

**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, 2006

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 No.)

**343 Thornall Street, Edison, New Jersey**  
(Address of principal executive offices)

**08837-2206**  
(Zip Code)

**(732) 590-1000**  
(Registrant's telephone number, including area code)

**Former Address: 11 Commerce Drive Cranford, New Jersey 07016-3501**  
(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 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past ninety (90) days. YES  NO

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check One):

Large accelerated filer  Accelerated filer  Non-accelerated filer

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

As of October 27, 2006, there were 62,604,676 shares of the registrant's Common Stock, par value \$0.01 per share, outstanding.

**MACK-CALI REALTY CORPORATION**

**FORM 10-Q**

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[Signatures](#)[Exhibit Index](#)**MACK-CALI REALTY CORPORATION****Part I — Financial Information****Item 1. 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, 2005.

The results of operations for the three and nine month periods ended September 30, 2006 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) (unaudited)*

|  | <u>September 30,<br/>2006</u> | <u>December 31,<br/>2005</u> |
|--|-------------------------------|------------------------------|
| <b>ASSETS</b>  |                               |                              |
| Rental property  |                               |                              |
| Land and leasehold interests   | \$ 656,810                    | \$ 637,653                   |
| Buildings and improvements   | 3,543,937                     | 3,539,003                    |
| Tenant improvements  | 332,775                       | 307,664                      |
| Furniture, fixtures and equipment  | 7,812                         | 7,432                        |
|  | <u>4,541,334</u>              | <u>4,491,752</u>             |
| Less – accumulated depreciation and amortization                                   | (763,053)                     | (722,980)                    |
|  | <u>3,778,281</u>              | <u>3,768,772</u>             |
| Rental property held for sale, net   | 247,207                       | —                            |
| Net investment in rental property  | 4,025,488                     | 3,768,772                    |
| Cash and cash equivalents  | 20,780                        | 60,397                       |
| Marketable securities available for sale at fair value                             | —                             | 50,847                       |
| Investments in unconsolidated joint ventures                                       | 205,773                       | 62,138                       |
| Unbilled rents receivable, net   | 107,757                       | 92,692                       |
| Deferred charges and other assets, net   | 250,884                       | 197,634                      |
| Restricted cash  | 15,981                        | 9,221                        |
| Accounts receivable, net of allowance for doubtful accounts of \$1,905 and \$1,088 | 42,098                        | 5,801                        |
|  | <u>4,668,761</u>              | <u>4,247,502</u>             |
| <b>Total assets</b>  | <b>\$ 4,668,761</b>           | <b>\$ 4,247,502</b>          |
| <b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>  |                               |                              |
| Senior unsecured notes   | \$ 1,631,216                  | \$ 1,430,509                 |
| Revolving credit facility  | 412,000                       | 227,000                      |
| Mortgages, loans payable and other obligations                                     | 402,621                       | 468,672                      |
| Dividends and distributions payable  | 50,521                        | 48,178                       |

|   |                     |                     |
|---|---------------------|---------------------|
| Accounts payable, accrued expenses and other liabilities  | 133,371             | 85,481              |
| Rents received in advance and security deposits   | 49,519              | 47,685              |
| Accrued interest payable  | 19,197              | 27,871              |
| Total liabilities   | <u>2,698,445</u>    | <u>2,335,396</u>    |
| Minority interests:   |                     |                     |
| Operating Partnership   | 480,951             | 400,819             |
| Consolidated joint ventures   | 2,104               | —                   |
| Total minority interests  | <u>483,055</u>      | <u>400,819</u>      |
| Commitments and contingencies   |                     |                     |
| Stockholders' equity:   |                     |                     |
| Preferred stock, \$0.01 par value, 5,000,000 shares authorized, 10,000 and 10,000 shares outstanding, at liquidation preference | 25,000              | 25,000              |
| Common stock, \$0.01 par value, 190,000,000 shares authorized, 62,551,206 and 62,019,646 shares outstanding                     | 625                 | 620                 |
| Additional paid-in capital  | 1,694,563           | 1,682,141           |
| Unamortized stock compensation  | —                   | (6,105)             |
| Dividends in excess of net earnings   | (232,927)           | (189,579)           |
| Accumulated other comprehensive loss  | —                   | (790)               |
| Total stockholders' equity  | <u>1,487,261</u>    | <u>1,511,287</u>    |
| Total liabilities and stockholders' equity  | <u>\$ 4,668,761</u> | <u>\$ 4,247,502</u> |

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<br>September 30, |                  | Nine Months Ended<br>September 30, |                  |
|--|-------------------------------------|------------------|------------------------------------|------------------|
|  | 2006                                | 2005             | 2006                               | 2005             |
| <b>REVENUES</b>  |                                     |                  |                                    |                  |
| Base rents   | \$ 140,356                          | \$ 127,770       | \$ 406,989                         | \$ 380,284       |
| Escalations and recoveries from tenants  | 25,045                              | 21,163           | 69,862                             | 57,128           |
| Construction services  | 23,236                              | —                | 36,286                             | —                |
| Real estate services   | 10,653                              | 636              | 19,015                             | 1,853            |
| Other income   | 3,927                               | 4,583            | 9,985                              | 7,517            |
| Total revenues   | <u>203,217</u>                      | <u>154,152</u>   | <u>542,137</u>                     | <u>446,782</u>   |
| <b>EXPENSES</b>  |                                     |                  |                                    |                  |
| Real estate taxes  | 22,652                              | 19,885           | 64,891                             | 56,890           |
| Utilities  | 18,766                              | 15,867           | 46,789                             | 38,648           |
| Operating services   | 23,534                              | 19,544           | 66,024                             | 59,428           |
| Direct construction costs  | 22,568                              | —                | 35,148                             | —                |
| Real estate services salaries, wages and other costs                                 | 6,686                               | —                | 10,820                             | —                |
| General and administrative   | 12,173                              | 7,952            | 32,796                             | 23,449           |
| Depreciation and amortization  | 40,132                              | 37,838           | 116,980                            | 106,067          |
| Total expenses   | <u>146,511</u>                      | <u>101,086</u>   | <u>373,448</u>                     | <u>284,482</u>   |
| Operating Income   | 56,706                              | 53,066           | 168,689                            | 162,300          |
| <b>OTHER (EXPENSE) INCOME</b>  |                                     |                  |                                    |                  |
| Interest expense   | (35,815)                            | (30,159)         | (100,620)                          | (88,919)         |
| Interest and other investment income   | 514                                 | 308              | 2,359                              | 493              |
| Equity in earnings (loss) of unconsolidated joint ventures                           | (4,757)                             | 322              | (5,356)                            | 552              |
| Minority interest in consolidated joint ventures                                     | 113                                 | —                | 143                                | (74)             |
| Gain on sale of investment in marketable securities                                  | —                                   | —                | 15,060                             | —                |
| Gain on sale of investment in unconsolidated joint ventures                          | —                                   | —                | —                                  | 35               |
| Total other (expense) income   | <u>(39,945)</u>                     | <u>(29,529)</u>  | <u>(88,414)</u>                    | <u>(87,913)</u>  |
| Income from continuing operations before Minority interest in Operating Partnership  | 16,761                              | 23,537           | 80,275                             | 74,387           |
| Minority interest in Operating Partnership   | (3,263)                             | (4,205)          | (15,326)                           | (15,043)         |
| Income from continuing operations  | 13,498                              | 19,332           | 64,949                             | 59,344           |
| Discontinued operations (net of minority interest):                                  |                                     |                  |                                    |                  |
| Income from discontinued operations  | 3,013                               | 1,772            | 7,872                              | 12,270           |
| Realized gains (losses) and unrealized losses on disposition of rental property, net | —                                   | —                | 3,921                              | 8,973            |
| Total discontinued operations, net   | <u>3,013</u>                        | <u>1,772</u>     | <u>11,793</u>                      | <u>21,243</u>    |
| Net income   | 16,511                              | 21,104           | 76,742                             | 80,587           |
| Preferred stock dividends  | (500)                               | (500)            | (1,500)                            | (1,500)          |
| Net income available to common shareholders  | <u>\$ 16,011</u>                    | <u>\$ 20,604</u> | <u>\$ 75,242</u>                   | <u>\$ 79,087</u> |
| <b>Basic earnings per common share:</b>  |                                     |                  |                                    |                  |
| Income from continuing operations  | \$ 0.21                             | \$ 0.30          | \$ 1.02                            | \$ 0.94          |
| Discontinued operations  | 0.05                                | 0.03             | 0.19                               | 0.35             |
| Net income available to common shareholders  | <u>\$ 0.26</u>                      | <u>\$ 0.33</u>   | <u>\$ 1.21</u>                     | <u>\$ 1.29</u>   |
| <b>Diluted earnings per common share:</b>  |                                     |                  |                                    |                  |
| Income from continuing operations  | \$ 0.21                             | \$ 0.30          | \$ 1.01                            | \$ 0.94          |
| Discontinued operations  | 0.05                                | 0.03             | 0.19                               | 0.35             |
| Net income available to common shareholders  | <u>\$ 0.26</u>                      | <u>\$ 0.33</u>   | <u>\$ 1.20</u>                     | <u>\$ 1.29</u>   |

|   |         |         |         |         |
|---|---------|---------|---------|---------|
| Dividends declared per common share         | \$ 0.64 | \$ 0.63 | \$ 1.90 | \$ 1.89 |
| Basic weighted average shares outstanding   | 62,302  | 61,609  | 62,158  | 61,397  |
| Diluted weighted average shares outstanding | 78,258  | 75,760  | 77,664  | 73,585  |

