunder. Without Purchaser's prior written consent, Seller shall not, and shall cause the Property Owner not to, (a) amend or modify the Financial Agreement, except as it may be amended by the Amended Financial Agreement, or (b) negotiate, settle, compromise, or consent or agree to any change in, the Total Project Cost (as defined in the Financial Agreement) in any manner that directly or indirectly does or could increase the Total Project Cost beyond \$78,674,777.

(j) **CREA.** At the Closing, Seller shall cause that certain cross reciprocal easement agreement in the form annexed hereto as **Exhibit 7.1(j)** ("**CREA**") to be recorded against the Real Property, which will provide for, *inter alia*, pedestrian easements, view corridors, certain parking rights, means of access, rights related to stormwater runoff and access to utilities, all of which shall benefit and burden the Real Property and the Excluded Real Property, as more particularly described in the CREA. Purchaser acknowledges that the CREA will be recorded against the Real Property and constitutes a Permitted Exception. None of Seller, Property Owner and 8/9 Transferee shall voluntarily cause to be placed on the Excluded Real Property any encumbrance which would be superior to the CREA.

(k) **Covenant and Restriction Agreement.** Purchaser acknowledges that a certain Reciprocal Operation and Easement Agreement for the Harborside Financial Center, dated as of December 4, 1995 (as amended, the "**ROEA**") is currently recorded in the title records of certain of the other parcels within the Harborside Financial Center, and that Purchaser has reviewed the ROEA during its due diligence as part of the Documents. At the Closing, Seller shall enter in an agreement, in the form annexed hereto as **Exhibit 7.1(k)** (the "**CRA**"), to be recorded against the Real Property; it being understood that the CRA shall, *inter alia*, subject the Real Property to certain provisions of the ROEA and, require the continued use of the name "Plaza X" and "the Harborside Financial Center" at the Real Property. Purchaser acknowledges that the CRA will be recorded against the Real Property and constitutes a Permitted Exception.

(l) **Insurance.** From the Effective Date until Closing Seller shall, and shall cause Property Owner and PXR to, maintain existing insurance policies with respect to the Property (or replacements or renewals thereof) in full force and effect.

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(m) **Taxes.** From the period beginning on the Effective Date until Closing, Seller shall cause Property Owner and PXR to: (i) pay all real estate taxes and assessments which are due and payable during such period (subject to proration); and (ii) pay all franchise taxes (subject to proration) due and payable during such period for each of Seller, Property Owner and PXR in all jurisdictions where such entity was formed or where such entity is qualified to transact business.

(n) **Zoning.** Except as expressly provided in this Agreement, from the Effective Date until Closing, Seller shall not, and shall cause Property Owner and PXR not to, initiate any zoning reclassifications or variance order with respect to the Property, impose or incur any restrictive covenant or execute a subdivision plat or otherwise voluntarily affect the zoning and permitted uses of the Property.

(o) **Walkway Easement.** At or prior to the Closing, Seller shall cause that certain walkway easement, in the form annexed hereto as **Exhibit 7.1(o)** (the "**Walkway Easement**"), to be recorded against the Real Property, which will provide for a thirty (30) foot-wide pedestrian walkway easement traversing the waterfront portion of the Property (the "**Waterfront Walkway**") for use by the general public which shall burden the Real Property, to be more particularly described in the Walkway Easement. Purchaser acknowledges that the Walkway Easement will be recorded against the Real Property and constitutes a Permitted Exception.

Section 7.2 **JMB Construction Contract and JMB Cooling Tower Contract** If at Closing, all amounts required to be paid to JMB under the JMB Construction Contract and JMB Cooling Tower Contract have not been paid and Seller has not received final lien waivers from JMB with respect to such contracts and any subcontracts entered into by JMB under the JMB Construction Contract and JMB Cooling Tower Contract, Seller shall remain responsible for obtaining such final lien waivers (but only to the extent that the statutory period for the applicable contractor to file a lien has not expired) and for paying such remaining amounts and Purchaser shall cooperate with Seller to accomplish the same.

Section 7.3 **Schwab Lease.** From and after the Effective Date through and after Closing, Seller and Property Owner (prior to giving effect to the transfers at Closing) shall make all commercially reasonable efforts to cooperate with respect to inquiries and information requests relating to audit rights of amounts included in the Base Operating Year Expenses provided in the Schwab Lease.

Section 7.4 **Excess Net Profits; Fines.** To the extent (i) the City audit of the Property shall conclude that there are any excess net profits payable under the Financial Agreement with respect to the operation of the Building and the Property for any period prior to Closing or (ii) any fines are levied against Property Owner by reason of Seller's failure to perform any of its obligations under the Financial Agreement or PECA for any period prior to Closing, Seller shall be responsible for the payment in full of any such excess net profits or fines, subject to (x) Seller's right to contest the conclusion of any such audit or the imposition of any such fines, as the case may be, in the name of Property Owner, provided that Property Owner has been apprised of such contest and Purchaser, at Purchaser's expense, shall have the right to participate

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in such contest, and (y) Purchaser cooperating with Seller as may be reasonably necessary in connection with such contest, and Seller's obligation to pay such excess net profits or fines shall only be to the extent the conclusion of such audit or the imposition of such fines, as the case may be, is final and non-appealable. From and after Closing, without Seller's prior written consent, Purchaser shall not, and shall cause the Property Owner not to, (a) amend or modify the Financial Agreement or PECA in any manner that directly or indirectly does or could increase the excess net profits or fines which Seller is responsible for hereunder, or (b) negotiate, settle, compromise, or consent or agree to any change in, the Financial Agreement or PECA in any manner that directly or indirectly does or could increase the excess net profits or fines which Seller is responsible for hereunder.

Section 7.5 **OCIP.** Purchaser shall pay to Seller any amounts actually received by Purchaser or Property Owner from and after Closing under the OCIP, including any refunds or savings thereunder. Seller shall be responsible for any payments which may be required to be made by Property Owner under the OCIP after the Closing.

Section 7.6 **EQR Release.** Seller shall use commercially reasonable efforts to obtain a release of AFE from any further obligations under that certain Easement Agreement dated March 21, 2001 by and among AFE, Cali Harborside (Fee) Associates L.P. and EQR – Lincoln North Pier L.L.C.

## ARTICLE VIII

### REPRESENTATIONS AND WARRANTIES

Section 8.1 **Harsimus Representations and Warranties.** Harsimus represents and warrants to Purchaser the following:

- (a) **Status.** Harsimus is a limited liability company, duly organized and validly existing and in good standing under the laws of the State of New Jersey.
- (b) **Authority.** The execution and delivery of this Agreement and all other documents now or hereafter to be executed and delivered by Harsimus pursuant to this Agreement (collectively, the "**Harsimus Documents**") and the performance of Harsimus' obligations hereunder and under the Harsimus Documents have been duly authorized by all necessary action on the part of Harsimus, and this Agreement constitutes, and the Harsimus Documents will constitute, the legal, valid and binding obligation of Harsimus, enforceable in accordance with their terms, subject to bankruptcy, reorganization and other similar laws affecting the enforcement of creditors' rights generally and except as may be limited by general equitable principles. The person signing this Agreement on behalf of Harsimus has been duly authorized to sign and deliver this Agreement on behalf thereof.
- (c) **Non-Contravention.** The execution and delivery of this Agreement and the Harsimus Documents by Harsimus and the consummation by Harsimus of the transactions contemplated hereby will not (i) violate any judgment, order, injunction, decree, regulation or ruling of any court or Authority having jurisdiction over Harsimus, (ii) conflict with, result in a

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breach of, or constitute a default under the organizational documents of Harsimus, (iii) violate any note or other evidence of indebtedness, any mortgage, deed of trust or indenture to which Harsimus is a party or by which it is bound, or (iv) provided the Approvals are obtained, violate any lease or other material agreement or instrument to which Harsimus is a party or by which it is bound.

(d) **Consents.** Other than the receipt of the Approvals, no consent, waiver, approval or authorization is required from any person or entity (that has not already been obtained) in connection with the execution and delivery of this Agreement and the Harsimus Documents by Harsimus or the performance by Harsimus of the transactions contemplated hereby.

(e) **Suits and Proceedings.** Except as listed on **Schedule 8.1(e)**, there are no legal actions, suits or similar proceedings pending and served, or, to Harsimus's Knowledge, threatened in writing against Harsimus, which (i) are not adequately covered by existing insurance and (ii) if adversely determined, would materially and adversely affect the value of the Harsimus Interest or Harsimus' ability to consummate the transactions contemplated hereby.

(f) **Bankruptcy.** Harsimus has not (A) commenced a voluntary case, or had entered against it a petition, for relief under any federal bankruptcy act or any similar petition, order or decree under any federal or state law or statute relative to bankruptcy, insolvency or other relief for debtors, (B) caused, suffered or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator or similar official in any federal, state or foreign judicial or non-judicial proceeding, to hold, administer and/or liquidate all or substantially all of its assets, or (C) made an assignment for the benefit of creditors.

(g) **Non-Foreign Entity.** Harsimus is not a "foreign person" (within the meaning of **Section 1445(f)(3)** of the Code).

(h) **Harsimus' Interest.** Harsimus has good title to the Harsimus Interest and has not transferred, assigned, sold, conveyed, pledged, mortgaged, granted a security interest in, or otherwise disposed of the Harsimus Interest or any portion thereof or interest therein or granted any option to any person or entity to acquire such interest. The Harsimus Interest is free and clear of all liens, encumbrances, liabilities, claims, exceptions, covenants and restrictions of any kind or character, including but not limited to, any security interests or, any restriction on sale or assignment or granting of any option, right or agreement for the purchase or acquisition of the same or any interest in the same.

The provisions of this **Section 8.1** are subject to the limitations on liability with respect to the representations, warranties and covenants of Harsimus set forth in **Section 8.5** of this Agreement.

Section 8.2 **Columbia Representations and Warranties.** Columbia represents and warrants to Purchaser the following:

- (a) **Status.** Columbia is a limited liability company, duly organized and validly existing and in good standing under the laws of the State of New Jersey.

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(b) **Authority.** The execution and delivery of this Agreement and all other documents now or hereafter to be executed and delivered by Columbia pursuant to this Agreement (collectively, the “**Columbia Documents**”) and the performance of Columbia’s obligations hereunder and under the Columbia Documents have been duly authorized by all necessary action on the part of Columbia, and this Agreement constitutes, and the Columbia Documents will constitute, the legal, valid and binding obligation of Columbia, enforceable in accordance with their terms, subject to bankruptcy, reorganization and other similar laws affecting the enforcement of creditors’ rights generally and except as may be limited by general equitable principles. The person signing this Agreement on behalf of Columbia has been duly authorized to sign and deliver this Agreement on behalf thereof.

(c) **Non-Contravention.** The execution and delivery of this Agreement and the Columbia Documents by Columbia and the consummation by Columbia of the transactions contemplated hereby will not (i) violate any judgment, order, injunction, decree, regulation or ruling of any court or Authority having jurisdiction over Columbia, (ii) conflict with, result in a breach of, or constitute a default under the organizational documents of Columbia, (iii) violate any note or other evidence of indebtedness, any mortgage, deed of trust or indenture to which Columbia is a party or by which it is bound, or (iv) provided the Approvals are obtained, violate any lease or other material agreement or instrument to which Columbia is a party or by which it is bound.

(d) **Consents.** Subject to receipt of the Approvals, no consent, waiver, approval or authorization is required from any person or entity (that has not already been obtained) in connection with the execution and delivery of this Agreement and the Columbia Documents by Columbia or the performance by Columbia of the transactions contemplated hereby

(e) **Suits and Proceedings.** Except as listed on **Schedule 8.2(e)**, there are no legal actions, suits or similar proceedings pending and served, or, to Columbia’s Knowledge, threatened in writing against Columbia, which (i) are not adequately covered by existing insurance and (ii) if adversely determined, would materially and adversely affect the value of the Columbia Interest or Columbia’s ability to consummate the transactions contemplated hereby.

(f) **Bankruptcy.** Columbia has not (A) commenced a voluntary case, or had entered against it a petition, for relief under any federal bankruptcy act or any similar petition, order or decree under any federal or state law or statute relative to bankruptcy, insolvency or other relief for debtors, (B) caused, suffered or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator or similar official in any federal, state or foreign judicial or non-judicial proceeding, to hold, administer and/or liquidate all or substantially all of its assets, or (C) made an assignment for the benefit of creditors.

(g) **Non-Foreign Entity.** Columbia is not a “foreign person” (within the meaning of Section 1445(f)(3) of the Code).

(h) **Columbia Interest.** Columbia has good title to the Columbia Interest and has not transferred, assigned, sold, conveyed, pledged, mortgaged, granted a security interest in,

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or otherwise disposed of the Columbia Interest or any portion thereof or interest therein or granted any option to any person or entity to acquire such interest. The Columbia Interest is free and clear of all liens, encumbrances, liabilities, claims, exceptions, covenants and restrictions of any kind or character, including but not limited to, any security interests or, any restriction on sale or assignment or granting of any option, right or agreement for the purchase or acquisition of the same or any interest in the same.

The provisions of this Section 8.2 are subject to the limitations on liability with respect to the representations, warranties and covenants of Columbia set forth in Section 8.5 of this Agreement.