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** (in thousands) (unaudited)

|  | Preferred Stock |           | Common Stock |           | Additional Paid-In Capital | Unamortized Stock Compensation | Dividends in Excess of Net Earnings | Accumulated Other Comprehensive Income (Loss) | Total Stockholders' Equity | Comprehensive Income |
|--|-----------------|-----------|--------------|-----------|----------------------------|--------------------------------|-------------------------------------|---|----------------------------|----------------------|
|  | Shares          | Amount    | Shares       | Par Value |                            |                                |                                     |   |                            |                      |
| Balance at January 1, 2006   | 10              | \$ 25,000 | 62,020       | \$ 620    | \$ 1,682,141               | \$ (6,105)                     | \$ (189,579)                        | \$ (790)                                      | \$ 1,511,287               | \$ —                 |
| Reclassification upon the adoption of FASB No. 123(R)                | —               | —         | —            | —         | (6,105)                    | 6,105                          | —                                   | —   | —                          | —                    |
| Net income   | —               | —         | —            | —         | —                          | —                              | 76,742                              | —   | 76,742                     | \$ 76,742            |
| Preferred stock dividends  | —               | —         | —            | —         | —                          | —                              | (1,500)                             | —   | (1,500)                    | —                    |
| Common stock dividends   | —               | —         | —            | —         | —                          | —                              | (118,590)                           | —   | (118,590)                  | —                    |
| Redemption of common units for common stock                          | —               | —         | 222          | 2         | 6,853                      | —                              | —                                   | —   | 6,855                      | —                    |
| Shares issued under Dividend Reinvestment and Stock Purchase Plan    | —               | —         | 4            | —         | 184                        | —                              | —                                   | —   | 184                        | —                    |
| Stock options exercised  | —               | —         | 302          | 3         | 8,836                      | —                              | —                                   | —   | 8,839                      | —                    |
| Stock options expense  | —               | —         | —            | —         | 212                        | —                              | —                                   | —   | 212                        | —                    |
| Comprehensive Gain:  |                 |           |              |           |                            |                                |                                     |   |                            |                      |
| Unrealized holding gain on marketable securities available for sale  | —               | —         | —            | —         | —                          | —                              | —                                   | 15,850  | 15,850                     | 15,850               |
| Directors Deferred comp. plan  | —               | —         | —            | —         | 226                        | —                              | —                                   | —   | 226                        | —                    |
| Issuance of restricted stock   | —               | —         | 10           | —         | —                          | —                              | —                                   | —   | —                          | —                    |
| Amortization of stock comp.  | —               | —         | —            | —         | 2,216                      | —                              | —                                   | —   | 2,216                      | —                    |
| Cancellation of restricted stock                                     | —               | —         | (7)          | —         | —                          | —                              | —                                   | —   | —                          | —                    |
| Reclassification adjustment for realized gain included in net income | —               | —         | —            | —         | —                          | —                              | —                                   | (15,060)                                      | (15,060)                   | (15,060)             |
| Balance at September 30, 2006  | 10              | \$ 25,000 | 62,551       | \$ 625    | \$ 1,694,563               | \$ —                           | \$ (232,927)                        | \$ —  | \$ 1,487,261               | \$ 77,532            |

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, |            |
|---|---------------------------------|------------|
|   | 2006                            | 2005       |
| <b>CASH FLOWS FROM OPERATING ACTIVITIES</b>   |                                 |            |
| Net income  | \$ 76,742                       | \$ 80,587  |
| Adjustments to reconcile net income to net cash provided by operating activities:                 |                                 |            |
| Depreciation and amortization   | 116,980                         | 106,067    |
| Depreciation and amortization on discontinued operations  | 7,088                           | 9,420      |
| Stock options expense   | 212                             | 411        |
| Amortization of stock compensation  | 2,216                           | 2,285      |
| Amortization of deferred financing costs and debt discount  | 2,171                           | 2,556      |
| Equity in (earnings) losses of unconsolidated joint ventures, net                                 | 5,356                           | (552)      |
| Gain on sale of investment in unconsolidated joint venture  | —                               | (35)       |
| Gain on sale of marketable securities available for sale  | (15,060)                        | —          |
| Realized gains and unrealized losses on disposition of rental property (net of minority interest) | (3,921)                         | (8,973)    |
| Minority interest in Operating Partnership  | 15,326                          | 15,043     |
| Minority interest in consolidated joint venture   | (143)                           | 74         |
| Minority interest in income from discontinued operations  | 1,926                           | 2,287      |
| Changes in operating assets and liabilities:  |                                 |            |
| Increase in unbilled rents receivable, net  | (15,190)                        | (9,185)    |
| Increase in deferred charges and other assets, net  | (41,367)                        | (38,105)   |
| Increase in accounts receivable, net  | (11,297)                        | (1,537)    |
| Increase in accounts payable, accrued expenses and other liabilities                              | 22,786                          | 24,449     |
| Increase (decrease) in rents received in advance and security deposits                            | 1,834                           | (92)       |
| Decrease in accrued interest payable  | (8,674)                         | (6,582)    |
| Net cash provided by operating activities   | \$ 156,985                      | \$ 178,118 |
| <b>CASH FLOWS FROM INVESTING ACTIVITIES</b>   |                                 |            |

|  |                     |                     |
|--|---------------------|---------------------|
| Additions to rental property and related intangibles             | \$ (192,137)        | \$ (417,305)        |
| Repayments of notes receivable                                   | 113                 | 47                  |
| Investment in unconsolidated joint ventures                      | (148,991)           | (17,250)            |
| Purchase of marketable securities available for sale             | (11,912)            | —                   |
| Proceeds from sale of investment in unconsolidated joint venture | —                   | 2,676               |
| Acquisition of minority interest in consolidated joint venture   | —                   | (7,713)             |
| Proceeds from sales of rental property                           | 18,912              | 97,414              |
| Proceeds from sale of marketable securities available for sale   | 78,609              | —                   |
| (Increase) decrease in restricted cash                           | (6,760)             | 1,179               |
| <b>Net cash used in investing activities</b>                     | <b>\$ (262,166)</b> | <b>\$ (340,952)</b> |

#### CASH FLOWS FROM FINANCING ACTIVITIES

|   |                  |                   |
|---|------------------|-------------------|
| Proceeds from senior unsecured notes                        | \$ 199,914       | \$ 298,804        |
| Borrowings from revolving credit facility                   | 660,250          | 916,460           |
| Repayment of revolving credit facility                      | (500,180)        | (796,460)         |
| Repayment of mortgages, loans payable and other obligations | (156,361)        | (159,192)         |
| Payment of financing costs                                  | (384)            | (4,176)           |
| Proceeds from mortgages                                     | —                | 32,926            |
| Proceeds from stock options exercised                       | 8,839            | 15,545            |
| Payment of dividends and distributions                      | (146,514)        | (143,772)         |
| <b>Net cash provided by financing activities</b>            | <b>\$ 65,564</b> | <b>\$ 160,135</b> |

|  |                  |                 |
|--|------------------|-----------------|
| Net decrease in cash and cash equivalents      | \$ (39,617)      | \$ (2,699)      |
| Cash and cash equivalents, beginning of period | 60,397           | 12,270          |
| Cash and cash equivalents, end of period       | <u>\$ 20,780</u> | <u>\$ 9,571</u> |

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

## MACK-CALI REALTY CORPORATION AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (unaudited)

#### 1. ORGANIZATION AND BASIS OF PRESENTATION

##### ORGANIZATION

Mack-Cali Realty Corporation, a Maryland corporation, together with its subsidiaries (collectively, 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 and third-parties. As of September 30, 2006, the Company owned or had interests in 321 properties plus developable land (collectively, the “Properties”). The Properties aggregate approximately 36.1 million square feet, which are comprised of 214 office buildings and 96 office/flex buildings, totaling approximately 35.7 million square feet (which include 43 office buildings and one office/flex building aggregating 5.3 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, two retail properties totaling approximately 17,300 square feet, a hotel (which is owned by an unconsolidated joint venture in which the Company has an investment interest) and two parcels of land leased to others. The Properties are located in nine 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. (the “Operating Partnership”) and variable interest entities for which the Company has determined itself to be the primary beneficiary, if any. See Note 2: Significant Accounting Policies – Investments in Unconsolidated Joint Ventures for the Company’s treatment of unconsolidated joint venture interests. 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 \$173.6 million and \$118.8 million (including land of \$61.8 million and \$58.4 million) as of September 30, 2006 and December 31, 2005, 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.

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

| <u>Leasehold interests</u>        | <u>Remaining lease term</u>                                 |
|-----------------------------------|---|
| 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 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 held for use 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 estimated 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. Properties identified as held for sale and/or sold are presented in discontinued operations for all periods presented. See Note 6: Discontinued Operations.

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.

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

The Company accounts for its investments in unconsolidated joint ventures for which Financial Accounting Standards Board ("FASB") Interpretation No. 46 (revised December 2003), Consolidation of Variable Interest Entities ("FIN 46") does not apply 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.

FIN 46 provides guidance on the identification of entities for which control is achieved through means other than voting rights (“variable interest entities” or “VIEs”) and the determination of which business enterprise, if any, should consolidate the VIE (the “primary beneficiary”). Generally, FIN 46 applies when either (1) the equity investors (if any) lack one or more of the essential characteristics of a controlling financial interest, (2) the equity investment at risk is insufficient to finance that entity’s activities without additional subordinated financial support or (3) the equity investors have voting rights that are not proportionate to their economic interests and the activities of the entity involve or are conducted on behalf of an investor with a disproportionately small voting interest.

The Company has evaluated its joint ventures with regards to FIN 46. As of September 30, 2006, the Company has identified its Meadowlands Xanadu joint venture as a VIE, but is not consolidating such venture as the Company is not the primary beneficiary. Disclosure about this VIE is included in Note 4: Investments in Unconsolidated Joint Ventures.

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

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carrying value of the investment, and such decline in value is deemed to be other than temporary. 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. Management does not believe that the value of any of the Company’s investments in unconsolidated joint ventures is impaired. See Note 4: Investments in Unconsolidated Joint Ventures.

***Cash and Cash  
Equivalents***

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

***Marketable  
Securities***

The Company classifies its marketable securities among three categories: Held-to-maturity, trading and available-for-sale. Unrealized holding gains and losses relating to available-for-sale securities are excluded from earnings and reported as other comprehensive income (loss) in stockholders’ equity until realized. A decline in the market value of any marketable security below cost that is deemed to be other than temporary results in a reduction in the carrying amount to fair value. Any impairment would be charged to earnings and a new cost basis for the security established.

The Company’s marketable securities at December 31, 2005 carried a value of \$50.8 million and consisted of 1,468,300 shares of common stock in CarrAmerica Realty Corporation, which were all acquired in 2005. The Company’s marketable securities at December 31, 2005 were all classified as available-for-sale and were carried at fair value based on quoted market prices. The Company recorded an unrealized holding loss of \$790,000 as other comprehensive loss in 2005. From January 1, 2006 through January 25, 2006, the Company purchased an additional 336,500 shares of common stock in CarrAmerica for a total purchase price of \$11.9 million.

The Company received dividend income of approximately \$902,000 from its holdings in CarrAmerica stock during the three months ended March 31, 2006, which is recorded in interest and dividend income. During the three months ended March 31, 2006, the Company sold all of its 1,804,800 shares of CarrAmerica common stock realizing a gain of approximately \$15.1 million, which is recorded in gain on sale of marketable securities.

***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 \$725,000 and \$817,000 for the three months ended September 30, 2006 and 2005, respectively, and \$2,171,000 and \$2,556,000 for the nine months ended September 30, 2006 and 2005, 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 \$908,000 and \$911,000 for the three months ended September 30, 2006 and 2005, respectively and \$2,574,000 and \$2,817,000 for the nine months ended September 30, 2006 and 2005, 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 and qualifying as fair value hedges, the changes in the fair value of

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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.