Section 8.3 **Seller’s Representations and Warranties.** Seller represents and warrants to Purchaser the following:

(a) **Non-Contravention.** The consummation of the transactions contemplated hereby will not, provided the Approvals are obtained, violate any judgment, order, injunction, decree, regulation or ruling of any court or Authority having jurisdiction over the Property, the Seller’s LLC Interests, the Seller, the Property Owner or PXR.

(b) **Suits and Proceedings/Insurance.**

(i) Except as listed in Schedule 8.3(b)(i), there are no legal actions, suits, arbitrations, administrative proceedings or similar proceedings pending and served, or, to Seller’s Knowledge, threatened in writing against Property Owner, PXR or the Property which (i) are not adequately covered by existing insurance and (ii) if adversely determined, would materially and adversely affect the value of the Property (or the continued operations thereof), any rights to develop the Property or the PILOT, or Seller’s ability to consummate the transactions contemplated hereby.

(ii) Attached hereto as Schedule 8.3(b)(ii) (the “**Schedule of Insurance by Property Owner**”) is a correct and complete list, in all material respects, of the types and amounts of insurance coverage maintained by the Property Owner and in force with respect to the Property, Ground Lease or Sublease. Property Owner has not received any notice in writing from the companies issuing such insurance which threatens to withdraw such coverage or requiring that any work be performed to preserve such coverage. All premiums on existing insurance policies which are due and payable prior to the Closing Date shall be paid.

(c) **Leases/Tenants.**

(i) As of the Effective Date, the only tenant (excluding subtenants) at the Building is Schwab. Schedule 8.3(c)(i)-1 annexed hereto is a true and complete schedule identifying the Schwab Lease and all material guarantees, amendments and modifications thereto. Schedule 8.3(c)(i)-2 annexed hereto is a true and complete schedule identifying the Sublease and all material amendments and modifications thereto, other than the Amendment to Sublease, which is not reflected on said schedule. Schedule 8.3(c)(i)-3 annexed hereto is a true and complete schedule identifying the Ground Lease and all amendments and modifications thereto, other than the Amendment to Ground Lease, which is not reflected on said schedule.

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The Documents made available to Purchaser pursuant to Section 5.2 hereof include true and correct copies of (i) the Schwab Lease (as described on Schedule 8.3(c)(i)-1), (ii) the Sublease (as described on Schedule 8.3(c)(i)-2), and (iii) the Ground Lease (as described on Schedule 8.3(c)(i)-3).

(ii) Except as set forth on Schedule 8.3(c)(ii), no written claim of material default (which remains uncured) under the Schwab Lease has been given or received by any party thereto prior to the date hereof and Seller has not received written notice from Schwab claiming any rights of set-off or counterclaim under the Schwab Lease.

(iii) To Seller’s Knowledge, Schedule 8.3(c)(iii) is a true and correct list, in all material respects, of subleases under the Schwab Lease at the Building (collectively, the “**Schwab Subleases**”). To Seller’s Knowledge, the Documents made available to Purchaser pursuant to Section 5.2 hereof include copies of all the Schwab Subleases in Seller’s, AFE’s, PXURA’s, PXLA’s and PXR’s possession.

(d) **Contracts.** Schedule 8.3(d)(1) is a true and correct list of all material written contracts and agreements (collectively, “**Contracts**”), other than the Ground Lease, Sublease and the Schwab Lease, which will be binding upon Purchaser (whether directly or indirectly) and/or the Property after the Closing. The Documents

made available to Purchaser pursuant to Section 5.2 hereof include copies of all of the Contracts. Except as set forth on Schedule 8.3(d)(2), no written claim of a material default (which remains uncured) or rights of set-off or counterclaim under the Contracts has been given or received by any party prior to the date hereof. Schedule 8.3(d)(3) sets forth the amount, if any, remaining to be paid under the JMB Contract and the JMB Cooling Tower Contract. Schedule 8.3(d)(4) is a true and correct list of all Warranties delivered to Seller under the JMB Contract and the JMB Cooling Tower Contract, excluding the warranties set forth in such contracts. To Seller's knowledge, each of the Warranties set forth on Schedule 8.3(d)(4) is in full force and effect and, except as set forth on Schedule 8.3(d)(5), there are no rights of set-off or counterclaim under any of such Warranties.

(e) **Legal Compliance.** Neither Seller nor Property Owner has received any written notices or citations of any violations of any applicable local, state or federal law, municipal ordinance or regulation, order, rule or requirement of any Federal, State or municipal department or agency having jurisdiction over or affecting the Property or the construction, management, ownership, maintenance, operation, use, improvement, acquisition or sale thereof (including, without limitation, building, health and environmental laws, regulations and ordinances) which would have a material adverse effect on a Property as currently owned, occupied and operated. Neither Seller nor Property Owner has received any written notification from any governmental or public authority that the Property is in violation of any applicable fire, health, building, use, occupancy or zoning laws where such violation remains outstanding and, if unaddressed, would have a material adverse effect on the use of the Property as currently owned, occupied and operated.

(f) **Environmental.** Except as may be disclosed in any of the environmental reports described on Schedule 8.3(f) (collectively, the "**Environmental Reports**"), copies of

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which have been provided to Purchaser, (i) neither Seller nor Property Owner has received any written notice of any violation of any Environmental Law with respect to the Property, and (ii) neither Seller nor Property Owner has asserted in writing that Schwab has caused any violation of any Environmental Law with respect to the Property. Seller has caused the Updated Deed Notice and the termination of the Existing Deed Notice, in accordance with N.J.S.A. 58:10B-13, to be submitted for recording in the title records of the Real Property in the official land records of the City or the County Recorder's Office of Hudson County, New Jersey.

(g) **Bankruptcy.** Neither Seller nor Property Owner has (A) commenced a voluntary case, or had entered against it a petition, for relief under any federal bankruptcy act or any similar petition, order or decree under any federal or state law or statute relative to bankruptcy, insolvency or other relief for debtors, (B) caused, suffered or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator or similar official in any federal, state or foreign judicial or non-judicial proceeding, to hold, administer and/or liquidate all or substantially all of its assets, or (C) made an assignment for the benefit of creditors.

(h) **Financial Matters.** Attached hereto as Exhibit 8.3(h) are true, correct and complete copies, in all material respects, of the Financial Statements. The Financial Statements present fairly in all material respects the financial position of AFE (together with its consolidated subsidiaries) as of the date thereof in accordance with GAAP. As of the date of the Financial Statements, there were no material liabilities, whether accrued, contingent, absolute, determined, determinable or otherwise, of AFE (together with its consolidated subsidiaries, including, without limitation, PXURA, PXLA and PXR) required pursuant to GAAP to be reflected in the Financial Statements or disclosed in the notes thereto which were not so reflected or disclosed. Since the date of the Financial Statements, no material liabilities have been incurred by AFE (together with its consolidated subsidiaries, including, without limitation, PXURA, PXLA and PXR) which would be required to be reflected in a balance sheet of AFE (together with its consolidated subsidiaries, including, without limitation, PXURA, PXLA and PXR) prepared in accordance with GAAP, other than liabilities incurred in the ordinary course of AFE's (together with its consolidated subsidiaries', including, without limitation, PXURA, PXLA and PXR) business consistent with past practice or as disclosed in the schedules and liabilities.

(i) **Licenses and Permits.** Schedule 8.3(i) contains a complete and correct list of all material Licenses and Permits issued by all applicable governmental authorities to the Property Owner with respect to the ownership, management and operation of the Property. The Documents made available to Purchaser pursuant to Section 5.2 hereof include copies of each License and Permit existing on the date hereof. Neither Property Owner nor PXR has not received written notice that any License and Permit has been or is threatened to be revoked. The consummation of the transactions contemplated hereby shall not cause any License and Permit to be terminated or revoked. Seller has no knowledge of any continuing obligations which will be binding upon the Property Owner under the Redevelopment Agreement other than such obligations which are contained in the original Redevelopment Agreement and the Amendments dated January 7, 1986, April 30, 1991, August 11, 1993, January 28, 1997, June 10, 1997 and December 19, 2001.

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(j) **Taxes.** None of PXLA, PXR, PXURA or AFE has filed an election under Treasury Regulation Section 301.7701-3 to be classified other than as provided in Treasury Regulation Section 301.7701-3(b).

(k) **Leasing Commission Agreements.** The Leasing Commission Agreements constitute all of the leasing agreements to which Property Owner is a party and which affect the Property. The Documents made available to Purchaser pursuant to Section 5.2 hereof include copies of all Leasing Commission Agreements listed on Schedule 8.3(k).

(l) **Mortgage Liens.** As of the date hereof, there is no outstanding mortgage lien affecting the Property. Property Owner has not made any assignment, pledge or mortgage of, or granted any security interest in, any portion of the Property.

(m) **Encumbrances.** None of AFE, PXR, PXURA and PXLA has entered into any written contracts for the sale of the Property, Ground Lease, Sublease, PXLA's interest in the Schwab Lease or Seller's LLC Interests which remain binding on any of AFE, PXR, PXURA and PXLA and, other than provided in the Schwab Lease, none of Columbia, Harsimus, AFE, PXR, PXURA and PXLA has granted, directly or indirectly, any currently effective options to purchase the Property, Ground Lease, Sublease or PXLA's interest in the Schwab Lease. Other than as set forth in the Schwab Lease, no person, firm or entity has any rights to acquire an ownership interest in the Property including, without limitation, any rights of first refusal, rights of reverter or rights of first offer relating to the Property, Ground Lease, Sublease or PXLA's interest in the Schwab Lease. Other than in favor of Seller, there are no options to purchase or rights to acquire an ownership interest, including, without limitation, rights of first refusal, rights of reverter or rights of first offer, with respect to the Seller's LLC interests.

(n) **Condemnation.** In the past two years, none of Seller, Property Owner or PXR has received written notice of any pending or contemplated condemnation or eminent domain proceedings affecting the Property, and to Seller's Knowledge, there is no: (i) pending or contemplated annexation or condemnation proceeding affecting, or which may affect, all or any portion of the Property; or (ii) proposed change in road patterns or grades which may adversely affect access to any roads providing a means of ingress to or egress from the property.

(o) **Employees.** None of AFE, PXR, PXURA and PXLA has or has ever had any employees. None of AFE, PXR, PXURA and PXLA is a participant in any pension or employee benefit plans subject to the provisions of the Employee Retirement Security Act of 1974, as amended. None of AFE, PXR, PXURA and PXLA has officers or directors. Each of AFE, PXR, PXURA and PXLA is member-managed.

(p) **Development Rights.** None of AFE, PXR, PXURA and PXLA has sold, leased, or otherwise encumbered any development rights and/or air rights related to the Property, it being understood, however, that except as set forth in the Plaza X Bifurcated Development Permit, as of the Closing Date there will be no remaining development attributable to the Property and all development rights under the Development Permit will be transferred on or prior to the Closing Date to the Excluded Real Property in connection with the transfer of the Excluded Real Property to 8/9 Transferee.

(q) **PILOT Matters.** Seller has delivered to Purchaser a true, accurate and complete copy of the Financial Agreement, Contribution Agreement and the Tax Exemption Application. To Seller's knowledge, the Financial Agreement is in full force and effect. PXURA has made all payments required to be paid to date under the Financial Agreement and filed all reports in connection therewith required to be filed to date. Neither Seller nor Property Owner has received any written notice that it has failed to pay or perform any obligation on its part to be paid or performed under the Financial Agreement (which remains uncured) or that it is in default (which remains uncured) under the Financial Agreement. To the best of Seller's knowledge, all representations and warranties of PXURA in the Tax Exemption Application are true, complete and correct in all material respects. AFE has paid all amounts required to be paid to date under the Contribution Agreement and the City has not notified AFE in writing of any default with regard to the Contribution Agreement or prepayment provision of the Financial Agreement. As of the date hereof, there is no litigation or proceedings pending or, to Seller's knowledge, threatened in writing with respect to the Financial Agreement, the Contribution Agreement or the Tax Exemption Application to which Property Owner or any Seller Entity is a party.

(r) **Property Owner.** The statements contained in the third, fourth, fifth and sixth Recitals to this Agreement are incorporated in this Section 8.3(r) as representations and warranties of Seller. AFE owns its interests in PXR free and clear of all liens, encumbrances, liabilities, claims, covenants and restrictions of any kind or character, including but not limited to, any security interests or, any restriction on sale or assignment or granting of any option, right or agreement for the purchase or acquisition of the same or any interest in the same and AFE has not transferred, assigned, sold, conveyed, pledged, mortgaged, granted a security interest in, or otherwise disposed of any of such interests or any portion thereof or interest therein or granted any option to any person or entity to acquire any of such interests. PXR owns its interests in PXURA and PXLA free and clear of all liens, encumbrances, liabilities, claims, covenants and restrictions of any kind or character, including but not limited to, any security interests or, any restriction on sale or assignment or granting of any option, right or agreement for the purchase or acquisition of the same or any interest in the same, and PXR has not transferred, assigned, sold, conveyed, pledged, mortgaged, granted a security interest in, or otherwise disposed of any of such interest or any portion thereof or interest therein or granted any option to any person or entity to acquire any of such interest. Each of AFE, PXR, PXURA and PXLA is validly existing and in good standing under the laws of the State of New Jersey.

The provisions of this Section 8.3 are subject to the limitations on liability set forth in Section 8.5 of this Agreement.

Section 8.4 **Purchaser's Representations and Warranties.** Purchaser represents and warrants to Seller the following:

(a) **Status.** Purchaser is a duly organized and validly existing limited liability company under the laws of the State of Delaware.

(b) **Authority.** The execution and delivery of this Agreement and all other documents now or hereafter to be executed and delivered by Purchaser pursuant to this Agreement (collectively, the "**Purchaser Documents**") and the performance of Purchaser's obligations hereunder and under the Purchaser Documents have been or will be duly authorized by all necessary action on the part of Purchaser, and this Agreement constitutes, and the Purchaser Documents will constitute, the legal, valid and binding obligation of Purchaser, enforceable in accordance with their terms, subject to bankruptcy, reorganization and other similar laws affecting the enforcement of creditors' rights generally and except as may be limited by general equitable principles. The person signing this Agreement on behalf of Purchaser has been duly authorized to sign and deliver this Agreement on behalf thereof.

(c) **Non-Contravention.** The execution and delivery of this Agreement and the Purchaser Documents by Purchaser and the consummation by Purchaser of the transactions contemplated hereby will not (i) violate any judgment, order, injunction, decree, regulation or ruling of any court or Authority having jurisdiction over Purchaser, (ii) conflict with, result in a breach of, or constitute a default under the organizational documents of Purchaser, (iii) violate any note or other evidence of indebtedness, any mortgage, deed of trust or indenture to which Purchaser is a party or by which it is bound, or (iv) violate any material agreement or instrument to which Purchaser is a party or by which it is bound.

(d) **Consents.** No consent, waiver, approval or authorization is required from any person or entity (that has not already been obtained) in connection with the execution and delivery of this Agreement by Purchaser or the performance by Purchaser of the transactions contemplated hereby.

Section 8.5 **Survival of Representations and Warranties.** The representations and warranties of Harsimus set forth in Section 8.1, of Columbia set forth in Section 8.2, of Seller set forth in Section 8.3(a) and 8.3(r) and of Purchaser set forth in Section 8.4, shall survive the Closing indefinitely and shall not be subject to the Representation Basket (as hereinafter defined) and the Representation Cap (as hereinafter defined) set forth below. The representations and warranties of Seller set forth in Sections 8.3(b) through 8.3(q) will survive the Closing for a period of twelve (12) months, after which time they will merge into the LLC Assignment and Assumption. Purchaser will not have any right to bring any action against Harsimus, Columbia, or Seller as a result of any untruth, inaccuracy or breach of any representations and warranties of Harsimus, Columbia, or Seller, as the case may be, unless and until the aggregate amount of all liability and losses arising out of all such untruths exceeds One Hundred Thousand and 00/100 Dollars (\$100,000.00) (the "**Representation Basket**"); and then only to the extent of such excess. In addition, in no event will Seller's liability for all such breaches exceed, in the aggregate, the sum of Ten Million 00/100 Dollars (\$10,000,000.00) (the "**Representation Cap**"). Notwithstanding anything contained herein to the contrary, Harsimus shall be solely liable for a breach of the representations and warranties set forth in Section 8.1, Columbia shall be solely liable for a breach of the representations and warranties set forth in Section 8.2, and Seller shall be solely liable for a breach of its representations and warranties set forth in Section 8.3. None of Harsimus, Columbia or Seller shall have any liability with respect any representation, warranty and covenant herein which may have been made by any of them,

respectively, if, prior to the Closing, Purchaser has actual knowledge of a breach of such representation, warranty or covenant by such party and Purchaser nevertheless consummates the transaction contemplated by this Agreement. The Closing Surviving Obligations will survive Closing without limitation unless a specified period is otherwise provided in this Agreement. All other representations, warranties, covenants and agreements made or undertaken by Harsimus, Columbia, or Seller under this Agreement, unless otherwise specifically provided herein, will not survive the Closing Date but will be merged into the LLC Assignment and Assumption and other Closing documents delivered at the Closing.

Section 8.6 **Updates and Additional Representation/Warranty Matters**

(a) At the Closing, each Seller Entity and Seller shall deliver to Purchaser a certificate (each, an "**Update Certificate**") updating any or all of the representations and warranties made by each such party in this Agreement. The updates contained in the Update Certificate shall in no way affect Purchaser's obligations to close this transaction unless (x) any update reveals a breach on the part of a Seller Entity or Seller under this Agreement, in which case Purchaser may pursue its remedies set forth in Section 13.1(a) and (b) of this Agreement, or (y) any update (or group of updates, in the aggregate) has a material adverse effect upon the Property or Seller's LLC Interests and does not reveal a breach on the part of any Seller or Seller Entity, in which case Purchaser may either (i) close this transaction without any adjustment in the Purchase Price, or (ii) terminate this Agreement upon written notice to Seller, whereupon the Earnest Money Deposit shall be returned to Purchaser and neither party hereto shall have any further rights under this Agreement other than with respect to the Termination Surviving Obligations. Purchaser shall have no ability to update its representations and warranties set forth in Section 8.4 at Closing, it being agreed that any modification to Purchaser's representations and warranties set forth in this Agreement shall have a material adverse effect upon Purchaser's ability and/or authority to consummate this transaction.

(b) Notwithstanding anything in this Agreement to the contrary, including, without limitation, the provisions of Sections 8.1(c) and (d), Sections 8.2(c) and (d), Section 8.3(a), Section 9.1(j) and Section 9.2(g), Purchaser hereby acknowledges that Harsimus, Columbia and Seller have not made, and are not making, either individually or collectively, any representations or warranties whatsoever in this Agreement as to whether or not the approval and consent of the Municipal Council of the City is required in connection with the consummation of the transactions contemplated by this Agreement.

## ARTICLE IX

### CONDITIONS PRECEDENT TO CLOSING

Section 9.1 **Conditions Precedent to Obligation of Purchaser.** The obligation of Purchaser to consummate the transaction hereunder shall be subject to the fulfillment on or before the Scheduled Closing Date of all of the following conditions, any or all of which may be waived by Purchaser in its sole discretion:

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(a) Seller shall have delivered to Escrow Agent all of the items required to be delivered to Purchaser pursuant to the terms of this Agreement, including but not limited to, those provided for in Section 10.3.

(b) Subject to the provisions of Section 8.6(a), all of the representations and warranties of each Seller Entity and Seller contained in this Agreement shall be true and correct in all material respects as of the Closing Date.

(c) Seller shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Seller as of the Closing Date.

(d) Schwab shall not have commenced a voluntary case, or had entered against it a petition, for relief under any federal bankruptcy act or any similar petition, order or decree under any federal or state law or statute relative to bankruptcy, insolvency or other relief for debtors, during the period from the Effective Date to, and including, the Closing Date.

(e) The Amended Financial Agreement shall be in full force and effect.

(f) No temporary restraining order, preliminary or permanent injunction or other order or decree issued by any court of competent jurisdiction or other legal restraint or prohibition (collectively, "**Legal Restraints**") that has the effect of preventing the consummation of the transaction contemplated hereby shall be in effect.

(g) The CREA and the CRA shall have been recorded against the Real Property.

(h) Title to the Real Property and Improvements shall be in the condition required pursuant to Article VI of this Agreement.

(i) The Excluded Real Property shall have been, or simultaneously with the Closing shall be, conveyed to 8/9 Transferee.

(j) The Approvals shall have been obtained.

(k) The Permit Condition shall have been satisfied.

(l) The Retained Entity shall have contributed the Retained Interest to Purchaser pursuant to the Retained Interest Assignments, and if required, Harsimus shall have consented thereto.

(m) Purchaser shall have received an estoppel certificate executed by Schwab certifying as to the items specified in the first sentence of Section 9.02 of the Schwab Lease (the "**Threshold Estoppel Certificate**"). Notwithstanding the foregoing, Seller agrees to request an estoppel certificate from Schwab certifying as to the items specified in the first sentence of Section 9.02 of the Schwab Lease and such other items concerning the Schwab Lease as

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Purchaser may reasonably request ("**Purchaser's Proposed Estoppel Certificate**"), but it shall only be a condition to Closing that the Threshold Estoppel Certificate be delivered on the Closing Date. Promptly following the parties' agreement as to the form of the Purchaser's Proposed Estoppel Certificate, Seller will request that Schwab execute Purchaser's Proposed Estoppel Certificate and will otherwise reasonably cooperate with Purchaser to facilitate Schwab's execution of Purchaser's Proposed Estoppel Certificate including, without limitation, making introductions and arranging meetings between Purchaser and Schwab, to the extent reasonably requested by Purchaser (it being understood however, that in connection with such cooperation Seller shall not be obligated to expend more than a *de minimis* amount, nor shall Seller be obligated to commence any litigation, arbitration or other proceeding). Seller shall not be in default of its obligations hereunder if Tenant fails to deliver the Threshold Estoppel Certificate, it being agreed that such failure shall merely constitute the failure of a condition precedent to Purchaser's obligation to close this transaction. Anything to the contrary contained herein notwithstanding, Purchaser obtaining the Threshold Estoppel Certificate shall only be a condition precedent to Purchaser's obligations hereunder if the Existing Escrow Schwab Amendment does not become effective on the Closing Date pursuant to the terms of the escrow agreement between Schwab and Purchaser.

(n) The Amended Leases shall have been, or simultaneously with the Closing shall be, recorded against the Real Property.

(o) The receipt from the Planning Board of the City (the "**Planning Board**") of a modification of the resolution previously passed by the Planning Board which authorized the subdivision of Plazas, 8, 9 and 10, which modification expressly approves the deviations or grants a variance from the yard set-back requirements for the West and South sides of the Building.

Section 9.2 **Conditions Precedent to Obligations of Seller.** The obligation of Seller to consummate the transaction hereunder shall be subject to the fulfillment on or before the Scheduled Closing Date of all of the following conditions, any or all of which may be waived by Seller in its sole discretion:

(a) Seller shall have received the Purchase Price as adjusted pursuant to, and payable in the manner provided in, this Agreement (including, without limitation, a credit against the Purchase Price in the amount of the Earnest Money Deposit).

(b) Purchaser shall have delivered to Escrow Agent (to the extent directed by Seller to do so) and/or Seller, as the case may be, all of the items required to be delivered to Seller pursuant to the terms of this Agreement, including but not limited to, those provided for in Section 10.2.

(c) All of the representations and warranties of Purchaser contained in this Agreement shall be true and correct in all material respects as of the date of Closing.

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- (d) Purchaser shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Purchaser as of the Closing Date.
- (e) On the Closing Date, Purchaser shall cause PXL A (as reconstituted on the Closing Date with Purchaser as the indirect owner thereof) to execute and deliver the Property Management Agreement (as hereinafter defined).
- (f) The CREA and the CRA shall have been recorded against the Real Property.
- (g) The Approvals shall have been obtained.
- (h) No Legal Restraint that has the effect of preventing the consummation of the transaction contemplated hereby shall be in effect.
- (i) Intentionally Omitted.
- (j) The Retained Entity shall have contributed the Retained Interest to Purchaser pursuant to the Retained Interest Assignments, and if required, Harsimus shall have consented thereto.
- (k) MCRLP and Columbia shall have been released by Schwab from all liability under all guarantees related to the Schwab Lease and the Right of First Offer and Expansion Agreements shall have been released by Schwab, all such releases of guarantees and agreements being attached hereto as **Exhibit 9.2(k)** (collectively, the "**Schwab Release Documents**").
- (l) The payment to Harsimus of a termination payment of One Million Six Hundred Thousand and 00/100 Dollars (\$1,600,000) (the "**Option Termination Payment**") in consideration for the termination of Harsimus' right to participate in the option granted under the Option Agreement.

Section 9.3 **Failure of Condition.** If, by the Scheduled Closing Date, any of the conditions set forth in (i) Section 9.1 above are not performed or satisfied for any reason whatsoever or, alternatively, are not expressly waived by Purchaser in writing, then, except as expressly provided below, Purchaser's sole remedy shall be to terminate this Agreement, whereupon the Earnest Money Deposit shall be returned to Purchaser and neither party hereto shall have any further rights under this Agreement other than with respect to the Termination Surviving Obligations, and (ii) Section 9.2 above are not performed or satisfied for any reason whatsoever or, alternatively, are not expressly waived by Seller in writing, then, except as expressly provided below, Seller's sole remedy shall be to terminate this Agreement, whereupon the Earnest Money Deposit shall be returned to Purchaser and neither party hereto shall have any further rights under this Agreement other than with respect to the Termination Surviving Obligations. Notwithstanding the foregoing, (x) if any of the conditions set forth in Section 9.1

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are not performed or satisfied by the Scheduled Closing Date by reason of a default by Seller under the other provisions of this Agreement, then Purchaser shall be entitled to the remedies set forth in Section 13.1(a) below, and (y) if any of the conditions set forth in Section 9.2 are not performed or satisfied by the Scheduled Closing Date by reason of a default by Purchaser under the other provisions of this Agreement, then Seller shall be entitled to the remedies set forth in Section 13.2 below.