***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 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. Escalations and recoveries from tenants 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: Tenant Leases. Construction services revenue includes fees earned and reimbursements received by the Company for providing construction management and general contractor services to clients. Construction services revenue is recognized on the percentage of completion method. Using this method, profits are recorded on the basis of estimates of the overall profit and percentage of completion of individual contracts. A portion of the estimated profits is accrued based upon estimates of the percentage of completion of the construction contract. This revenue recognition method involves inherent risks relating to profit and cost estimates. Real estate services revenue includes property management, facilities management, leasing commission fees and other services, and payroll and related costs reimbursed from clients. Other income includes income from parking spaces leased to tenants, income from tenants for additional services arranged for by the Company and income from tenants for early lease terminations.

**Allowance for Doubtful Accounts**

Management periodically performs a detailed review of amounts due from tenants and clients 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 (including alternative minimum 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 has elected to treat certain of its corporate subsidiaries as taxable REIT subsidiaries (each a "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

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under which any lodging facility or health care facility is operated). A TRS is subject to corporate federal income tax. 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, 2006 represents dividends payable to preferred shareholders (10,000 shares) and common shareholders (62,562,206 shares), and distributions payable to minority interest common unitholders of the Operating Partnership (15,595,825 common units) for all such holders of record as of October 4, 2006 with respect to the third quarter 2006. The third quarter 2006 preferred stock dividends of \$50.00 per share, common stock dividends and common unit distributions of \$0.64 per common share and unit were approved by the Board of Directors on September 19, 2006. The preferred stock dividends, common stock dividends and common unit distributions payable were paid on October 16, 2006.

The dividends and distributions payable at December 31, 2005 represents dividends payable to preferred shareholders (10,000 shares) and common shareholders (62,028,306 shares), and distributions payable to minority interest common unitholders of the Operating Partnership (13,650,439 common units) for all such holders of record as of January 5, 2006 with respect to the fourth quarter 2005. The fourth quarter 2005 preferred stock dividends of \$50.00 per share, common stock dividends and common unit distributions of \$0.63 per common share and unit were approved by the Board of Directors on December 6, 2005. The common stock dividends and common unit distributions payable were paid on January 13, 2006. The preferred stock dividends payable were paid on January 17, 2006.

**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 Compensation**

The Company accounts for stock options and restricted stock awards granted prior to 2002 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 for stock options 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 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. Restricted stock awards granted prior to 2002 are valued at the vesting dates of such awards with compensation cost for such awards recognized ratably over the vesting period.



In 2002, the Company adopted the provisions of FASB No. 123, and in 2006, the Company adopted the provisions of FASB No. 123(R), which did not have a material effect on the Company's financial position and results of operations. These provisions require that the estimated fair value of restricted stock ("Restricted Stock Awards") and stock options at the grant date be amortized ratably into expense over the appropriate vesting period. For the three months ended September 30, 2006 and 2005, the Company recorded restricted stock and stock options expense of \$815,000 and \$1,070,000, respectively, and \$2,429,000 and \$2,696,000 for the nine months ended September 30, 2006 and 2005, respectively. 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 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 below:

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 for the three and nine month periods ended September 30, 2005: (*dollars in thousands*)

|  | Three Months Ended<br>September 30,<br>2005 | Nine Months Ended<br>September 30,<br>2005 |
|--|---|--|
| Net income, as reported  | \$ 21,104                                   | \$ 80,587                                  |
| Add: Stock-based compensation expense included in reported net income (net of minority interest)       | 875   | 2,262                                      |
| Deduct: Total stock-based compensation expense determined under fair value based method for all awards | (1,195)                                     | (3,000)                                    |
| Add: Minority interest on stock-based compensation expense under fair value based method               | 218   | 482  |
| Pro forma net income   | 21,002                                      | 80,331                                     |
| Deduct: Preferred stock dividends  | (500)                                       | (1,500)                                    |
| Pro forma net income available to common shareholders – basic  | \$ 20,502                                   | \$ 78,831                                  |
| <b>Earnings Per Share:</b>   |   |  |
| Basic – as reported  | \$ 0.33                                     | \$ 1.29                                    |
| Basic – pro forma  | \$ 0.33                                     | \$ 1.28                                    |
| Diluted – as reported  | \$ 0.33                                     | \$ 1.29                                    |
| Diluted – pro forma  | \$ 0.33                                     | \$ 1.28                                    |

**Other  
Comprehensive  
Income**

Other comprehensive income (loss) includes items that are recorded in equity, such as unrealized holding gains or losses on marketable securities available for sale.

**Reclassifications**

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

### 3. REAL ESTATE TRANSACTIONS

**Gale/Green Transactions**

On May 9, 2006, the Company completed the acquisitions of: (i) The Gale Company and certain of its related businesses, which engage in construction, property management, facilities management, and leasing services (collectively, the "Gale Company"); (ii) three office properties; and (iii) indirect interests in a portfolio of office properties, located primarily in New Jersey, which were owned indirectly by The Gale Company and its affiliates ("Gale") and affiliates of SL Green Realty Corp. ("SL Green"). The agreements to complete the aforementioned acquisitions (collectively, the "Gale/Green Transactions") required that the Company complete all of the acquisitions.

The Gale Company was acquired by the Company for initial purchase consideration of approximately \$22.3 million consisting of the issuance by the Company of 224,719 common units of the Operating Partnership and the payment of approximately \$12 million in cash, which was primarily funded through borrowing under the Company's revolving credit facility. Additionally, the agreement to acquire the Gale Company ("Gale Agreement") contains earn-out provisions providing for the payment of contingent purchase consideration of up to \$18 million in cash based upon the achievement of Gross Income and NOI (as such terms are defined in the Gale Agreement) targets and other events for the three years following the closing date.

In connection with the Company's acquisition of the Gale Company, Mr. Stanley C. Gale and certain other affiliates of Gale are restricted from competing with the Company or hiring the Company's employees for a period of four years expiring on May 9, 2010.

In addition, the Gale Agreement provides for the Company to acquire certain other ownership interests in up to 11 real estate projects (the "Non-Portfolio Properties"), subject to obtaining certain third party consents and the satisfaction of various project-related and/or other conditions. Each of the Company's acquired interests in the Non-Portfolio Properties will provide for the initial distributions of net cash flow solely to the Company, and thereafter an affiliate of Gale controlled by Stanley C. Gale ("Gale Affiliate") has participation rights ("Gale Participation Rights") in 50 percent of the excess net cash flow remaining after the distribution to the Company of the aggregate amount equal to the sum of: (a) the Company's capital contributions, plus (b) an internal rate of return ("IRR") of 10 percent per annum, accruing on the date or dates of the Company's investments. Mr. Gale has caused the Gale Affiliate to transfer certain of his interests in the Non-Portfolio Properties, to several former employees of Gale, some of whom are current employees of the Company, including Mark Yeager, one of the Company's executive officers.

Through September 30, 2006, the Company completed seven of the acquisitions of interests in the Non-Portfolio Properties, which included the acquisitions of: a 530,000 square foot, mixed-use office/retail complex; a 139,750 square-foot fully-leased office property; an office property in development; two vacant land parcels and two pre-developed projects. The aggregate cost of the completed acquisitions was approximately \$24.7 million.

In connection with the execution of the Gale Agreement, the Company entered into agreements to acquire three office properties directly and indirect ownership interests in entities which own a portfolio of office properties (collectively, the "Gale/Green Agreements"). Under the Gale/Green Agreements, the Company acquired 100 percent of the ownership interests in three office properties located in New Jersey, aggregating 516,162 square feet, (the "Wholly-Owned Properties"). The Wholly-Owned Properties were acquired for approximately \$106 million, consisting of the assumption of \$39.9 million in existing mortgage indebtedness and the payment of \$66.1 million in cash, which was funded primarily through borrowing under the Company's revolving credit facility.

Also, as part of the Gale/Green Agreements, the Company entered into a joint venture with SL Green, known as Mack-Green-Gale LLC ("Mack-Green"), to hold an approximate 96 percent interest and act as general partner of Gale SLG NJ Operating Partnership, L.P. (the "OP LP"). The Company acquired its interest in Mack-Green for approximately \$116 million, which was funded primarily through borrowing under the Company's revolving credit facility. The OP LP owns 100 percent of entities which own 25 office properties (collectively, the "OP LP Properties") which aggregate 3.5 million square feet (consisting of 17 office properties aggregating 2.3 million square feet located in New Jersey and eight properties aggregating 1.2 million square feet located in Troy, Michigan), as well as a minor, non-controlling interest in four office properties aggregating 419,000 square feet

located in Naperville, Illinois. For a discussion of the ownership interests in Mack-Green, see Note 4: Investments in Unconsolidated Joint Ventures – Mack-Green-Gale LLC.

The Company has not yet obtained all the information necessary to finalize its estimates to complete the purchase price allocations related to the Gale/Green Transactions. The purchase price allocations will be finalized once the information identified by the Company has been received, which should not be longer than one year from the date of acquisition.

#### Property Acquisitions

The Company acquired the following office properties during the nine months ended September 30, 2006: (dollars in thousands)

| Acquisition Date             | Property/Address               | Location                    | # of Bldgs. | Rentable Square Feet | Acquisition Cost |
|------------------------------|--------------------------------|-----------------------------|-------------|----------------------|------------------|
| 02/28/06                     | Capital Office Park (a)        | Greenbelt, Maryland         | 7           | 842,258              | \$ 166,011       |
| 05/09/06                     | 35 Waterview Boulevard (b) (c) | Parsippany, New Jersey      | 1           | 172,498              | 32,600           |
| 05/09/06                     | 105 Challenger Road (b) (d)    | Ridgefield Park, New Jersey | 1           | 150,050              | 31,792           |
| 05/09/06                     | 343 Thornall Street (b) (e)    | Edison, New Jersey          | 1           | 195,709              | 41,113           |
| 07/31/06                     | 395 W. Passaic Street (f)      | Rochelle Park, New Jersey   | 1           | 100,589              | 22,219           |
| Total Property Acquisitions: |                                |                             | 11          | 1,461,104            | \$ 293,735       |

- (a) This transaction was funded primarily through the assumption of \$63.2 million of mortgage debt and the issuance of 1.9 million common operating partnership units valued at \$87.2 million.
- (b) The property was acquired as part of the Gale/Green Transactions.
- (c) Transaction was funded primarily through borrowing on the Company's revolving credit facility and the assumption of \$20.4 million of mortgage debt.
- (d) Transaction was funded primarily through borrowing on the Company's revolving credit facility and the assumption of \$19.5 million of mortgage debt.
- (e) Transaction was funded primarily through borrowing on the Company's revolving credit facility.
- (f) Transaction was funded primarily through borrowing on the Company's revolving credit facility and the assumption of \$13.1 million of mortgage debt.