## ARTICLE X

### CLOSING

Section 10.1 **Closing.** The consummation of the transaction contemplated by this Agreement by delivery of documents and payments of money shall take place at 1:00 p.m. Eastern Time on the Scheduled Closing Date at the offices of Fried, Frank, Harris, Shriver & Jacobson, located at One New York Plaza, New York, New York. Notwithstanding anything in this Agreement to the contrary, including, without limitation, Seller's right to adjourn the Scheduled Closing Date set forth in Section 6.3(a), the Scheduled Closing Date shall be adjourned to no later than November 15, 2003 (the "**Outside Closing Date**"). If the Closing does not occur by the Outside Closing Date, this Agreement shall automatically terminate and shall be of no further force and effect, whereupon (x) the Earnest Money Deposit shall be returned to Purchaser, unless the failure of the Closing to occur by the Outside Closing Date is due to a default by either party, in which event the provisions of Article XIII shall apply, and (y) neither party hereto shall have any further rights under this Agreement other than with respect to the Termination Surviving Obligations. At Closing, the events set forth in this Article X will occur, it being understood that the performance or tender of performance of all matters set forth in this Article X are mutually concurrent conditions which may be waived by the party for whose benefit they are intended. The acceptance of the LLC Assignment and Assumption by Purchaser shall be deemed to be full performance and discharge of each and every agreement and obligation on the part of Seller to be performed hereunder, other than the Closing Surviving Obligations. The acceptance of the Purchase Price by Seller shall be deemed to be full performance and discharge of each and every agreement and obligation on the part of the Purchaser to be performed hereunder, other than the Closing Surviving Obligations. The parties agree to provide all of the documents required under Sections 10.2 and 10.3 to the Escrow Agent, in escrow, at least one day prior to the Scheduled Closing Date.

Section 10.2 **Purchaser's Closing Obligations.** On the Scheduled Closing Date, Purchaser, at its sole cost and expense, will deliver (or cause to be delivered) the following items to Seller at Closing as provided herein (unless the delivery thereof shall have been waived in writing by Seller):

- (a) the Purchase Price, after all adjustments are made as herein provided (including, without limitation, a credit against the Purchase Price in the amount of the Earnest Money Deposit), by Federal Reserve wire transfer of immediately available funds, in accordance with the timing and other requirements of Section 3.2;

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- (b) documents evidencing the authority of Purchaser to consummate the transactions contemplated by this Agreement, including, without limitation, evidence that the person executing the LLC Assignment and Assumption on behalf of Purchaser has full right, power and authority to do so;
- (c) a counterpart original of the LLC Assignment and Assumption, duly executed by Purchaser;
- (d) written notice executed by Purchaser and addressed and delivered to Schwab by Purchaser in accordance with Section 10.6 herein, (i) acknowledging the sale of Seller's LLC Interest to Purchaser, (ii) indicating that rent should thereafter be paid in accordance with the instructions set forth therein, and (iii) providing a revised address for notice purposes under the Schwab Lease (the "**Tenant Notice Letter**"), in the form annexed hereto as **Exhibit 10.2(d)**;
- (e) a counterpart original of the Closing Statement, duly executed by Purchaser;
- (f) a property management agreement in the form annexed hereto as **Exhibit 10.2(f)** (the "**Property Management Agreement**"), executed by PXL A (as reconstituted on the Closing Date with Purchaser as the indirect owner thereof), pursuant to which Mack-Cali Realty, L.P. ("**MCRLP**") or its designee will be retained as the management agent for the Property from and after the Closing;

(g) a certificate, dated as of the date of Closing, stating (i) that the representations and warranties of Purchaser contained in Section 8.4 are true and correct in all material respects as of the Closing Date;

(h) if applicable, all transfer and other tax declarations and returns and information returns as may be required by law in connection with the conveyance of Seller's LLC Interest to Purchaser, including, but not limited to, IRS Forms (collectively, "**Transfer Tax Forms**"), duly executed and sworn to by Purchaser;

(i) evidence of the authorization of the transactions contemplated hereby, including a Secretary's Certificate certifying to the formation and good standing (or equivalent thereof) of Purchaser and proof of any required partner or member consents or approvals, together with such evidence as the Title Company may reasonably require as to the authority of the persons executing documents on behalf of Purchaser;

(j) a counterpart original of the Retained Interest Assignment to Purchaser, duly executed by Purchaser;

(k) Fully-executed counterpart originals of the Schwab Release Documents;

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(l) a guaranty duly executed by Post-Transfer AFE in the form annexed hereto as Exhibit 10.2(l), pursuant to which Post-Transfer AFE shall guaranty the Closing Surviving Obligations of Purchaser (the "**AFE Guaranty**");

(m) an Amended and Restated Limited Liability Company Agreement of Post-Transfer AFE dated as of the Closing Date which agreement has been duly executed by Purchaser (the "**Reconstituted AFE Agreement**");

(n) an agreement, duly executed by Purchaser (the "**Option Agreement**"), pursuant to which the Retained Entity shall be granted the right to purchase Purchaser's equity interests in Post Transfer AFE upon the terms and conditions mutually satisfactory to the parties thereto and more particularly set forth therein;

(o) an amended and restated limited liability company agreement for Purchaser, duly executed by the iStar Harborside Member LLC or its affiliate, upon terms and conditions mutually satisfactory to the parties thereto (the "**Purchaser LLC Agreement**");

(p) a guaranty duly executed by iStar in the form annexed hereto as Exhibit 10.2(p) pursuant to which iStar shall guaranty Purchaser's obligations under Article XX.

(q) the Option Termination Payment shall be paid to Harsimus; and

(r) such other documents as may be reasonably necessary or appropriate to effect the consummation of the transaction which is the subject of this Agreement.

**Section 10.3 Seller's Closing Obligations.** On the Scheduled Closing Date, Seller (and/or each of the Seller Entities, as the case may be) will deliver (or cause Property Owner to deliver) to Purchaser the following documents (unless the delivery thereof shall have been waived in writing by Purchaser):

(a) an assignment and assumption of Seller's LLC Interest in the form annexed hereto as Exhibit 10.3(a) (the "**LLC Assignment and Assumption**"), free and clear of liens and encumbrances, duly executed by each of the Seller Entities, conveying to Purchaser all of Seller's LLC Interest;

(b) the Tenant Notice Letter, duly executed by PXL A;

(c) (i) evidence of the authorization of the transactions contemplated hereby (including without limitation, the transfer of the Seller's LLC Interests, transfer of the Excluded Real Property to 8/9 Transferee, the Option Agreement and Purchaser LLC Agreement), including without limitation, Secretary's or Member's Certificates certifying to the formation and good standing (or equivalent thereof) of each of the Seller Entities, AFE, PXR, PXURA and PXL A (and Columbia's affiliates with respect to the Retained Interest Assignments, the Option Agreement and Purchaser LLC Agreement), certifying and annexing all charter documents of all parties controlling such entities and any and all partner, member or board consents or approvals required by such charter documents, together with such other evidence as the Title Company or Purchaser may reasonably require as to the due authority of the persons executing documents on

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(d) behalf of the applicable entities to execute such documents; and (ii) evidence of the authorization of the transactions contemplated hereby (including without limitation, the transfer of the Seller's LLC Interests, transfer of the Excluded Real Property to 8/9 Transferee and the Option Agreement), including, without limitation, Secretary's or Member's certificates certifying to the formation and good standing (or equivalent thereof) of MCRLP and 8/9 Transferee, certifying and annexing all charter documents of all parties controlling such entities and any and all partner, member or board consents or approvals required by such charter documents, together with such other evidence as the Purchaser may reasonably require as to the due authority of the persons executing documents on behalf of the applicable entities to execute such documents;

(e) a certificate in the form annexed hereto as Exhibit 10.3(d) ("**Certificate as to Foreign Status**") certifying that each of Seller and Retained Entity is not a "foreign person" as defined in Section 1445 of the Code;

(f) the Personal Property and originals (or if not in Seller's possession, copies) of the: (v) Construction Agreements, (w) Financial Agreement and the Amended Financial Agreement (together with all exhibits thereto), (x) Schwab Lease, (y) Licenses and Permits, and (z) Leasing Commission Agreements, all of which Licenses and Permits, Leasing Commission Agreements and Personal Property may remain on site at the Property and need not be delivered to the location of the Closing;

(g) if applicable, a counterpart original of the Transfer Tax Forms, duly executed and sworn to by Seller;

(h) a counterpart original of the Closing Statement, duly executed by Seller;

(i) copies of any operating files maintained by Property Owner or its property manager in connection with the development, leasing, maintenance, and/or management of the Property, including, without limitation, plans, specifications, operating agreements, bills, invoices, receipts, real estate tax records and information and other general records relating to the income and expenses of the Property;

(j) a guaranty duly executed by 8/9 Transferee (the "**8/9 Transferee Guaranty**"), in the form annexed hereto as Exhibit 10.3(j), pursuant to which 8/9 Transferee shall (in addition to other matters provided in Section 7.1(b)(ii) hereof) guaranty the obligations and liabilities of Seller which are expressly set forth in (A) Section 8.5 of this Agreement, subject, however, in all respects, to the provisions of said Section 8.5 of this Agreement, (B) Article XV of this Agreement, subject, however, in all respects, to the provisions of said Article XV, (C) Article XIX of this Agreement, subject, however, in all respects, to the provisions of said Article XIX, and (D) the Closing Surviving Obligations (collectively, the "**8/9 Guaranty Provisions**");



(k) a guaranty duly executed by MCRLP in the form annexed hereto as **Exhibit 10.3 (j)**, pursuant to which MCRLP shall guaranty Seller's obligations under **Section 7.2** and Article XX;

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- (l) subject to the provisions of **Section 8.6(a)**, a certificate, dated as of the date of Closing, stating that all of the representations and warranties of Seller contained in this Agreement are true and correct in all material respects as of the Closing Date;
- (m) evidence reasonably satisfactory to Purchaser that 8/9 Transferee is the owner of the Excluded Real Property on and as of the Closing;
- (n) Seller's, Property Owner's or Retained Entity's title affidavit and if not in the title affidavit, Seller's, Property Owner's or Retained Entity's affidavit required in connection with the Non-Imputation Endorsement, all as reasonably required by the Title Company and reasonably acceptable to each Seller Entity, Property Owner and Retained Entity, as the case may be;
- (o) Intentionally Omitted.
- (p) the keys to the Building;
- (q) a counterpart original of the Property Management Agreement, duly executed by MCRLP or its designee;
- (r) a counterpart original of the Option Agreement, duly executed by the Retained Entity;
- (s) a counterpart original of the Retained Interest Assignments duly executed by Columbia and the Retained Entity, as applicable, together with Harsimus' consent thereto if required;
- (t) a counterpart original of the Purchaser LLC Agreement duly executed by the Retained Entity;
- (u) counterpart originals of the Schwab Release Documents executed by Seller or its affiliates to the extent required;
- (v) the Amended Leases shall have been, or simultaneously with the Closing shall be, recorded against the Real Property; and
- (w) such other documents as may be reasonably necessary or appropriate to effect the consummation of the transaction which is the subject of this Agreement.

(x) At the Closing, Seller shall deliver to, and certify to, Purchaser a list of Additional Charges (as such term is defined in the Schwab Lease), under Article 4 of the Schwab Lease (collectively, "**Operating Expenses**") billed to Schwab for the calendar year in which the Closing occurs (both on a monthly basis and in the aggregate through the month prior to the month in which the Closing occurs if the Closing occurs on or after the fifteenth (15<sup>th</sup>) day of the month, and if the Closing occurs prior to the fifteenth (15<sup>th</sup>) day of the month, through the month that is two (2) months prior to the month in which the Closing occurs (e., if the Closing occurs

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on November 10, 2003, through September 2003), the monthly amounts being billed for Operating Expenses and the amounts incurred by Seller on account of the components of Operating Expenses for such portion of such calendar year.

Section 10.4 **Prorations.**

- (a) Seller and Purchaser agree to adjust, as of 11:59 p.m. on the day preceding the Closing Date (the "**Proration Time**"), the following (collectively, the "**Proration Items**"):
- (i) Rentals, in accordance with **Section 10.4(b)** below;
- (ii) utility charges payable by Seller, AFE, PXURA, PXR, PXLA if any, including, without limitation, electricity, water charges and sewer charges. If there are meters on the Real Property, Seller will cause readings of all said meters to be performed not more than five (5) days prior to the Closing Date, and a per diem adjustment shall be made for the days between the meter reading date and the Closing Date based on the most recent meter reading;
- (iii) all real estate ad valorem and personal property taxes, including, without limitation, all PILOT Payments (as such term is defined in the Schwab Lease) sewer rents and charges and other state, country, school district, municipal and other governmental and quasi-governmental taxes and charges, due and payable by Seller, AFE, PXURA, PXR, PXLA for the calendar year in which the Closing occurs;
- (iv) Purchaser's Share of the Contribution Amount (as hereinafter defined) and the PILOT Service Charge (as hereinafter defined), in accordance with **Section 10.4(e)** below;
- (v) charges and payments under service contracts owed by Seller, AFE, PXURA, PXR, PXLA to the extent that the charges and payment refer to periods including the Closing Date; and
- (vi) such other items of income and expense as are typically prorated at closing similar to the transaction contemplated by this Agreement.