#### Property Sales

The Company sold the following office properties during the nine months ended September 30, 2006: (dollars in thousands)

| Sale Date                    | Property/Address        | Location               | # of Bldgs. | Rentable Square Feet | Net Sales Proceeds | Net Book Value | Realized Gain/(Loss) |
|------------------------------|-------------------------|------------------------|-------------|----------------------|--------------------|----------------|----------------------|
| 06/28/06                     | Westage Business Center | Fishkill, New York     | 1           | 118,727              | \$ 14,765          | \$ 10,872      | \$ 3,893             |
| 06/30/06                     | 1510 Lancer Drive       | Moorestown, New Jersey | 1           | 88,000               | 4,146              | 3,134          | 1,012                |
| Total Office Property Sales: |                         |                        | 2           | 206,727              | \$ 18,911          | \$ 14,006      | \$ 4,905             |

#### 4. INVESTMENTS IN UNCONSOLIDATED JOINT VENTURES

The debt of the Company's unconsolidated joint ventures aggregating \$571.0 million as of September 30, 2006 is non-recourse to the Company, except for customary exceptions pertaining to such matters as intentional misuse of funds, environmental conditions and material misrepresentations, and except as otherwise indicated below.

##### MEADOWLANDS XANADU

On November 25, 2003, the Company and affiliates of The Mills Corporation ("Mills") entered into a joint venture agreement ("Meadowlands Xanadu Venture Agreement") to form Meadowlands Mills/Mack-Cali Limited Partnership ("Meadowlands Venture") for the purpose of developing a \$1.3 billion family entertainment, recreation and retail complex with an office and hotel component to be built at the Meadowlands sports complex in East Rutherford, New Jersey ("Meadowlands Xanadu"). The First Amendment to the Meadowlands Xanadu Venture

Agreement was entered into as of June 30, 2005. Meadowlands Xanadu's approximately 4.76 million-square-foot complex is expected to feature a family entertainment, recreation and retail destination comprising five themed zones: sports; entertainment; children's education; fashion; and food and home, in addition to four office buildings, aggregating approximately 1.8 million square feet, and a 520-room hotel.

On December 3, 2003, the Meadowlands Venture entered into a redevelopment agreement (the "Redevelopment Agreement") with the New Jersey Sports and Exposition Authority ("NJSEA") for the redevelopment of the area surrounding the Continental Airlines Arena in East Rutherford, New Jersey and the construction of the Meadowlands Xanadu project. The Redevelopment Agreement provides for a 75-year ground lease and requires the Meadowlands Venture to pay the NJSEA a \$160 million development rights fee and fixed rent over the term. Fixed rent will be in the amount of \$1,000 per year for the first 15 years, increasing to \$7.5 million from the 16<sup>th</sup> to the 18<sup>th</sup> years, increasing to \$8.4 million in the 19<sup>th</sup> year, increasing to \$8.7 million in the 20<sup>th</sup> year, increasing to \$9.0 million in the 21<sup>st</sup> year, then to \$9.2 million in the 23<sup>rd</sup> to 26<sup>th</sup> years, with additional increases over the remainder of the term, as set forth in the ground lease. The ground lease also allows for the potential for participation rent payments by the Meadowlands Venture, as described in the ground lease agreement. The First Amendment to the Redevelopment Agreement and the ground lease, itself, were signed on October 5, 2004. The Meadowlands Venture received all necessary permits and approvals from the NJSEA and U.S. Army Corps of Engineers in March 2005 and commenced construction in the same month. As a condition to fill wetlands pursuant to the permit issued by the U.S. Army Corps of Engineers and pursuant to the Redevelopment Agreement, as amended, Mills conveyed certain vacant land, known as the Empire Tract, to a conservancy trust. On June 30, 2005, the \$160 million development rights fee was deposited into an escrow account by the Meadowlands Venture in accordance with the terms of the First Amendment to the Redevelopment Agreement. On such date, the following amounts were paid from escrow: (i) approximately \$37.2 million to defease certain debt obligations of the NJSEA; and (ii) \$26.8 million to the NJSEA, which, in turn, paid such amount to the Meadowlands Venture for the Empire Tract. Subsequently, the remainder of the monies were released from the escrow account to the NJSEA.

The Company and Mills own a 20 percent and 80 percent interest, respectively, in the Meadowlands Venture. These interests were subject to certain participation rights by The New York Giants, which were subsequently terminated in April 2004. The Meadowlands Xanadu Venture Agreement required the Company to make an equity contribution up to a maximum of \$32.5 million, which it fulfilled in April 2005. Pursuant to the Meadowlands Xanadu Venture Agreement, Mills has received subordinated capital credit in the venture of approximately \$118.0 million, which represents certain costs incurred by Mills in connection with the Empire Tract prior to the creation of the Meadowlands Venture. However, under the First Amendment to the Meadowlands Xanadu Venture Agreement, the Company and Mills agreed that due to the expected receipt by the Meadowlands Venture of certain other sums and certain development costs savings in connection with Meadowlands Xanadu, Mills' subordinated capital credit in the venture for the Empire Tract should be reduced to \$60.0 million as of the date of the First Amendment to the Meadowlands Xanadu Venture Agreement. The Meadowlands Xanadu Venture Agreement requires Mills to contribute the balance of the capital required to complete the entertainment phase, subject to certain limitations. The Company will receive a 9 percent preferred return on its equity investment, only after Mills receives a 9 percent preferred return on its equity investment. Residual returns, subject to participation by other parties, will be in proportion to each partner's respective percentage interest.

Mills will develop, lease and operate the entertainment phase of the Meadowlands Xanadu project. The Meadowlands Venture has formed and owns, directly and indirectly, all of the partnership interests in and to the component ventures which were formed for the future development of the office and hotel phases, which the Company will develop, lease and operate. Upon the Company's exercise of its rights under the Meadowlands Xanadu Venture Agreement to develop the office and hotel phases, the Meadowlands Venture will convey ownership of the component ventures to the Company and Mills or its affiliate, and the Company or its affiliate will own an 80 percent interest and Mills or its affiliate will own a 20 percent interest in such component ventures. However, under the First Amendment to the Meadowlands Xanadu Venture Agreement, if the Meadowlands Venture develops a hotel that has video lottery terminals (or "slots"), or any other legalized form of gaming on or in its premises, then the Company or its affiliate will own a 50 percent interest in such component venture and Mills or its affiliate will own a 50 percent interest. The Meadowlands Xanadu Venture Agreement requires that the Company must exercise its rights with respect to the first office and hotel phase no later than four years after the grand opening of the entertainment phase, and requires that the Company exercise all of its rights with respect to the office and hotel phases no later than 10 years from such date, but does not require that any or all components be

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developed. However, under the Meadowlands Xanadu Venture Agreement, Mills has the right to accelerate such exercise schedule, subject to certain conditions. Should the Company fail to meet the time schedule described above for the exercise of its rights with respect to the office and hotel phases, the Company will forfeit its rights to control future development. If this occurs, Mills will have the right to develop the additional phases, subject to the Company's right to participate, or to cause the Meadowlands Venture to sell such components to a third party, subject to a sales price limitation of 95 percent of the value that would have been required to form such component ventures.

Commencing three years after the grand opening of the entertainment phase of the Meadowlands Xanadu project, either Mills or the Company may sell its partnership interest to a third party subject to the following provisions:

- Mills has certain "drag-along" rights and the Company has certain "tag-along" rights in connection with such sale of interest to a third party; and
- Mills has a right of first refusal with respect of a sale by the Company of its partnership interests.

In addition, commencing on the sixth anniversary of the opening, the Company may cause Mills to purchase, and Mills may cause the Company to sell to Mills, all of the Company's partnership interests at a price based on the then fair market value of the project. Notwithstanding the exercise by Mills or the Company of any of the foregoing rights with respect to the sale of the Company's partnership interest to Mills or a third party, the Company will retain its right to component ventures for the future development of the office and hotel phases.

On August 21, 2006, The Mills Corporation ("TMC") announced that it had signed a non-binding letter of intent with Colony Capital Acquisitions, LLC ("Colony") and Kan Am USA Management XXII Limited Partnership ("Kan Am") under which Colony would arrange for construction financing for Meadowlands Xanadu and make a significant equity infusion into the Meadowlands Venture, and TMC would not have any financial obligations post closing ("Colony Transaction"). Kan Am has been a partner with Mills in the Meadowlands Venture.

The Company has reached an agreement in principle with Colony, TMC and Kan Am whereby the Company will relinquish its participation in the entertainment/retail component of Meadowlands Xanadu in exchange for \$25 million; \$22.5 million payable at closing and the remaining \$2.5 million due when the Company exercises its rights to develop any of the office or hotel phases. Concurrently with the payment of the \$2.5 million, the Company's ownership interest in the office and hotel component ventures will be reduced from 80 percent to 75 percent. It is expected that the agreement in principle will be consummated simultaneous with the completion of the Colony Transaction.

In October 2006, Mills, the manager of the Meadowlands Venture, provided the Company information regarding the restatements of financial information it had previously presented to the Company for the period from November 25, 2003 (the inception of the Meadowlands Venture) through December 31, 2005. Included in the Company's equity in loss of unconsolidated joint ventures from the Meadowlands Venture of \$1.8 million for the three and nine months ended September 30, 2006 is \$1.4 million related to the Company's allocated share of the loss arising from the restatement for the period referenced above.