Seller will be charged and credited for the amounts of all of the Proration Items relating to the period up to and including the Proration Time, and Purchaser will be charged and credited for the amounts of all of the Proration Items relating to the period after the Proration Time. The estimated Closing prorations being adjusted pursuant to this Agreement shall be set forth on a preliminary closing statement to be prepared by Seller and submitted to Purchaser two (2) days prior to the Closing Date (the "**Closing Statement**"). The Closing Statement, once agreed upon, shall be signed by Purchaser and Seller. The prorations being adjusted pursuant to this Agreement shall be paid at Closing by Purchaser to Seller (if the prorations result in a net credit to Seller) or by Seller to Purchaser (if the prorations result in a net credit to Purchaser) by increasing or reducing the cash to be delivered by Purchaser in payment of the Purchase Price at the Closing. If the actual amounts of the Proration Items are not known as of the Closing Date,

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the prorations will be made at Closing on the basis of the best evidence then available; thereafter, when actual figures are received, re-prorations will be made on the basis of the actual figures, and a final cash settlement will be made between Seller and Purchaser. No prorations will be made in relation to insurance premiums, and Seller's insurance policies will not be assigned to Purchaser. Final readings and final billings for utilities will be made if possible as of the Closing Date, in which event no proration will be made at the Closing with respect to utility bills. Seller will be entitled to all deposits presently in effect with the utility providers, and Purchaser will be obligated to make its own arrangements for any deposits with the utility providers, but Seller will, if necessary, maintain such deposits until such time as Purchaser can post its own deposits (but in no event longer than thirty (30) days after Closing) so that such utility service will not be discontinued to the Property. No later than September 30, 2005, Seller and Purchaser will jointly and in good faith prepare a final closing statement reasonably satisfactory in form and substance to Seller and Purchaser (the "**Final Closing Statement**") setting forth the final determination of the adjustments and prorations provided for herein.

(b) Purchaser will receive a credit on the Closing Statement for the prorated amount (as of the Proration Time) of all Rental previously paid to or collected by Seller and attributable to any period following the Proration Time. After the Closing, Seller will cause to be paid or turned over to Purchaser all Rental, if any, received by Seller after Closing and attributable to any period following the Proration Time. "**Rental**" as used herein means all Rent (as such term is defined in the Schwab Lease) paid under the Schwab Lease. Rental is "**Delinquent**" when it was due prior to the Closing Date, and payment thereof has not been made on or before the Proration Time. Delinquent Rental will not be prorated. Purchaser agrees to use good faith collection procedures with respect to the collection of any Delinquent Rental, but Purchaser will have no liability for the failure to collect any such amounts and will not be required to pursue legal action to enforce collection of any such amounts owed to Seller by any tenant. All sums collected by Purchaser from and after Closing from Schwab will be applied first to current amounts owed by Schwab to Purchaser and then to delinquencies owed by Schwab to PXLA. Any sums due Seller will be promptly remitted to Seller.

(c) With respect to specific tenant billings for work orders, special items performed or provided at the request of Schwab or other specific services, which are collected by Purchaser after the Closing Date but relate to the foregoing specific services rendered by Seller prior to the Proration Time, then notwithstanding anything to the contrary contained herein, Purchaser shall cause the first amounts collected from Schwab specifically for such special services (as opposed to regular scheduled rental payments) to be paid to Seller on account thereof, so long as Seller identifies same prior to Closing.

(d) Seller shall be liable and solely responsible for the payment of all of the leasing commissions due and owing with respect to the initial term of the Schwab Lease (the "**Initial Term Schwab Commissions**"). Purchaser shall be liable and solely responsible for all leasing commissions payable under the Leasing Commission Agreements or otherwise with respect to any renewals or extensions of the Schwab Lease (the "**Renewal Term Schwab Commissions**"), as well as, subject to the provisions of Section 18.2 of this Agreement, the Work Allowance and the Additional Work Allowance (as such terms are defined in the Schwab

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Lease) and all tenant improvement costs or other expenditures due with respect to any amendments, renewals and/or extensions of the Schwab Lease first arising, accruing and payable following the Closing Date, as set forth in the Schwab Lease or in documents provided to Purchaser prior to Closing and in any documents or pursuant to any agreements (whether written or oral entered into after the Closing by Purchaser or Property Owner), and all of the leasing commissions, tenant improvement costs and other expenditures due and owing with respect to Schwab's exercise of Schwab's Expansion Options.

(e) Prior to the Closing Date, Seller (or Property Owner) shall have pre-paid to the applicable Authority the amount of One Million Five Hundred Seventy-Six Thousand Four Hundred Nineteen and 00/100 Dollars (\$1,576,419.00) (the "**PILOT Service Charge**") as and for the annual service charge required to be paid in connection with the PILOT. In addition, Purchaser hereby acknowledges that Property Owner has entered into the Contribution Agreement and in connection therewith, the amount of Three Hundred Ninety-Nine Thousand Seven Hundred and No/100 (\$399,700.00) (the "**Contribution Amount**") has been paid to the City. Seller will receive a credit on the Closing Statement (x) in an amount equal to fifty percent (50%) of the Contribution Amount ("**Purchaser's Share of the Contribution Amount**"), and (y) in an amount equal to the PILOT Service Charge less that amount of the PILOT Service Charge, if any, which was amortized by Seller (and/or Property Owner) prior to the Closing Date (it being understood that the PILOT Service Charge shall be amortized on a straight-line basis commencing on the date of the first PILOT Payment made under the Financial Agreement (excluding the PILOT Service Charge for purposes of determining such first PILOT Payment)).

(f) At the Closing, Purchaser shall receive a credit against the Purchase Price in an amount calculated in accordance with Schedule 10.4(f), pro-rated for a partial month (the "**Rent Shortfall Credit**").

(g) The provisions of this Section 10.4 shall survive the Closing indefinitely.

**Section 10.5** Costs of Title Company and Closing Costs Costs of the Title Company and other Closing costs incurred in connection with the Closing will be allocated as follows:

(a) Seller shall pay (i) all state or county documentary stamps on transfer taxes and recording fees and changes necessary or required in connection with the LLC Assignment and Assumption, if any; (ii) Seller's attorney's fees; (iii) one-half (1/2) of escrow fees, if any; and (iv) any and all fees required to be paid to the City and/or the Jersey City Redevelopment Authority in connection with obtaining the Approvals from such party for this transaction, including any fees required to be paid for its consent to the transaction contemplated by this Agreement, if such consent is necessary, including any related fees required by, or increases in the amounts payable under, the Financial Agreement in order for the tax exemption to remain in full force and effect, including any fees (or increases in amounts payable under the Financial Agreement) required for obtaining the approval of the transaction contemplated by this Agreement by means of the Ordinance.

(b) Purchaser shall pay (i) the cost of the premium for its Title Policy and customary title searches, together with all costs of any additional coverage under its Title Policy

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or endorsements (including, without limitation, the Non-Imputation Endorsement) to its Title Policy that are desired by Purchaser; (ii) all premiums and other costs for any mortgagee policy of title insurance, if any, including but not limited to any endorsements or deletions; (iii) Purchaser's attorney's fees; (iv) one-half (1/2) of escrow fees, if any; and (v) the costs of the Survey, as provided for in Section 6.1.

(c) The provisions of this Section 10.5 shall survive the Closing indefinitely.

**Section 10.6** Post-Closing Delivery of Tenant Notice Letters. Immediately following Closing, Purchaser will deliver to Schwab a Tenant Notice Letter, as described in Section 10.2(d). The provisions of this Section 10.6 shall survive the Closing indefinitely.

**Section 10.7** Like-Kind Exchange. In the event that either Seller shall elect to effectuate the Closing as a "like-kind" exchange under Section 1031 of the Code, Purchaser agrees to cooperate and assist such Seller in all reasonable respects (with no adjustment to the Closing Date hereunder) in order that the exchange so qualifies as a "like-kind" exchange under Section 1031 of the Code and the Treasury Regulations promulgated, or to be promulgated, thereunder: provided, however, that Seller shall reimburse Purchaser for any reasonable out-of-pocket attorneys' fees (other than incidental, *de minimis* expenses and attorneys' fees).

## ARTICLE XI

### CONDEMNATION AND CASUALTY

Section 11.1 **Casualty.** If, prior to the Scheduled Closing Date, all or a Significant Portion of the Real Property and Improvements is destroyed or damaged by fire or other casualty, Seller will notify Purchaser of such casualty. Purchaser will have the option to terminate this Agreement upon notice to Seller given not later than fifteen (15) days after receipt of Seller's notice. If this Agreement is terminated, the Earnest Money Deposit will be returned to Purchaser and thereafter neither Seller nor Purchaser will have any further rights or obligations to the other hereunder except with respect to the Termination Surviving Obligations. If Purchaser does not elect to terminate this Agreement or less than a Significant Portion of the Real Property and Improvements is destroyed or damaged as aforesaid, neither Seller nor the Property Owner will be obligated to repair such damage or destruction but (a) Seller will (or will cause Property Owner to) (i) turn over to Purchaser the insurance proceeds net of reasonable collection costs (or if such have not been awarded, all of its right, title and interest therein) payable with respect to such fire or other casualty and (ii) assign to AFE (as reconstituted on the Closing Date with Purchaser as the direct or indirect owner therein), without any representation, warranty or recourse whatsoever, all of Property Owner's rights, if any, to any payments to be made (after the Closing Date) with respect to the Property under any applicable rental loss insurance policies in effect on the Closing Date, and (b) the parties will proceed to Closing pursuant to the terms hereof without abatement of the Purchase Price, except that Purchaser will receive credit for any insurance deductible amount. In the event Seller or Property Owner elects to perform any repairs as a result of a casualty prior to Closing, (i) the performance thereof shall be subject, except in the case of emergency or to perform repairs required by applicable law, to Purchaser's consent, not to be unreasonably withheld, conditioned or delayed, and (ii) Seller will

be entitled to deduct its costs and expenses from any amount to which Purchaser is entitled under this Section 11.1, which right shall survive the Closing. Neither Seller nor Property Owner will have any right to elect to perform any repairs after the Closing.

Section 11.2 **Condemnation of Property.** In the event of any condemnation or sale in lieu of condemnation of all or that portion of the Property which entitles Schwab to terminate the Schwab Lease pursuant to Section 10.04 thereof (a "**Material Taking**"), Purchaser will have the option, to be exercised within fifteen (15) days after receipt of notice of such condemnation or sale, of terminating Purchaser's obligations under this Agreement, or electing to have this Agreement remain in full force and effect. In the event that either (i) any condemnation or sale in lieu of condemnation of the Property is not a Material Taking, or (ii) Purchaser does not terminate this Agreement pursuant to the preceding sentence, Seller will (or will cause Property Owner to) turn over to Purchaser any and all claims for the proceeds of such condemnation or sale to the extent the same are applicable to the Property, and Purchaser will take title to the Property subject to such condemnation and without reduction of the Purchase Price. Should Purchaser elect to terminate Purchaser's obligations under this Agreement under the provisions of this Section 11.2, the Earnest Money Deposit will be returned to Purchaser and neither Seller nor Purchaser will have any further obligation under this Agreement, except for the Termination Surviving Obligations. Purchaser hereby acknowledges and agrees that the Dedication shall not constitute a Material Taking and Purchaser shall have no rights whatsoever pursuant to the provisions of this Section 11.2 with respect to the Dedication.

## ARTICLE XII

### CONFIDENTIALITY

Section 12.1 **Confidentiality.** Seller and Purchaser each expressly acknowledge and agree that the transactions contemplated by this Agreement and the terms and conditions concerning the same will be held in confidence by each of them and will not be disclosed by either of them except to their respective legal counsel, accountants, consultants, officers, partners, directors, and shareholders and municipal officials with the City with whom Purchaser is permitted to discuss the transaction contemplated herein, or as otherwise permitted hereunder (including, without limitation, Section 5.2(b)), and except and only to the extent that such disclosure may be necessary or advisable for their respective performances hereunder. Purchaser further acknowledges and agrees that, unless and until the Closing occurs, all information obtained by Purchaser in connection with the Property will not be disclosed by Purchaser to any third persons (other than Licensee Parties) without the prior written consent of Seller, unless such disclosure is required by law, rule or regulation. Nothing contained in this Article XII will preclude or limit either party to this Agreement from disclosing or accessing any information otherwise deemed confidential under this Article XII or this Agreement in response to lawful process or subpoena or other valid or enforceable order of a court of competent jurisdiction or any filings with governmental authorities required by reason of the transactions provided for herein pursuant to an opinion of counsel. In addition, prior to or as a part of the Closing, any release to the public of information with respect to the sale contemplated herein or any matters set forth in this Agreement will be made only in the form approved by Purchaser and Seller and

their respective counsel, which approval shall not be unreasonably withheld or delayed. Subject to preceding 2 sentences of this Section 12.1, Seller and/or Seller's Affiliates shall not name Purchaser, Purchaser's Affiliates, iStar or any iStar affiliates in any public statements or governmental filings related to the transactions contemplated by this Agreement, including, without limitation, press releases, brochures, marketing materials or other written, oral, digital or electronic communications; provided, however, in describing the transactions contemplated by this Agreement, Seller and Seller's Affiliates may refer to Purchaser, Purchaser's Affiliates, iStar or any iStar affiliates as an "institutional real estate buyer". Notwithstanding anything to the contrary provided herein, in no event shall Seller and/or Seller's Affiliates be liable under this Section 12.1 for any disclosure of Purchaser's, iStar's or any iStar affiliates' involvement in the transactions contemplated by this Agreement to the extent such involvement becomes public knowledge (and only to the extent of such public knowledge) other than as a result of a disclosure by Seller and/or Seller's Affiliates. The provisions of this Article XII will survive the Closing or any termination of this Agreement. Nothing in this Article XII will negate, supersede or otherwise affect the obligations of the parties under the Confidentiality Agreement, and the provisions of this Article XII will survive the termination of this Agreement, and in the event of a conflict between the provisions of the Confidentiality Agreement and this Agreement, the provisions of this Agreement shall govern.