On February 12, 2003, the NJSEA selected The Mills Corporation and the Company to redevelop the Continental Airlines Arena site ("Arena Site") for mixed uses, including retail. In March 2003, Hartz Mountain Industries, Inc., ("Hartz"), filed a lawsuit in the Superior Court of New Jersey, Law Division, for Bergen County, seeking to enjoin NJSEA from entering into a contract with the Meadowlands Venture for the redevelopment of the Continental Airlines Arena site. In May 2003, the court denied Hartz's request for an injunction and dismissed its suit for failure to exhaust administrative remedies. In June 2003, the NJSEA held hearings on Hartz's protest, and on a parallel protest filed by another rejected developer, Westfield, Inc. ("Westfield"). On September 10, 2003, the NJSEA ruled against Hartz's and Westfield's protests. Hartz and Westfield, as well as Elliot Braha and three other taxpayers (collectively "Braha"), thereafter filed appeals from the NJSEA's final decision. By decision dated May 14, 2004, the Appellate Division of the Superior Court of New Jersey rejected the appellants' contention that the NJSEA lacks statutory authority to allow retail development of its property. The Appellate Division also remanded Hart's claim under the Open Public Records Acts, seeking disclosure of additional documents from NJSEA, to the Law Division for further proceedings. The Supreme Court of New Jersey declined to review the Appellate Division's decision. On August 19, 2004, the Law Division issued a

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ordered NJSEA to disclose some, but not all, of the documents Hartz was seeking. The Appellate Division, in a decision rendered on November 24, 2004, upheld the findings of the Law Division in the remand proceeding. The Supreme Court of New Jersey declined to review the Appellate Division's decision. At Hartz's request, the NJSEA thereafter held further hearings on December 15 and 16, 2004, to review certain additional facts in support of Hartz's and Westfield's bid protest. Braha, as a taxpayer, did not have standing to participate in the supplemental protest hearing. On March 4, 2005, the Hearing Officer rendered his Supplemental Report and Recommendation to the NJSEA, finding no merit in the protests presented by Hartz and Westfield. The NJSEA accepted the Hearing Officer's Supplemental Report and Recommendation on March 30, 2005 and Hartz and Braha have appealed that decision to the Appellate Division.

In January 2004, Hartz and Westfield also appealed to the Appellate Division of the Superior Court of New Jersey from the NJSEA's December 2003 approval and execution of the Redevelopment Agreement with the Meadowlands Venture.

In November 2004, Hartz and Westfield filed additional appeals in the Appellate Division challenging NJSEA's resolution authorizing the execution of the First Amendment to the Redevelopment Agreement with Meadowlands Venture and the ground lease with the Meadowlands Venture.

All of the above appeals have been consolidated by the Appellate Division. On August 17, 2006, the Appellate Division issued an opinion affirming NJSEA's selection of the Meadowlands Venture and rejecting the appellants' arguments in all respects. On August 28, 2006, Hartz made a motion before the Appellate Division for reconsideration of this decision and for supplementation of the record. That motion is pending.

On September 30, 2004, the Borough of Carlstadt filed an action in the Superior Court of New Jersey Law Division, challenging Meadowlands Xanadu, which asserted claims that are substantially the same as claims asserted by Hartz and Braha in the above appeals. By Order dated November 19, 2004, the Law Division transferred that matter to the Superior Court of New Jersey, Appellate Division. This matter was voluntarily dismissed by Carlstadt in accordance with a March 22, 2006, Settlement Agreement and Release between Carlstadt and the Meadowlands Venture.

Several appeals filed by Hartz, the Sierra Club and others, including certain environmental groups, that challenge certain approvals received by the Meadowlands Venture from the NJSEA, the New Jersey Meadowlands Commission ("NJMC") and the New Jersey Department of Environmental Protection ("NJDEP") remain pending before the Appellate Division. Some of these appeals challenge NJDEP's issuance of a stream encroachment permit, waterfront development permit, and coastal zone consistency determination for Meadowlands Xanadu. Other of these appeals are from NJDEP's and NJMC's issuance of reports in connection with a consultation process the NJSEA was statutorily required to undertake in connection with any NJSEA-development project.

A Hartz affiliate and a trade association have filed an appeal from an advisory opinion favorable to the Meadowlands Venture issued by the Director of the Division of Alcoholic Beverage Control concerning the availability of special concessionaire permits. That appeal is also pending in the Appellate Division of the Superior Court of New Jersey.

Three separate lawsuits have been filed in the United States District Court for the District of New Jersey, challenging a permit issued by the U.S. Army Corps of Engineers ("USACE") in connection with the project. The first suit was filed on March 30, 2005, by the Sierra Club, the New Jersey Public Interest Research Group, Citizen Lobby, Inc. and the New Jersey Environmental Federation. Additional suits were filed on May 16 and May 31, 2005, respectively, by Hartz (together with one of its officers as an individually-named plaintiff) and the Borough of Carlstadt. The Sierra Club also filed a motion for a preliminary injunction to stop certain construction activities on the project, which the Court denied on July 6, 2005. On October 26, 2005, the court granted the motions of the Meadowlands Venture and the USACE to dismiss the Hartz complaint for lack of standing. The deadline for appealing that decision has passed, so the Hartz action is ended. On October 31, 2005, the USACE filed a motion to dismiss the complaint filed by the Borough of Carlstadt for lack of standing. On February 7, 2006, the Court granted the motion and dismissed the Borough of Carlstadt's complaint in its entirety. On March 9, 2006, Carlstadt filed a notice of appeal of this decision to the United States Court of Appeals for the Third Circuit. This appeal has

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been dismissed pursuant to the Settlement Agreement and Release executed by Carlstadt and the Meadowlands Venture.

On April 5, 2005, the New York Football Giants ("Giants") filed an emergent application with the Supreme Court of New Jersey, Chancery Division, seeking an injunction stopping all work on the Meadowlands Xanadu project as being in violation of its existing lease with the NJSEA. After hearing oral argument on the application on August 5, 2005, the court denied the Giants' motion for preliminary injunctive relief. On June 22, 2006, the court entered a Stipulation and Consent Order that dismissed without prejudice the parties' respective claims.

The New Jersey Builders' Association ("NJBA") has commenced an action, which is pending in the Appellate Division, alleging that the NJSEA has failed to meet a purported obligation to provide affordable housing at the Meadowlands Complex and seeking, among other relief, an order enjoining the construction of Meadowlands Xanadu. NJBA filed an application for preliminary injunctive relief seeking to enjoin further construction of Meadowlands Xanadu, which the Appellate Division denied on July 28, 2005. The Meadowlands Venture is not a party to that action.

On January 25, 2006, the Bergen Cliff Hawks Baseball Club, LLC (the "Cliff Hawks"), filed a complaint against the Company and Mills, alleging that the Company and Mills breached an agreement to provide the Cliff Hawks with a minor league baseball park as part of the Xanadu Project. This matter is pending.

The Company believes that the Meadowlands Venture's proposal and the planned project comply with applicable laws, and the Meadowlands Venture intends to continue its vigorous defense of its rights under the Redevelopment Agreement and Ground Lease. Although there can be no assurance, the Company does not believe that the pending lawsuits will have any material affect on its ability to develop the Meadowlands Xanadu project.

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

The Company holds a 50 percent interest in G&G Martco, which owns Convention Plaza, a 305,618 square foot office building, located in San Francisco, California. The venture has a mortgage loan with a \$47.3 million balance at September 30, 2006 collateralized by its office property. The loan also provides the venture the ability to increase the balance of the loan up to an additional \$266,000 for the funding of qualified leasing costs. The loan bears interest at a rate of the London Inter-Bank Offered Rate ("LIBOR") (5.322 percent at September 30, 2006) plus 162.5 basis points and was scheduled to mature in August 2006. The Company has agreed in principle to sell its joint venture interest to an affiliate of its current joint venture partner. The maturity date of the mortgage loan was extended to November 15, 2006. The Company performs management and leasing services for the property owned by the joint venture and recognized \$36,000 and \$30,000 in fees for such services in the three months ended September 30, 2006 and 2005, respectively, and \$119,000 and \$99,000 for the nine months ended September 30, 2006 and 2005, respectively.

On May 20, 1998, the Company entered into a joint venture 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, New Jersey, adjacent to the Company’s Harborside Financial Center office complex. Among other things, the partnership agreement provides 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.

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 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 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, New York. In August 1999,

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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 \$14.9 million balance at September 30, 2006 secured by its office/flex property. The mortgage bears interest at a rate of LIBOR plus 175 basis points and matures in January 2007, with one two-year extension option, subject to certain conditions. The venture has provided notice and the required extension fee to the lender of its intention to extend the term of the loan until January 2009.

The Company performs management, leasing and other services for the property owned by the joint venture and recognized \$35,000 and \$8,000 in fees for such services in the three months ended September 30, 2006 and 2005, respectively, and \$82,000 and \$63,000 for the nine months ended September 30, 2006 and 2005, 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 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, Texas. The Company held a 20 percent interest in the joint venture. On February 25, 2005, the Company sold its interest in the venture to Prudential for \$2.7 million.

#### **SOUTH PIER AT HARBORSIDE – HOTEL DEVELOPMENT**

On November 17, 1999, the Company entered into a joint venture with Hyatt Corporation (“Hyatt”) to develop a 350-room hotel on the South Pier at Harborside Financial Center, Jersey City, New Jersey, which was completed and commenced initial operations in July 2002. The Company owns a 50 percent interest in the venture.

The venture had a mortgage loan with a commercial bank with a \$62.9 million balance at December 31, 2003 collateralized by its hotel property. The debt bore interest at a rate of LIBOR plus 275 basis points, which was scheduled to mature in December 2003, and was extended through January 29, 2004. On that date, the venture repaid the mortgage loan using the proceeds from a new \$40.0 million mortgage loan, (with a balance as of September 30, 2006 of \$38.9 million) collateralized by the hotel property, as well as capital contributions from the Company and Hyatt of \$10.8 million each. The new loan carried an interest rate of LIBOR plus 200 basis points and was scheduled to mature in February 2007. On October 12, 2006, the venture repaid the mortgage loan using proceeds from a new \$70.0 million mortgage loan collateralized by the hotel property. The new loan carries an interest rate of 6.15 percent and matures in November 2016. On May 25, 2004, the venture obtained a second mortgage loan with a commercial bank for \$20.0 million. The loan carried an interest rate of LIBOR plus 175 basis points and was scheduled to mature in February 2007. The proceeds from this loan were used to make distributions to the Company and Hyatt in the amount of \$10.0 million each. This loan was repaid in full during the quarter from operating cash.

Additionally, the venture has a loan with a balance as of September 30, 2006 of \$7.3 million 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 a \$7.3 million letter of credit in support of this loan, \$3.6 million of which is indemnified by Hyatt.

#### **RED BANK CORPORATE PLAZA L.L.C./RED BANK CORPORATE PLAZA II, L.L.C.**

On March 23, 2006, the Company entered into a joint venture with the PRC Group (“PRC”) to form Red Bank Corporate Plaza L.L.C. The venture was formed to develop Red Bank Corporate Plaza, a 92,878 square foot office building located in Red Bank, New Jersey, which has been fully pre-leased to Hovnanian Enterprises, Inc. for a 10-year term. The Company holds a 50 percent interest in the venture. PRC contributed the vacant land for the development of the office building as its initial capital in the venture. The Company funded the costs of development up to the value of the land contributed by PRC of \$3.5 million as its initial capital. PRC and the Company each funded development costs of the venture of \$1.1 million in excess of their initial capital contributed.