## ARTICLE XIII

### REMEDIES

#### Section 13.1 **Default by Seller.**

(a) In the event the Closing and the transactions contemplated hereby do not occur as herein provided by reason of any default of Seller under this Agreement, Purchaser may, as Purchaser's sole and exclusive remedy, elect by notice to Seller within ten (10) Business Days following the Scheduled Closing Date, either of the following: (i) to terminate this Agreement, in which event Purchaser will receive from the Escrow Agent the Earnest Money Deposit, and thereafter Seller and Purchaser will have no further rights or obligations under this Agreement, except with respect to the Termination Surviving Obligations; or (ii) seek to enforce specific performance of Seller's obligation to execute the documents required to convey Seller's LLC Interest to Purchaser, it being understood and agreed that the remedy of specific performance shall not be available to enforce any other obligation of Seller hereunder. Other than as expressly set forth in Section 13.1(b) below, Purchaser expressly waives its rights to seek damages in the event that the Closing does not occur by reason of Seller's default hereunder. Purchaser shall be deemed to have elected to terminate this Agreement and receive back the Earnest Money Deposit if Purchaser fails to file suit for specific performance against Seller in a court having jurisdiction in the county and state in which the Property is located, on or before ninety (90) days following the Scheduled Closing Date. Notwithstanding the foregoing as to the Termination Surviving Obligations, nothing contained in this Section 13.1 will limit Purchaser's remedies at law, in equity or as herein provided in pursuing remedies of a breach by Seller of any of the Termination Surviving Obligations. Purchaser specifically waives its rights to seek any punitive, speculative, or consequential damages.

(b) Notwithstanding Section 13.1(a) above, if Purchaser terminates this Agreement by reason of Seller's bad faith, willful default under this Agreement, then, in addition to the return of the Earnest Money Deposit, Purchaser shall be entitled to be reimbursed for Purchaser's actual out-of-pocket costs related to this transaction, including, without limitation, reasonable attorneys' and third party fees and reasonable expenses and reasonable due diligence expenses with respect to the purchase of the Property, the negotiation of this Agreement (and ancillary agreements) and obtaining the Title Report and any survey of the Property.

Section 13.2 **Default by Purchaser.** In the event the Closing and the consummation of the transactions contemplated herein do not occur as provided herein by reason of any default of Purchaser, Purchaser and Seller agree it would be impractical and extremely difficult to fix the damages which Seller may suffer. In such event, Escrow Agent shall pay the Earnest Money Deposit to each of Harsimus (or its designee) and Columbia (or its designee) by separate Federal Reserve wire transfers of immediately available funds to the account designated by each of them, the portion of the Earnest Money Deposit to which each of them is entitled, as set forth in a writing executed by Harsimus and Columbia and which shall be furnished to Escrow Agent, and Purchaser and Seller hereby agree that (a) an amount equal to the Earnest Money Deposit is a reasonable estimate of the total net detriment Seller would suffer in the event Purchaser defaults and fails to complete the purchase of the Property, and (b) such amount will be the full, agreed and liquidated damages for Purchaser's default and failure to complete the purchase of Seller's LLC Interest, and will be Seller's sole and exclusive remedy (whether at law or in equity) for any default of Purchaser resulting in the failure of consummation of the Closing, whereupon this Agreement will terminate and Seller and Purchaser will have no further rights or obligations hereunder, except with respect to the Termination Surviving Obligations. The payment of such amount as liquidated damages is not intended as a forfeiture or penalty but is intended to constitute liquidated damages to Seller. Notwithstanding the foregoing, as to the Termination Surviving Obligations, nothing contained herein will limit Seller's remedies at law, in equity or as herein provided in the event of a breach by Purchaser of any of the Termination Surviving Obligations. Seller specifically waives its rights to seek any punitive, speculative, or consequential damages.

## ARTICLE XIV

### NOTICES

#### Section 14.1 **Notices.**

(a) All notices or other communications required or permitted hereunder shall be in writing, and shall be given by any nationally recognized overnight delivery service (using the next business day delivery method) with proof of delivery, or by facsimile transmission (provided that such facsimile is confirmed by the sender by expedited delivery service in the manner previously described), sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee will have designated by written notice sent in accordance herewith. Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Agreement will be as follows:

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If to Purchaser: c/o iStar Financial Inc.  
1114 Avenue of the Americas  
New York, NY 10036  
Attn: H. Cabot Lodge III, Executive Vice President  
Nina B. Matis, Executive Vice President and General Counsel  
(212) 930-9400 (tele.)  
(212) 930-9494 (fax)

with a copy to : Katten Muchin Zavis Rosenman  
575 Madison Avenue  
New York, New York 10022-2585  
Attn: Ellen L. Shapiro, Esq.  
(212) 940-8800 (tele.)  
(212) 940-8776 (fax)

If to Seller: c/o Mack-Cali Realty Corporation  
11 Commerce Drive  
Cranford, New Jersey 07016

with separate notices to the attention of:

Attn: Mitchell E. Hersh  
(908) 272-8000 (tele.)  
(908) 272-0214 (fax)

and

Attn: Roger W. Thomas, Esq.  
(908) 272-2612 (tele.)  
(908) 497-0485 (fax)

and

Columbia Development Company, L.L.C.  
c/o Panepinto Properties Inc.  
30 Montgomery Street, 15<sup>th</sup> Floor  
Jersey City, New Jersey 07302  
Attn: Joseph A. Panepinto  
(201) 521-9000 (tele.)  
(201) 434-3218 (fax)

and

Garden State Development Inc.  
30 Montgomery Street, 15<sup>th</sup> Floor  
Jersey City, New Jersey 07302  
Attn: Peter G. Mangin  
(201) 521-9000 (tele.)  
(201) 434-3218 (fax)

with a copy to:

Fried, Frank, Harris, Shriver & Jacobson  
 One New York Plaza  
 New York, New York 10004  
 Attn: Andrew Dady, Esq.  
 (212) 859-8161 (tele.)  
 (212) 859-4000 (fax)

and

Greenbaum, Rowe, Smith, Ravin, Davis & Himmel LLP  
 99 Wood Avenue South  
 Woodbridge, New Jersey 08830  
 Attn: Robert Greenbaum, Esq.  
 (732) 549-5600 (tele.)  
 (732) 549-1881 (fax)

If to Escrow Agent: First American Title Insurance Company  
 633 Third Avenue  
 New York, New York 10017  
 Attn: Anthony Ruggeri  
 (212) 922-9700 (tele.)  
 (212) 922-0881 (fax)

(b) Notices given by (i) overnight delivery service as aforesaid shall be deemed received and effective on the first Business Day following such dispatch and (ii) facsimile transmission as aforesaid shall be deemed given at the time and on the date of machine transmittal provided same is sent and confirmation of receipt is received by the sender prior to 4:00 p.m. Eastern Standard Time on a Business Day (if sent later, then notice shall be deemed given on the next Business Day). Notices may be given by counsel for the parties described above, and such notices shall be deemed given by said party, for all purposes hereunder.

#### ARTICLE XV

#### BROKERAGE

Section 15.1 **Brokers.** Purchaser and Seller represent that they have not dealt with any brokers, finders or salesmen, in connection with this transaction, other than The Greenwich Group International LLC (the "**Broker**"). Purchaser and Seller shall each pay one half of any and all fees and commissions payable to the Broker on account of this transaction up to a maximum amount of five hundred thousand dollars (\$500,000) each. Purchaser and Seller agree to indemnify, defend and hold each other harmless from and against any and all loss, cost, damage, liability or expense, including reasonable attorneys' fees, which either party may sustain, incur or be exposed to by reason of any claim for fees or commissions made through the

other party on account of any broker, finder or salesman with whom they have dealt, including, with respect to Purchaser's indemnity in favor of Seller, any claims made by Broker against Seller with respect to the transactions contemplated by this Agreement in excess of \$500,000. The provisions of this Article XV will survive any Closing or termination of this Agreement.

#### ARTICLE XVI

#### ESCROW AGENT

##### Section 16.1 **Escrow.**

(a) Escrow Agent will hold the Earnest Money Deposit in escrow in an interest-bearing account of the type generally used by Escrow Agent for the holding of escrow funds until the earlier of (i) the Closing, or (ii) the termination of this Agreement in accordance with any right hereunder. The Earnest Money Deposit shall be non-refundable to Purchaser, except as otherwise set forth herein, and shall be credited against the Purchase Price at the Closing. All interest earned on the Earnest Money Deposit shall be paid to the party entitled to the Earnest Money Deposit. In the event the Closing occurs, the Earnest Money Deposit will be released to Seller, and Purchaser shall receive a credit against the Purchase Price in the amount of the Earnest Money Deposit. In all other instances, Escrow Agent shall not release the Earnest Money Deposit to either party until Escrow Agent has been requested by Seller or Purchaser to release the Earnest Money Deposit as follows: (i) if requested by Seller, then upon Seller's written demand therefore stating that Purchaser defaulted in the performance of Purchaser's obligations to close under this Agreement and the facts and circumstances forming the basis of such default and (ii) if requested by Purchaser, then upon Purchaser's written demand therefore, stating that Seller defaulted in the performance of Seller's obligations to close under this Agreement and the facts and circumstances forming the basis of such default; provided, that, in neither case shall Escrow Agent release the Earnest Money Deposit until five (5) Business Days following Escrow Agent's delivery of such written demand to the non-requesting party; provided, further, that if during such five (5) Business Days period, the non-requesting party shall have delivered to Escrow Agent a written dispute to the release of the Earnest Money Deposit, Escrow Agent shall not release the Earnest Money Deposit unless it receives further written direction signed by Seller and Purchaser. If no written dispute is so delivered, Escrow Agent shall disburse the Earnest Money Deposit as directed. Purchaser represents that its tax identification number, for purposes of reporting the interest earnings, is 03-0493637. Harsimov represents that its tax identification number, for purposes of reporting the interest earnings, is 22-3666122, and Columbia represents that its tax identification number, for purposes of reporting interest earnings, is 22-3571776.

(b) Escrow Agent shall not be liable to any party for any act or omission, except for bad faith, gross negligence or willful misconduct, and the parties agree to indemnify Escrow Agent and hold Escrow Agent harmless from any and all claims, damages, losses or expenses arising in connection herewith. The parties acknowledge that Escrow Agent is acting solely as stakeholder for their mutual convenience. In the event Escrow Agent receives written notice of a dispute between the parties with respect to the Earnest Money Deposit (the

otherwise directed in a writing signed by all parties hereto or (ii) deposit the Escrowed Funds with the clerk of any court of competent jurisdiction. Upon such deposit, Escrow Agent will be released from all duties and responsibilities hereunder. Escrow Agent shall have the right to consult with separate counsel of its own choosing (if it deems such consultation advisable) and shall not be liable for any action taken, suffered or omitted by it in accordance with the advice of such counsel.

(c) Escrow Agent shall not be required to defend any legal proceeding which may be instituted against it with respect to the Escrowed Funds, the Property or the subject matter of this Agreement unless requested to do so by Purchaser or Seller and is indemnified to its satisfaction against the cost and expense of such defense. Escrow Agent shall not be required to institute legal proceedings of any kind and shall have no responsibility for the genuineness or validity of any document or other item deposited with it or the collectibility of any check delivered in connection with this Agreement. Escrow Agent shall be fully protected in acting in accordance with any written instructions given to it hereunder and believed by it to have been signed by the proper parties.

## ARTICLE XVII

### MISCELLANEOUS

Section 17.1 **Waivers.** No waiver of any breach of any covenant or provisions contained herein will be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision contained herein. No extension of time for performance of any obligation or act will be deemed an extension of the time for performance of any other obligation or act.

Section 17.2 **TIME OF THE ESSENCE. TIME IS OF THE ESSENCE WITH RESPECT TO ALL TIME PERIODS AND DATES FOR PERFORMANCE SET FORTH IN THIS AGREEMENT.**

Section 17.3 **Recovery of Certain Fees.** In the event a party hereto files any action or suit against another party hereto by reason of any breach of any of the covenants, agreements or provisions contained in this Agreement, then in that event the prevailing party will be entitled to have and recover certain fees from the other party including all reasonable attorneys' fees and costs resulting therefrom. For purposes of this Agreement, the term "attorneys' fees" or "attorneys' fees and costs" shall mean the fees and expenses of counsel to the parties hereto, which may include printing, photocopying, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals and other persons not admitted to the bar but performing services under the supervision of an attorney, and the costs and fees incurred in connection with the enforcement or collection of any judgment obtained in any such proceeding. The provisions of this [Section 17.3](#) shall survive the entry of any judgment, and shall not merge, or be deemed to have merged, into any judgment.

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Section 17.4 **Construction.** Headings at the beginning of each Article and Section are solely for the convenience of the parties and are not a part of this Agreement. Whenever required by the context of this Agreement, the singular will include the plural and the masculine will include the feminine and vice versa. This Agreement will not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same. All exhibits and schedules referred to in this Agreement are attached and incorporated by this reference, and any capitalized term used in any exhibit or schedule which is not defined in such exhibit or schedule will have the meaning attributable to such term in the body of this Agreement. In the event the date on which Purchaser or Seller is required to take any action under the terms of this Agreement is not a Business Day, the action will be taken on the next succeeding Business Day.