On October 20, 2006, the venture entered into a \$22.0 million construction loan with a commercial bank collateralized by the land and development project. The loan carries an interest rate of LIBOR plus 130 basis points and matures in April 2008. The loan currently has three one-year extension options subject to certain conditions, each of which require payment of a fee.

On July 20, 2006, the Company entered into a second joint venture agreement with PRC to form Red Bank Corporate Plaza II L.L.C. The venture was formed to hold land on which it plans to develop Red Bank Corporate

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Plaza II, an 18,561 square foot office building located in Red Bank, New Jersey. The Company holds a 50 percent interest in the venture. The terms of the venture are similar to Red Bank Corporate Plaza L.L.C. PRC contributed the vacant land as its initial capital in the venture.

#### **MACK-GREEN-GALE LLC**

On May 9, 2006, as part of the Gale/Green Transactions, the Company entered into a joint venture, Mack-Green-Gale LLC (“Mack-Green”), with SL Green, pursuant to which Mack-Green holds a 96 percent interest and acts as general partner of Gale SLG NJ Operating Partnership, L.P. (the “OP LP”). The Company acquired its interest in Mack-Green for approximately \$116 million, which was funded primarily through borrowing under the Company’s revolving credit facility. The OP LP owns 100 percent of entities which own 25 office properties (the “OP LP Properties”) which aggregate 3.5 million square feet (consisting of 17 office properties aggregating 2.3 million square feet located in New Jersey and eight properties aggregating 1.2 million square feet located in Troy, Michigan), as well as a minor, non-controlling interest in four office properties aggregating 419,000 square feet located in Naperville, Illinois.

As defined in the Mack-Green operating agreement, the Company shares decision-making equally with SL Green regarding: (i) all major decisions involving the operations of Mack-Green; and (ii) overall general partner responsibilities in operating the OP LP.

The Mack-Green operating agreement generally provides for profits and losses to be allocated as follows:

- (i) 99 percent of Mack-Green's share of the profits and losses from 10 specific OP LP Properties allocable to the Company and one percent allocable to SL Green;
- (ii) one percent of Mack-Green's share of the profits and losses from eight specific OP LP Properties and its minor interest in four office properties allocable to the Company and 99 percent allocable to SL Green; and
- (iii) 50 percent of all other profits and losses allocable to the Company and 50 percent allocable to SL Green.

Substantially all of the OP LP Properties are encumbered by mortgage loans with an aggregate outstanding principal balance of \$358.5 million. \$190.2 million of the mortgage loans bear interest at a weighted average fixed interest rate of 6.32 percent per annum and mature at various times through May 2016. \$168.3 million of the mortgage loans bear interest at a floating rate ranging from LIBOR plus 185 basis points to LIBOR plus 275 basis points per annum and mature at various times through August 2008. Included in the floating rate mortgage loans are \$90.3 million provided by an affiliate of SL Green.

On August 9, 2006, \$69.7 million of mortgage loans were refinanced. The new loan has a maximum principal amount of \$90.0 million with \$78.0 million drawn at September 30, 2006. The loan provides the ability to draw funds for qualified leasing and capital improvement costs. The loan bears interest at a rate of LIBOR plus 185 basis points and matures on August 8, 2008 with a two-year extension option.

The Company performs management, leasing, and construction services for the properties owned by the joint venture and recognized \$900,000 in income (net of \$310,000 in direct costs) and \$1.7 million in income (net of \$737,000 in direct costs) for such services in the three and nine months ended September 30, 2006.

#### **GE/GALE FUNDING LLC (PFV)**

On May 9, 2006, as part of the Gale/Green Transactions, the Company acquired from a Gale Affiliate for \$1.8 million a 50 percent controlling interest in GMW Village Associates, LLC ("GMW Village"). GMW Village holds a 20 percent interest in GE/Gale Funding LLC ("GE Gale"). GE Gale owns a 100 percent interest in the entity owning Princeton Forrestal Village, a mixed-use, office/retail complex aggregating 530,000 square feet and located in Plainsboro, New Jersey ("Princeton Forrestal Village" or "PFV").

In addition to the cash consideration paid to acquire the interest, the Company provided a Gale Affiliate with the Gale Participation Rights.

The operating agreement of GE Gale, which is owned 80 percent by GEBAM, Inc., provides for, among other things, distributions of net cash flow, initially, in proportion to each member's interest and subject to adjustment upon achievement of certain financial goals, as defined in the operating agreement.

GE Gale has a mortgage loan in an amount not to exceed \$52.8 million, which has a balance at September 30, 2006, of \$39.3 million. The loan provides the venture the ability to draw funds for qualified leasing and capital improvement costs. The loan bears interest at a rate of LIBOR plus 275 basis points and matures on January 9, 2009, with an extension option through January 9, 2011.

The Company performs management, leasing, and construction services for PFV and recognized \$402,000 in income (net of \$3.2 million in direct costs) for such services in the three and nine months ended September 30, 2006.

#### **ROUTE 93 MASTER LLC ("Route 93 Participant")/ROUTE 93 BEDFORD MASTER LLC (with the Route 93 Participant, collectively, the "Route 93 Venture")**

On June 1, 2006, the Route 93 Venture was formed between the Route 93 Participant, a majority-owned subsidiary of the Company, having a 30 percent interest and the Commingled Pension Trust Fund (Special Situation Property) of JPMorgan Chase Bank having a 70 percent interest, for the purpose of acquiring seven office buildings, aggregating 670,000 square feet, located in the towns of Andover, Bedford and Billerica, Massachusetts. Profits and losses are shared by the partners in proportion to their respective interests until the investment yields an 11 percent IRR, then sharing will shift to 40/60, and when the IRR reaches 15 percent, then sharing will shift to 50/50.

The Route 93 Participant is a joint venture between the Company and a Gale affiliate. Profits and losses are shared by the partners under this venture in proportion to their respective interests until the investment yields an 11 percent IRR, then sharing will shift to 50/50.

The Route 93 Ventures have mortgage loans with an amount not to exceed \$58.6 million, with a \$39.4 million balance at September 30, 2006 collateralized by its office properties. The loan provides the venture the ability to draw additional monies for qualified leasing and capital improvement costs. The loan bears interest at a rate of LIBOR plus 220 basis points and matures on July 11, 2008, with three one-year extension options.

The Company performs management and construction services for the properties owned by the Route 93 Ventures and recognized \$0 for such services in the three and nine months ended September 30, 2006.

#### **GALE KIMBALL, L.L.C.**

On June 15, 2006, the Company entered into a joint venture with a Gale Affiliate to form M-C Kimball, LLC ("M-C Kimball"). M-C Kimball was formed for the sole purpose of acquiring a Gale Affiliate's 33.33 percent membership interest in Gale Kimball, L.L.C. ("Gale Kimball"), an entity holding a 25 percent interest in 100 Kimball Drive LLC ("100 Kimball"), which is developing a 175,000 square foot office property located at 100 Kimball Drive, Parsippany, New Jersey (the "Kimball Property").

The operating agreement of M-C Kimball provides, among other things, for the Gale Participation Rights.

Gale Kimball is owned 33.33 percent by M-C Kimball and 66.67 percent by the Hampshire Generational Fund, L.L.C. ("Hampshire"). The operating agreement of Gale Kimball provides, among other things, for the distribution of net cash flow, initially, in accordance with its members' respective membership interests and, upon achievement of certain financial conditions, 50 percent to each of the Company and Hampshire.

100 Kimball is owned 25 percent by Gale Kimball and 75 percent by 100 Kimball Drive Realty Member LLC, an affiliate of JP Morgan ("JPM"). The operating agreement of 100 Kimball provides, among other things, for the distributions to be made in the following order:

- (i) first, to JPM, such that JPM is provided with an annual 12 percent compound preferred return on Preferred Equity Capital Contributions (as such term is defined in the operating agreement of 100 Kimball and largely comprised of development and construction costs);

- (ii) second, to JPM, as return of Preferred Equity Capital Contributions until complete repayment of such Preferred Equity Capital Contributions;
- (iii) third, to each of JPM and Gale Kimball in proportion to their respective membership interests until each member is provided, as a result of such distributions, with an annual twelve percent compound return on the Member's Capital Contributions (as defined in the operating agreement of 100 Kimball, and excluding Preferred

Equity Capital Contributions, if any); and

(iv) fourth, 50 percent to each of JPM and Gale Kimball.

100 Kimball has a construction loan in an amount not to exceed \$29 million, with a balance at September 30, 2006 of \$12.5 million. The loan bears interest at a rate of LIBOR plus 195 basis points and matures on December 8, 2008 with a one-year extension option.

The Company performs construction and development services for the property owned by 100 Kimball for which it recognized \$130,000 in income (net of \$2.4 million in direct costs) and \$276,000 in income (net of \$5.7 million in direct costs) in the three and nine months ended September 30, 2006.

#### 55 CORPORATE PARTNERS, LLC

On June 9, 2006, the Company entered into a joint venture with a Gale Affiliate to form 55 Corporate Partners, LLC ("55 Corporate"). 55 Corporate was formed for the sole purpose of acquiring from a Gale Affiliate a 50 percent interest in SLG 55 Corporate Drive II, LLC ("SLG 55"), an entity indirectly holding a condominium interest in a vacant land parcel located in Bridgewater, New Jersey, which can accommodate development of an approximately 200,000 square foot office building. Sanofi-Aventis, which occupies neighboring buildings, has an option to cause the venture to construct the building, which it would lease on a long-term basis. Sanofi-Aventis is required to pay a penalty of \$7 million, subject to certain conditions, in the event it fails to exercise the option. The remaining 50 percent in SLG 55 is owned by SLG Gale 55 Corporate LLC, an affiliate of SL Green Realty Corp ("SLG Gale 55").

The operating agreement of 55 Corporate provides, among other things, for the Gale Participation Rights.

The operating agreement of SLG 55 provides, among other things, for the distribution of the available net cash flow to each of 55 Corporate and SLG Gale 55 in proportion to their respective membership interests in SLG 55 (50 percent each).

#### 12 VREELAND ASSOCIATES, L.L.C.

On September 8, 2006, the Company entered into a joint venture with a Gale Affiliate to form M-C Vreeland, LLC ("M-C Vreeland"). M-C Vreeland was formed for the sole purpose of acquiring a Gale Affiliate's 50 percent membership interest in 12 Vreeland Associates, L.L.C., an entity owning an office property located at 12 Vreeland Road, Florham Park, New Jersey.

The operating agreement of M-C Vreeland provides, among other things, for the Gale Participation Rights.

The office property at 12 Vreeland is a 139,750 square foot office building that is fully leased to a single tenant through June 15, 2012. The property is subject to a mortgage loan, which matures on July 1, 2012, in the initial amount of \$18.1 million bearing interest at 6.9 percent per annum. As of September 30, 2006 the outstanding balance on the mortgage note was \$10.6 million.

Under the operating agreement of 12 Vreeland Associates, L.L.C., M-C Vreeland has a 50 percent interest, with S/K Florham Park Associates, L.L.C. (the managing member) and its affiliate holding the other 50 percent.

### 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, 2006 and December 31, 2005: (*dollars in thousands*)

|  | September 30, 2006    |               |                                  |                   |                          |                                |               |          |                       |                 |                 |           |                   |
|--|-----------------------|---------------|----------------------------------|-------------------|--------------------------|--------------------------------|---------------|----------|-----------------------|-----------------|-----------------|-----------|-------------------|
|  | Meadowlands<br>Xanadu | G&G<br>Martco | Plaza<br>VIII & IX<br>Associates | Ramland<br>Realty | Harborside<br>South Pier | Red Bank<br>Corporate<br>Plaza | Mack<br>Green | PFV      | Route 93<br>Portfolio | Gale<br>Kimball | 55<br>Corporate | Vreeland  | Combined<br>Total |
| <b>Assets:</b>   |                       |               |                                  |                   |                          |                                |               |          |                       |                 |                 |           |                   |
| Rental property, net   | \$ 425,431            | \$ 9,860      | \$ 11,558                        | \$ 12,189         | \$ 70,462                | \$ 9,446                       | \$503,696     | \$31,356 | \$ 54,292             | \$ 23,780       | —               | \$ 8,287  | \$1,160,357       |
| Other assets   | 178,253               | 7,155         | 1,177                            | 1,234             | 12,074                   | 936                            | 35,499        | 26,060   | 7,274                 | 653             | —               | 920       | 271,235           |
| Total assets   | \$ 603,684            | \$17,015      | \$ 12,735                        | \$ 13,423         | \$ 82,536                | \$ 10,382                      | \$539,195     | \$57,416 | \$ 61,566             | \$24,433        | —               | \$ 9,207  | \$1,431,592       |
| <b>Liabilities and partners'/members' capital (deficit):</b> |                       |               |                                  |                   |                          |                                |               |          |                       |                 |                 |           |                   |
| Mortgages, loans payable and other obligations               | —                     | \$47,363      | —                                | \$ 14,936         | \$ 48,170                | —                              | \$358,495     | \$39,344 | \$ 39,435             | \$ 12,529       | —               | \$ 10,684 | \$ 570,956        |
| Other liabilities  | \$ 40,682             | 1,027         | 530                              | 355               | 6,059                    | \$ 1,350                       | 18,937        | 7,072    | 956                   | —               | —               | —         | 76,968            |
| Partners'/members' capital (deficit)                         | 563,002               | (31,375)      | 12,205                           | (1,868)           | 28,307                   | 9,032                          | 161,763       | 11,000   | 21,175                | 11,904          | —               | (1,477)   | 783,668           |
| Total liabilities and partners'/members' capital (deficit)   | \$ 603,684            | \$17,015      | \$ 12,735                        | \$ 13,423         | \$ 82,536                | \$ 10,382                      | \$539,195     | \$57,416 | \$ 61,566             | \$24,433        | —               | \$ 9,207  | \$1,431,592       |
| Company's investment in unconsolidated joint ventures, net   | \$ 34,420             | \$ 5,708      | \$ 6,022                         | \$ —              | \$ 16,716                | \$ 4,744                       | \$112,463     | \$ 2,718 | \$ 6,524              | \$ 1,006        | \$ 8,500        | \$ 6,952  | \$ 205,773        |

  

|  | December 31, 2005     |               |                                  |                   |                          |                                |               |     |                       |                 |                 |          |                   |
|--|-----------------------|---------------|----------------------------------|-------------------|--------------------------|--------------------------------|---------------|-----|-----------------------|-----------------|-----------------|----------|-------------------|
|  | Meadowlands<br>Xanadu | G&G<br>Martco | Plaza<br>VIII & IX<br>Associates | Ramland<br>Realty | Harborside<br>South Pier | Red Bank<br>Corporate<br>Plaza | Mack<br>Green | PFV | Route 93<br>Portfolio | Gale<br>Kimball | 55<br>Corporate | Vreeland | Combined<br>Total |
| <b>Assets:</b>   |                       |               |                                  |                   |                          |                                |               |     |                       |                 |                 |          |                   |
| Rental property, net   | \$ 390,488            | \$ 10,628     | \$ 12,024                        | \$ 12,511         | \$ 74,466                | —                              | —             | —   | —                     | —               | —               | —        | \$ 500,117        |
| Other assets   | 171,029               | 6,427         | 1,661                            | 1,188             | 11,393                   | —                              | —             | —   | —                     | —               | —               | —        | 191,698           |
| Total assets   | \$ 561,517            | \$ 17,055     | \$ 13,685                        | \$ 13,699         | \$ 85,859                | —                              | —             | —   | —                     | —               | —               | —        | 691,815           |
| <b>Liabilities and partners'/members' capital (deficit):</b> |                       |               |                                  |                   |                          |                                |               |     |                       |                 |                 |          |                   |
| Mortgages, loans payable and other obligations               | —                     | \$ 46,588     | —                                | \$ 14,936         | \$ 56,970                | —                              | —             | —   | —                     | —               | —               | —        | \$ 118,494        |
| Other liabilities  | \$ 60,447             | 876           | \$ 1,358                         | 220               | 4,341                    | —                              | —             | —   | —                     | —               | —               | —        | 67,242            |
| Partners'/members' capital (deficit)                         | 501,070               | (30,409)      | 12,327                           | (1,457)           | 24,548                   | —                              | —             | —   | —                     | —               | —               | —        | 506,079           |
| Total liabilities and partners'/members' capital (deficit)   | \$ 561,517            | \$ 17,055     | \$ 13,685                        | \$ 13,699         | \$ 85,859                | —                              | —             | —   | —                     | —               | —               | —        | \$ 691,815        |
| Company's investment in unconsolidated joint ventures, net   | \$ 34,640             | \$ 6,438      | \$ 6,084                         | \$ —              | \$ 14,976                | —                              | —             | —   | —                     | —               | —               | —        | \$ 62,138         |

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, 2006 and 2005: (*dollars in thousands*)

|  | Three Months Ended September 30, 2006 |               |                                  |                   |                 |                          |                                |               |     |                       |                 |                 |          |
|--|---------------------------------------|---------------|----------------------------------|-------------------|-----------------|--------------------------|--------------------------------|---------------|-----|-----------------------|-----------------|-----------------|----------|
|  | Meadowlands<br>Xanadu                 | G&G<br>Martco | Plaza<br>VIII & IX<br>Associates | Ramland<br>Realty | Ashford<br>Loop | Harborside<br>South Pier | Red Bank<br>Corporate<br>Plaza | Mack<br>Green | PFV | Route 93<br>Portfolio | Gale<br>Kimball | 55<br>Corporate | Vreeland |

|  |            |          |         |          |   |          |   |            |          |          |      |   |        |            |
|--|------------|----------|---------|----------|---|----------|---|------------|----------|----------|------|---|--------|------------|
| Total revenues   | \$ 110     | \$ 1,703 | \$ 167  | \$ 518   | — | \$ 9,926 | — | \$15,002   | \$2,194  | \$ 1,970 | \$ 3 | — | \$ 156 | \$ 31,749  |
| Operating and other expenses   | (2,578)    | (999)    | (62)    | (391)    | — | (6,015)  | — | (7,578)    | (1,694)  | (590)    | (1)  | — | (64)   | (19,972)   |
| Depreciation and amortization  | —          | (363)    | (154)   | (167)    | — | (1,460)  | — | (5,841)    | (695)    | (349)    | —    | — | (29)   | (9,058)    |
| Interest expense   | —          | (845)    | —       | (267)    | — | (893)    | — | (6,629)    | (795)    | (761)    | —    | — | —      | (10,190)   |
| Net income   | \$ (2,468) | \$ (504) | \$ (49) | \$ (307) | — | \$ 1,558 | — | \$ (5,046) | \$ (990) | \$ 270   | \$ 2 | — | \$ 63  | \$ (7,471) |
| Company's equity in earnings (loss) of unconsolidated joint ventures | \$ (1,876) | \$ (409) | \$ (24) | \$ (225) | — | \$ 639   | — | \$ (2,749) | \$ (211) | \$ 67    | —    | — | \$ 31  | \$ (4,757) |

**Three Months Ended September 30, 2005**

|  | Meadowlands<br>Xanadu | G&G<br>Martco | Plaza<br>VIII & IX<br>Associates | Ramland<br>Realty | Ashford<br>Loop | Harborside<br>South Pier | Red Bank<br>Corporate<br>Plaza | Mack<br>Green | PFV | Route 93<br>Portfolio | Gale<br>Kimball | 55<br>Corporate | Vreeland | Combined<br>Total |
|--|-----------------------|---------------|----------------------------------|-------------------|-----------------|--------------------------|--------------------------------|---------------|-----|-----------------------|-----------------|-----------------|----------|-------------------|
| Total revenues   | —                     | \$ 1,796      | \$ 94                            | \$ 486            | —               | \$ 9,045                 | —                              | —             | —   | —                     | —               | —               | —        | \$ 11,421         |
| Operating and other expenses   | —                     | (948)         | (37)                             | (381)             | —               | (5,848)                  | —                              | —             | —   | —                     | —               | —               | —        | (7,214)           |
| Depreciation and amortization  | —                     | (315)         | (154)                            | (160)             | —               | (1,300)                  | —                              | —             | —   | —                     | —               | —               | —        | (1,929)           |
| Interest expense   | —                     | (604)         | —                                | (198)             | —               | (1,084)                  | —                              | —             | —   | —                     | —               | —               | —        | (1,886)           |
| Net income   | —                     | \$ (71)       | \$ (97)                          | \$ (253)          | —               | \$ 813                   | —                              | —             | —   | —                     | —               | —               | —        | \$ 392            |
| Company's equity in earnings (loss) of unconsolidated joint ventures | —                     | \$ (35)       | \$ (49)                          | \$ —              | —               | \$ 406                   | \$ 0                           | —             | —   | —                     | —               | —               | —        | \$ 322            |

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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, 2006 and 2005: *(dollars in thousands)*