Section 17.5 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which, when assembled to include an original signature for each party contemplated to sign this Agreement, will constitute a complete and fully executed original. All such fully executed original counterparts will collectively constitute a single agreement.

Section 17.6 **Severability.** If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any rule of law or public policy, all of the other conditions and provisions of this Agreement will nevertheless remain in full force and effect, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any adverse manner to either party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the parties hereto will negotiate in good faith to modify this Agreement so as to reflect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

Section 17.7 **Entire Agreement.** This Agreement is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof, and supersedes all prior understandings with respect thereto. This Agreement may not be modified, changed, supplemented or terminated, nor may any obligations hereunder be waived, except by written instrument, signed by the party to be charged or by its agent duly authorized in writing, or as otherwise expressly permitted herein.

Section 17.8 **Governing Law.** THIS AGREEMENT WILL BE CONSTRUED, PERFORMED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW JERSEY. SELLER AND PURCHASER HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN THE STATE OF NEW JERSEY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND HEREBY IRREVOCABLY AGREE THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN A STATE OR FEDERAL COURT SITTING IN THE STATE OF NEW JERSEY.

Section 17.9 **No Recording.** Except to the extent the Title Company requires a notice of the settlement to be recorded at Closing against the Real Property, the parties hereto agree that neither this Agreement nor any affidavit or memorandum concerning it will be recorded and

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unless so required by the Title Company, any recording of this Agreement or any such affidavit or memorandum by Purchaser will be deemed a default by Purchaser hereunder.

Section 17.10 **Further Actions.** The parties agree to execute such instructions to the Title Company and such other instruments and to do such further acts as may be reasonably necessary to carry out the provisions of this Agreement.

Section 17.11 **No Partnership.** Notwithstanding anything to the contrary contained herein, this Agreement shall not be deemed or construed to make the parties hereto partners or joint venturers, it being the intention of the parties to merely create the relationship of Seller and Purchaser with respect to the Property to be conveyed as contemplated hereby.

Section 17.12 **Limitations on Benefits.** It is the explicit intention of Purchaser and Seller that no person or entity other than Purchaser, Purchaser's Affiliates, Seller, Seller's Affiliates and their permitted successors and assigns is or shall be entitled to bring any action to enforce any provision of this Agreement against any of the parties hereto, and the covenants, undertakings and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, Purchaser, Purchaser's Affiliates, Seller and Seller's Affiliates, or their respective successors and assigns as permitted hereunder. Except as set forth in this [Section 17.12](#), nothing contained in this Agreement shall under any circumstances whatsoever be deemed or construed, or be interpreted, as making any third party a beneficiary of any term or provision of this Agreement or any instrument or document delivered pursuant hereto, and Purchaser and Seller expressly reject any such intent, construction or interpretation of this Agreement.

Section 17.13 **Assignment: Binding Effect.** Except as set forth in this Section 17.13, Purchaser will not have the right to assign this Agreement; Purchaser may assign all of its rights under this Agreement to an entity which directly or indirectly controls, is controlled by, or is under common control with, iStar, including, without limitation, a single purpose entity created by Purchaser for the purpose of holding title to Seller's LLC Interest. Purchaser will notify each Seller of any such assignment. In the event of any such assignments, whether accomplished as a matter of right or upon the consent of the other party, the original parties to this Agreement shall not be released. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 17.14 **Remedies Cumulative.** Except as provided in Article XIII of this Agreement, all rights, powers and privileges conferred hereunder upon the parties in any specific Section shall be cumulative but not restrictive of those given in other Sections of this Agreement and by law.

Section 17.15 **Further Assurances.** At and after Closing, the parties shall deliver to each other any additional materials and documents which are necessary or appropriate to further assure, complete and document the consummation of the purchase and sale contemplated herein on the terms described herein. From and after Closing, each party shall afford to the other reasonable access to any information in its possession concerning Seller's LLC Interest and the operations of the Property (including the right to copy the same at the expense of the party

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desiring the copy) for purposes of ascertaining post-Closing adjustments, tax examinations or audits, or other similar purposes.

Section 17.16 **Cooperation.**

(a) Purchaser acknowledges that Seller and/or any one or more of its Affiliates may be required by the Securities and Exchange Commission to file audited financial statements for one to three years after Closing with regard to the Property. At no cost or liability to Purchaser, after Closing, Purchaser shall, and shall cause each Property Owner, to reasonably cooperate with Seller and/or its Affiliate, its counsel, accountants, agents and representatives, to provide them with reasonable access to Purchaser's and Property Owner's books and records with respect to the ownership, management, maintenance and operation of the Property for the applicable period, and permit them to copy same. Seller or its Affiliate agrees to deliver to Purchaser a commercially reasonable confidentiality agreement in connection with the foregoing prior to any such access or copying.

(b)(i) Seller and only Seller shall prepare and file, or cause to be prepared and filed, all tax returns and reports that are required to be filed by or with respect to each Property Owner entity for all tax periods ending on or prior to the Closing Date and any amended tax return or report for any such tax period (any such tax return or report or amended tax return or report, a "**Pre-Closing Tax Return**"). Unless otherwise required by applicable law or contrary to the reasonable advice of Seller's tax counsel or accountants, any Pre-Closing Tax Return shall be prepared on a basis consistent with past practice. Seller shall deliver, or cause to be delivered (the date of such delivery, the "**Delivery Date**"), a copy of each such Pre-Closing Tax Return to the Purchaser for the Purchaser's review. The Purchaser shall have until midnight on the tenth (10<sup>th</sup>) day following the Delivery Date of a Pre-Closing Tax Return to deliver to the Seller any proposed revisions that it may have to such return, which proposed revisions shall be in writing and shall be set forth in reasonable detail. Seller may incorporate (or cause to be incorporated) any one or more of such proposed revisions but shall be required to incorporate (or cause to be incorporated) only those proposed revisions: (i) which are not inconsistent with the past practice in filing such return, except if otherwise required by applicable law or contrary to the reasonable advice of Seller's tax counsel or accountants; (ii) in the case of any federal income tax return, which has "substantial authority" (within the meaning of Treasury Regulations Section 1.6662-4(d)(1)) and which would replace a position for which there is no "substantial authority" (within the meaning of Treasury Regulations Section 1.6662-4(d)(1)); and (iii) in the case of any other Pre-Closing Tax Return, which are correct under applicable law and which would replace a position which is clearly erroneous; provided, however, that, notwithstanding anything herein to the contrary, Purchaser's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed) shall be required with respect to any position contained on any such Pre-Closing Tax Return which would reasonably result in an increase in liability to Purchaser post-Closing (including under the Financial Agreement or Amended Financial Agreement). Seller, and only Seller, may prepare and file or cause to be prepared and filed a Pre-Closing Tax Return, and under no circumstances may a Pre-Closing Tax Return be filed by Purchaser or any other person without Seller's prior written consent. Seller, and only Seller, shall control (subject to Purchaser's rights hereunder) any Audit (as defined below) in respect of any

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tax period ending on or prior to the Closing Date ("**Seller Audit**") and, in connection therewith, Seller shall keep Purchaser fully and contemporaneously apprised of all material aspects of any Seller Audit and shall promptly furnish or cause to be promptly furnished to Purchaser copies of any and all documents, reports, correspondence and other written materials pertaining to any Seller Audit. Seller shall be authorized to take, or cause to be taken (or not take, or cause not to be taken) any action with respect to any Seller Audit in its sole discretion; provided, however, that Seller shall not take or cause to be taken (or not take, or cause not to be taken) any action which would reasonably result in an increase in liability to Purchaser post-Closing (including under the Financial Agreement or Amended Financial Agreement) without Purchaser's prior written consent (which consent shall not be unreasonably withheld conditioned or delayed). Seller, and only Seller, shall be entitled to any refund or credit (and/or benefit therefrom) resulting from the filing of any Pre-Closing Tax Return or arising from or in respect of any Seller Audit.

(ii) The Purchaser shall prepare, or cause to be prepared, and timely file, or cause to be timely filed, all tax returns and reports that are required to be filed by or with respect to each Property Owner for all tax periods beginning prior to, and ending after, the Closing Date, as well as any amended tax return or report for any such tax period (any such return and report or amended return or report, a "**Straddle Return**"). Purchaser shall deliver, or cause to be delivered a copy of each such Straddle Return to Seller for Seller's review at least ten (10) prior to the filing thereof. Seller's prior written consent (not to be unreasonably withheld, conditioned or delayed) shall be required with respect to any position contained on a Straddle Return which would reasonably result in an increase in liability to Seller for any pre-Closing period (including under the Financial Agreement or Amended Financial Agreement), except that no such consent shall be required if the total liability resulting from such position is allocable proportionately between Seller and Purchaser and Purchaser is liable for more than fifty percent (50%) of said liability. Unless otherwise required by applicable law, any Straddle Return shall be prepared on a basis consistent with past practice (to the extent of past practice). The Purchaser shall control (subject to Seller's rights hereunder) and, unless the Seller consents in writing for the Purchaser to do otherwise, shall diligently pursue and defend (and shall cause a Property Owner to diligently pursue and defend) any Audit of any Straddle Period ("**Straddle Audit**"); provided, however, that, without Seller's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed), Purchaser shall not take or cause or permit to be taken (or not take, or cause or permit not to be taken) any action which could reasonably be expected to result in an increase in liability for Seller for any pre-Closing period (including under the Financial Agreement or Amended Financial Agreement), except that no such consent shall be required if the total liability resulting from such action is allocable proportionately between Seller and Purchaser and Purchaser is liable for more than fifty percent (50%) of said liability. Purchaser shall keep the Seller fully and contemporaneously apprised of all material aspects of any Straddle Audit and shall promptly furnish or cause to be promptly furnished to the Seller copies of any and all documents, reports, correspondence and other written materials pertaining to any Straddle Audit. At the reasonable request of Seller, the Purchaser shall use commercially reasonable efforts to pursue any claim for a refund or credit in respect of any taxes for any Straddle Period, either by the filing of an amended Straddle Return or during a Straddle Audit, unless Purchaser reasonably believes, and is able to establish to the reasonable satisfaction of

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Seller and its tax counsel and accountants, that the total cost of pursuing such claim would exceed the amount of such refund or credit. Purchaser shall pay to Seller Seller's proportionate share of any such refund or credit (*i.e.*, the amount of such refund or credit multiplied by the fraction the numerator of which is the total number of days in the

Pre-Closing Straddle Period and the denominator of which is the total number of days in such Straddle Period) and any interest thereon so obtained promptly after receipt from, or allowance thereof, by the relevant tax authority, less Seller's proportionate share of the cost thereof. The Seller and Purchaser shall, and Purchaser shall cause any Property Owner to, fully cooperate in the obtaining of any refund or credit.

(iii) For purposes of this Section 17.16(b), the term "**Audit**" shall mean any audit, assessment, or other examination or claim by any tax authority and any judicial, administrative or other proceeding or litigation (including any appeal of any such judicial, administrative or other proceeding or litigation), relating to taxes or tax returns or reports. For purposes of this Section 17.16(b), the term "**Pre-Closing Straddle Period**" shall mean with respect to any Straddle Period, the portion of such Straddle Period beginning on the first day thereof and ending on an including the Closing Date. The Purchaser shall not dispose of any records or documents relevant to any taxes or Pre-Closing Returns or Straddle Returns prior to the later of six months after the expiration of the applicable limitations period on assessment with respect to any such taxes or tax returns, or the final resolution of any Seller Audit or Straddle Audit initiated prior to the expiration of the applicable limitations period.

(iv) Seller and Purchaser shall cooperate fully, to the extent reasonably requested, in connection with the filing of any tax return (e.g., Pre-Closing Tax Return or Straddle Tax Return) or the procuring or claiming of any refund or credit for any overpayment of taxes and with respect to any Audit (e.g., any Seller Audit or Straddle Audit). Such cooperation shall include, but shall not be limited to: (A) subject to any limitations set forth in this Section 17.16, the taking or making or the declining to take or make (or the causing of any Property Owner to take or make or to decline to take or make) any action, position or claim with respect to any Audit or tax return, as directed by the party authorized under Section 17.16 to prepare, file and/or control such tax return or Audit (e.g., with respect to Seller's control of any Seller Audit in accordance with Section 17.16(b)(i)); (B), the prompt furnishing and/or making available by Seller, Purchaser and any Property Owner of any and all relevant records, documents, consents, certificates, workpapers and other information as may be necessary to control and defend any Audit and/or to prepare and timely file any tax return; and (C) making employees available on a mutually convenient basis to sign any tax return and/or sign-off on any Audit and to provide additional information and explanation of any material provided hereunder.

(c) For purposes of this Section 17.16, and as the context requires, any reference to "Property Owner" in this Section 17.16 shall be deemed to refer to and include any one or more of the Post-Transfer AFE entities.

**Section 17.17 Exculpation.** (a) If the Closing shall occur, other than expressly contained in guaranties, indemnities or agreements entered into at Closing by Seller, 8/9 Transferee and/or MCRLP or Seller's Affiliates for the benefit of Purchaser (and/or Purchaser's

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Affiliates), Purchaser acknowledges and agrees that Purchaser shall look solely to Seller's, AFE's, PXURA's, PXLA's and PXR's interests in the Property, the Ground Lease and the Sublease, and Seller's LLC Interest, for the recovery of any judgment against Seller arising out of or relating to this Agreement and the transactions contemplated herein, and no other property or assets of Seller, Seller's Affiliates or any of Seller's and Seller's Affiliates direct and indirect shareholders, officers, directors, partners, principals, members, employees, agents, contractors, and any successors or assigns of the foregoing (collectively with Seller, "**Seller Related Parties**") shall be subject to levy, execution or other enforcement procedure for the satisfaction of Purchaser's remedies under or with respect to this Agreement. Purchaser agrees to indemnify and hold the Seller Related Parties harmless from and against any and all losses, costs, damages, liens, claims, liabilities or expenses (including, but not limited to, reasonable attorneys' fees, court costs and disbursements) (collectively, "**Losses**") incurred by any of the Seller's Related Parties arising from or by reason of any damage to person or property caused by Purchaser's breach of this Section 17.17(a).

(b) If the Closing occurs hereunder, then other than expressly contained in guaranties, indemnities or agreements entered into at Closing by Purchaser, Post-Transfer AFE, iStar or Purchaser's Affiliates for the benefit of Seller (and/or Seller's Affiliates), Seller acknowledges and agrees that Seller shall look solely to Purchaser's, AFE's, PXURA's, PXLA's and PXR's interests in the Property, the Ground Lease and the Sublease, and Seller's LLC Interest, for the recovery of any judgment against Purchaser arising out of or relating to this Agreement and the transactions contemplated herein, and no other property or assets of Purchaser, Purchaser's Affiliates or any of Purchaser's and Purchaser's Affiliates direct and indirect shareholders, officers, directors, partners, principals, members, employees, agents, contractors, and any successors or assigns of the foregoing (collectively with Purchaser, "**Purchaser Related Parties**") shall be subject to levy, execution or other enforcement procedure for the satisfaction of Seller's remedies under or with respect to this Agreement. Seller agrees to indemnify and hold the Purchaser Related Parties harmless from and against any and all Losses incurred by any of the Purchaser's Related Parties arising from or by reason of any damage to person or property caused by Seller's breach of this Section 17.17(b).

**Section 17.18 Drafts Not an Offer to Enter into a Legally Binding Contract.** The parties hereto agree that the submission of a draft of this Agreement by one party to another is not intended by either party to be an offer to enter into a legally binding contract with respect to the purchase and sale of Seller's LLC Interest or the Property. The parties shall be legally bound with respect to the purchase and sale of the Seller's LLC Interest pursuant to the terms of this Agreement only if and when the parties have been able to negotiate all of the terms and provisions of this Agreement in a manner acceptable to each of the parties in their respective sole discretion, including, without limitation, all of the exhibits hereto, and each of Seller and Purchaser have fully executed and delivered to each other a counterpart of this Agreement. Unless and until each of Seller and Purchaser have fully executed and delivered a counterpart of this Agreement to the other, neither shall have any obligation whatsoever to the other, except as set forth in the Confidentiality Agreement.

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## ARTICLE XVIII

### SCHWAB MATTERS

#### Section 18.1 **Schwab's Lease.**

(a) As set forth in Section 7.1(e), Purchaser is permitted to have negotiations with Schwab regarding the Schwab Lease and related issues.

#### Section 18.2 **Work Allowance and Additional Work Allowance**

(a) Purchaser acknowledges that (i) pursuant to and in accordance with the provisions of (x) Section 6.02 of the Schwab Lease, PXLA is obligated to pay to Schwab the Work Allowance, and (y) Section 6.05 of the Schwab Lease, PXLA is obligated to pay to Schwab the Additional Work Allowance and (ii) the Additional Work Allowance is repaid to the landlord under the Schwab lease during the term thereof in accordance with the provisions of Section 6.05(f) of the Schwab Lease. It is the intention of the parties that Seller shall provide Purchaser, at Closing, a credit in an amount equal to any unpaid portion of the Work Allowance (the "**Work Allowance Credit**"), and Purchaser (together with Purchaser's Affiliates) shall, from and after the Closing, assume all obligations and liabilities with respect to the Work Allowance and Additional Work Allowance, and shall pay to Schwab same as and when due.

(b) Notwithstanding anything to the contrary in the foregoing, Purchaser shall indemnify, defend and hold the Seller Related Parties (including, without limitation, MCRLP and Columbia), harmless from any and all Losses arising or resulting out of Purchaser's failure to pay the Work Allowance (up to, but not to exceed the amount of the Work Allowance Credit) and the Additional Work Allowance to Schwab as and when due.

(c) In the event that it shall be finally determined (whether by settlement or by a final, non-appealable order issued by a court of competent jurisdiction) that any Work Allowance payments in excess of the Work Allowance Credit are owed after the Closing to Schwab under Section 6.02 of the Schwab Lease, then Seller shall indemnify, defend, and hold Purchaser and the Purchaser Related Entities harmless from any and all Losses arising on account of such excess Work Allowance



payments.

## ARTICLE XIX

### INDEMNITY

Section 19.1 **Indemnification by Seller.** In addition to any other indemnities expressly provided for in this Agreement, Seller agrees to indemnify, hold harmless and defend Purchaser from and against:

(a) any Losses which accrue or which are based upon Seller's failure to comply with its Closing Surviving Obligations or events which occurred prior to the Closing Date, except for Losses arising out of matters which are Purchaser's liability under this

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Agreement, all matters which pursuant to Section 5.4 of this Agreement Seller has disclaimed liability or responsibility for, including, without limitation, the condition of the Property on or prior to the Closing Date, and matters which are apportioned hereunder;

(b) any Losses which accrue or which are based upon events related to the Excluded Real Property which occurred prior to the Closing Date; and

(c) all reasonable costs and expenses (including reasonable attorneys' fees and expenses) incurred by the Purchaser in connection with any action, suit, proceeding, demand, assessment or judgment instituted by a third party against Purchaser or by the Purchaser against Seller or a third party incident to any of the matters indemnified against in this Section 19.1.

Section 19.2 **Indemnification by Purchaser.** In addition to any other indemnities expressly provided for in this Agreement, Purchaser agrees to indemnify, hold harmless and defend Seller from and against:

(a) any Losses which accrue or which are based on Purchaser's failure to comply with its Closing Surviving Obligations or events which occurred on or after the Closing Date, including, without limitation, any failure on the part of Purchaser to pay (or cause to be paid) the Renewal Term Schwab Commissions and any failure on the part of Purchaser (and Purchaser's Affiliates) to perform as required under this Agreement and the Schwab Lease (except as the obligations of performance thereunder is retained by Seller as expressly provided in this Agreement); and

(b) all reasonable costs and expenses (including reasonable attorneys' fees and expenses) incurred by the Seller in connection with any action, suit, proceeding, demand, assessment or judgment instituted by a third party against Seller or by the Seller against Purchaser or a third party incident to any of the matters indemnified against in this Section 19.2.

Section 19.3 **Survival of Indemnity.** The provisions of this Article XIX shall survive the Closing until the tenth (10th) anniversary of the Closing Date, unless a shorter statute of limitations shall apply.

## ARTICLE XX

### 8/9 TRANSFEREE DEBT MAINTENANCE COVENANT

Section 20.1 **Maintenance Covenant.** From the Closing through the second anniversary of the Closing (the "**Net Worth Survival Period**"), Seller shall cause 8/9 Transferee, and Purchaser shall cause Post-Transfer AFE, to maintain a Net Worth of not less than \$10,000,000.00. Notwithstanding anything to the contrary provided herein, each of Seller and Purchaser shall have the right at any time during the Net Worth Survival Period to provide Escrow Agent with cash or a Letter of Credit in the amount of \$10,000,000, in which case such

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party providing the cash or Letter of Credit shall have no further obligations under this Article XX; provided, that if either party has delivered a Letter of Credit, such party shall have no further obligations as aforesaid so long as such Letter of Credit remains in effect through the end of the Net Worth Survival Period or so long as the Escrow Agent draws on any such Letter of Credit and holds cash proceeds in-lieu of such Letter of Credit. Any cash or Letter of Credit delivered to Escrow Agent shall be held by Escrow Agent pursuant to an escrow agreement in form reasonably satisfactory to the parties. If any party provides cash or a Letter of Credit hereunder, such cash or Letter of Credit (less any amounts drawn down under the escrow agreement) shall be refunded to such party at the expiration of the Net Worth Survival Period. "**Net Worth**" means (a) in the case of Post-Transfer AFE, net worth computed in accordance with generally accepted accounting principles and (b) in the case of 8/9 Transferee, the value of the Excluded Real Property and any improvements now or hereafter built thereon less any debt secured thereby. "Letter of Credit" means an irrevocable, unconditional letter of credit, in form approved by the party receiving such letter of credit (which approval shall not be unreasonably withheld, conditioned or delayed), naming Escrow Agent as beneficiary, issued by a bank organized or licensed under the laws of the United States, or any state thereof, having (i) a net worth computed in accordance with generally accepted accounting principles in excess of \$1,500,000,000 and (ii) a senior unsecured debt rating of "A" or better as rated by Standard and Poors or 'A-2' or better as rated by Moody's, and providing for draws by sight draft in New York or New Jersey, having a term of not less than 60 days. Seller agrees to indemnify, defend and hold harmless Purchaser, Post-Transfer AFE and the other entities constituting Property Owner (as reconstituted upon Closing) from and against any and all Losses which any such Persons may incur on account of Seller's failure to cause 8/9 Transferee to comply with Section 20.1. Purchaser agrees to indemnify, defend and hold harmless the Seller from and against any and all Losses which any such Persons may incur on account of Purchaser's failure to cause Post-Transfer AFE to comply with Section 20.1.

Section 20.2 **Guaranty of Maintenance.** At the Closing, MCRLP shall execute a guaranty pursuant to which MCRLP agrees to guaranty Seller's obligations under this Article XX. At the Closing, iStar shall execute a guaranty pursuant to which iStar agrees to guaranty Purchaser's obligations under this Article XX.

*[The remainder of this page is intentionally left blank.]*

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IN WITNESS WHEREOF, Seller and Purchaser have respectively executed this Agreement as of the Effective Date.

**PURCHASER:**

**iSTAR HARBORSIDE LLC**

By: iStar Harborside Member, LLC, member

By: iStar Financial Inc., member

By: /s/ H. CABOT LODGE, III  
Name: H. Cabot Lodge, III  
Title: Executive Vice President

**SELLER:**

**M-C Harsimus Partners L.L.C.**

By: Mack-Cali Realty, L.P., sole member

By: Mack-Cali Realty Corporation,  
general partner

By: /s/ MITCHELL E. HERSH  
Name: Mitchell E. Hersh  
Title: Chief Executive Officer

**COLUMBIA DEVELOPMENT COMPANY, L.L.C.**

By: Atlantis Charter Company, L.L.C., member

By: /s/ FRANK GUARINI  
Name: Frank Guarini  
Title: Member

and

By: Columbia Charter Group, L.L.C., member

By: /s/ JOSEPH PANEPINTO  
Name: Joseph Panepinto  
Title: Member

*[Additional Signatures on Following Page]*

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The undersigned is executing this Agreement for the sole and exclusive purpose of evidencing its agreement with the matters set forth in Sections 3.2 and 4.3 and Article XVI of this Agreement.

**ESCROW AGENT:**

**FIRST AMERICAN TITLE INSURANCE  
COMPANY**

By: /s/ ANTHONY RUGGERI  
Name: Anthony Ruggeri  
Title: Vice President

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The undersigned is executing this Agreement for the sole and exclusive purpose of evidencing its agreement set forth in Section 5.5 of this Agreement.

**iSTAR FINANCIAL INC.**

By: /s/ H. CABOT LODGE, III  
Name: H. Cabot Lodge, III  
Title: Executive Vice President

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**CERTIFICATION**

I, Mitchell E. Hersh, Chief Executive Officer of Mack-Cali Realty Corporation, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Mack-Cali Realty Corporation;
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)) 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) 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
  - c) 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.

Date: November 5, 2003

By: /s/ MITCHELL E. HERSH

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Mitchell E. Hersh  
*Chief Executive Officer*

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QuickLinks

[EXHIBIT 31.1](#)

[CERTIFICATION](#)

**CERTIFICATION**

I, Barry Lefkowitz, Chief Financial Officer of Mack-Cali Realty Corporation, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Mack-Cali Realty Corporation;
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)) 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) 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
  - c) 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.

Date: November 5, 2003

By: /s/ BARRY LEFKOWITZ

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Barry Lefkowitz  
*Executive Vice President and Chief Financial Officer*

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QuickLinks

[EXHIBIT 31.2](#)

[CERTIFICATION](#)

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of Mack-Cali Realty Corporation (the "Company") for the quarterly period ended September 30, 2003, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Mitchell E. Hersh, as Chief Executive Officer of the Company, and Barry Lefkowitz, as Chief Financial Officer of the Company, each hereby certifies, pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that:

- (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.

Date: November 5, 2003

By: /s/ MITCHELL E. HERSH

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Mitchell E. Hersh  
*Chief Executive Officer*

Date: November 5, 2003

By: /s/ BARRY LEFKOWITZ

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Barry Lefkowitz  
*Executive Vice President and  
Chief Financial Officer*

This certification accompanies each Report pursuant to § 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, be deemed filed by the Company for purposes of §18 of the Securities Exchange Act of 1934, as amended.

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.

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QuickLinks

[CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002](#)