**Nine Months Ended September 30, 2006**

|  | Meadowlands<br>Xanadu | G&G<br>Martco | Plaza<br>VIII & IX<br>Associates | Ramland<br>Realty | Ashford<br>Loop | Harborside<br>South Pier | Red Bank<br>Corporate<br>Plaza | Mack<br>Green | PFV        | Route 93<br>Portfolio | Gale<br>Kimball | 55<br>Corporate | Vreeland | Combined<br>Total |
|--|-----------------------|---------------|----------------------------------|-------------------|-----------------|--------------------------|--------------------------------|---------------|------------|-----------------------|-----------------|-----------------|----------|-------------------|
| Total revenues   | \$ 409                | \$ 5,351      | \$ 489                           | \$ 1,533          | —               | \$ 27,529                | —                              | \$24,469      | \$ 6,585   | \$ 2,528              | \$ 3            | —               | \$ 156   | \$ 69,052         |
| Operating and other expenses   | (2,729)               | (2,880)       | (150)                            | (1,095)           | —               | (16,651)                 | —                              | (11,354)      | (4,410)    | (847)                 | (1)             | —               | (64)     | (40,181)          |
| Depreciation and amortization  | —                     | (1,075)       | (462)                            | (543)             | —               | (4,369)                  | —                              | (9,219)       | (2,116)    | (465)                 | —               | —               | (29)     | (18,278)          |
| Interest expense   | —                     | (2,362)       | —                                | (756)             | —               | (2,750)                  | —                              | (10,219)      | (2,178)    | (1,002)               | —               | —               | —        | (19,267)          |
| Net income   | \$ (2,320)            | \$ (966)      | \$ (123)                         | \$ (861)          | —               | \$ 3,759                 | —                              | \$ (6,323)    | \$ (2,119) | \$ 214                | \$ 2            | —               | \$ 63    | \$ (8,674)        |
| Company's equity in earnings (loss) of unconsolidated joint ventures | \$ (1,876)            | \$ (731)      | \$ (61)                          | \$ (225)          | —               | \$ 1,740                 | —                              | \$ (4,009)    | \$ (278)   | \$ 53                 | —               | —               | \$ 31    | \$ (5,356)        |

**Nine Months Ended September 30, 2005**

|  | Meadowlands<br>Xanadu | G&G<br>Martco | Plaza<br>VIII & IX<br>Associates | Ramland<br>Realty | Ashford<br>Loop | Harborside<br>South Pier | Red Bank<br>Corporate<br>Plaza | Mack<br>Green | PFV | Route 93<br>Portfolio | Gale<br>Kimball | 55<br>Corporate | Vreeland | Combined<br>Total |
|--|-----------------------|---------------|----------------------------------|-------------------|-----------------|--------------------------|--------------------------------|---------------|-----|-----------------------|-----------------|-----------------|----------|-------------------|
| Total revenues   | —                     | \$ 4,945      | \$ 222                           | \$ 1,519          | \$ 405          | \$ 24,932                | —                              | —             | —   | —                     | —               | —               | —        | \$ 32,023         |
| Operating and other expenses   | —                     | (2,685)       | (133)                            | (1,047)           | (397)           | (15,673)                 | —                              | —             | —   | —                     | —               | —               | —        | (19,935)          |
| Depreciation and amortization  | —                     | (861)         | (462)                            | (478)             | (160)           | (4,184)                  | —                              | —             | —   | —                     | —               | —               | —        | (6,145)           |
| Interest expense   | —                     | (1,592)       | —                                | (540)             | —               | (3,091)                  | —                              | —             | —   | —                     | —               | —               | —        | (5,223)           |
| Net income   | —                     | \$ (193)      | \$ (373)                         | \$ (546)          | \$ (152)        | \$ 1,984                 | —                              | —             | —   | —                     | —               | —               | —        | \$ 720            |
| Company's equity in earnings (loss) of unconsolidated joint ventures | —                     | \$ (280)      | \$ (187)                         | \$ —              | \$ (30)         | \$ 1,049                 | —                              | —             | —   | —                     | —               | —               | —        | \$ 552            |

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**5. DEFERRED CHARGES AND OTHER ASSETS**

| <b>(dollars in thousands)</b>                                   | <b>September 30,<br/>2006</b> | <b>December 31,<br/>2005</b> |
|---|-------------------------------|------------------------------|
| Deferred leasing costs  | \$ 186,425                    | \$ 182,975                   |
| Deferred financing costs  | 21,379                        | 21,764                       |
|   | 207,804                       | 204,739                      |
| Accumulated amortization  | (75,083)                      | (73,410)                     |
| Deferred charges, net   | 132,721                       | 131,329                      |
| Notes receivable  | 11,806                        | 11,919                       |
| In-place lease values, related intangible and other assets, net | 71,859                        | 37,028                       |
| Prepaid expenses and other assets, net                          | 34,498                        | 17,358                       |
| Total deferred charges and other assets, net                    | <u>\$ 250,884</u>             | <u>\$ 197,634</u>            |

**6. DISCONTINUED OPERATIONS**

On March 23, 2006, the Company entered into an agreement to sell its 118,727 square-foot office building located at 300 Westage Business Center Drive in Fishkill, New York. On June 28, 2006, the Company completed the sale of the building, received net sales proceeds of approximately \$14.8 million, and recognized a gain of approximately \$3.9 million on the sale.

On June 30, 2006, the Company sold 1510 Lancer Drive, an 88,000 square-foot office/flex building located in Moorestown, New Jersey, for \$4.2 million, and recognized a gain of approximately \$1.0 million on the sale.

On August 9, 2006, the Company entered into an agreement to sell its entire Colorado portfolio, which consists of 19 office buildings totaling approximately 1.4 million square feet, plus 7.1 acres of vacant land and a 1.6 acre site being developed for additional parking at one of the office buildings, for approximately \$195.3 million.

On September 25, 2006, the Company entered into an agreement to sell its California portfolio, which consists of two office buildings totaling approximately 450,891 square feet, for approximately \$126 million.

The above referenced portfolios are identified as held for sale as of September 30, 2006 and carried an aggregate book value of \$247.2 million, net of accumulated



depreciation of \$50 million. The Company has presented these assets as discontinued operations in its statements of operations for all periods presented.

When the Company identified its 178,329 square foot office building located at 201 Willowbrook Boulevard in Wayne, New Jersey as held for sale on March 31, 2005, it determined that the carrying amount of this property was not expected to be recovered from estimated net sales proceeds and recognized a valuation allowance of \$1.4 million (net of minority interest of \$179,000) during the three months ended March 31, 2005.

As the Company sold 111 East Shore Road and 600 Community Drive in North Hempstead, New York; 210 South 1<sup>st</sup> Street in Omaha, Nebraska; 3600 South Yosemite in Denver, Colorado; 201 Willowbrook Boulevard in Wayne, New Jersey; 1122 Alma Road in Richardson, Texas; and 3 Skyline Drive in Hawthorne, New York during the year ended December 31, 2005; the Company has also presented these assets as discontinued operations in the statements of operations for all periods presented.

The following tables summarize income from discontinued operations (net of minority interest) and the related realized gains (losses) and unrealized losses on disposition of rental property (net of minority interest), net for the three and nine month periods ended September 30, 2006 and 2005: (dollars in thousands)

|   | Three Months Ended<br>September 30, |          | Nine Months Ended<br>September 30, |           |
|---|-------------------------------------|----------|------------------------------------|-----------|
|   | 2006                                | 2005     | 2006                               | 2005      |
| Total revenues  | \$ 9,683                            | \$ 9,858 | \$ 29,840                          | \$ 38,483 |
| Operating and other expenses  | (4,252)                             | (4,781)  | (12,958)                           | (14,548)  |
| Depreciation and amortization   | (1,662)                             | (2,910)  | (7,088)                            | (9,420)   |
| Interest expense (net of interest income)   | —                                   | —        | 4                                  | 42        |
| Minority interest   | (756)                               | (395)    | (1,926)                            | (2,287)   |
| Income from discontinued operations (net of minority interest)  | \$ 3,013                            | \$ 1,772 | \$ 7,872                           | \$ 12,270 |
|   |                                     |          |                                    |           |
|   | Three Months Ended<br>September 30, |          | Nine Months Ended<br>September 30, |           |
|   | 2006                                | 2005     | 2006                               | 2005      |
| Realized gains on disposition of rental property  | —                                   | —        | \$ 4,905                           | \$ 12,691 |
| Unrealized losses on disposition of rental property   | —                                   | —        | —                                  | (1,613)   |
| Minority interest   | —                                   | —        | (984)                              | (2,105)   |
| Realized gains (losses) and unrealized losses on disposition of rental property (net of minority interest), net | —                                   | —        | \$ 3,921                           | \$ 8,973  |

## 7. SENIOR UNSECURED NOTES

A summary of the Company's senior unsecured notes as of September 30, 2006 and December 31, 2005 is as follows: (dollars in thousands)

|  | September 30,<br>2006 | December 31,<br>2005 | Effective<br>Rate (1) |
|--|-----------------------|----------------------|-----------------------|
| 7.250% Senior Unsecured Notes, due March 15, 2009    | \$ 299,423            | \$ 299,246           | 7.49%                 |
| 5.050% Senior Unsecured Notes, due April 15, 2010    | 149,806               | 149,765              | 5.27%                 |
| 7.835% Senior Unsecured Notes, due December 15, 2010 | 15,000                | 15,000               | 7.95%                 |
| 7.750% Senior Unsecured Notes, due February 15, 2011 | 299,251               | 299,122              | 7.93%                 |
| 5.250% Senior Unsecured Notes, due January 15, 2012  | 98,966                | —                    | 5.46%                 |
| 6.150% Senior Unsecured Notes, due December 15, 2012 | 91,858                | 91,488               | 6.89%                 |
| 5.820% Senior Unsecured Notes, due March 15, 2013    | 25,392                | 25,309               | 6.45%                 |
| 4.600% Senior Unsecured Notes, due June 15, 2013     | 99,808                | 99,787               | 4.74%                 |
| 5.125% Senior Unsecured Notes, due February 15, 2014 | 201,768               | 201,948              | 5.11%                 |
| 5.125% Senior Unsecured Notes, due January 15, 2015  | 149,233               | 149,164              | 5.30%                 |
| 5.800% Senior Unsecured Notes, due January 15, 2016  | 200,711               | 99,680               | 5.81%                 |
| Total Senior Unsecured Notes                         | \$ 1,631,216          | \$ 1,430,509         |                       |

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

On January 24, 2006, the Company issued \$100.0 million face amount of 5.80 percent senior unsecured notes due January 15, 2016 with interest payable semi-annually in arrears, and \$100.0 million face amount of 5.25 percent senior unsecured notes due January 15, 2012 with interest payable semi-annually in arrears. The total proceeds from

the issuances, including accrued interest on the 5.80 percent notes, of approximately \$200.8 million were used to reduce outstanding borrowings under the Company's unsecured facility.

## 8. UNSECURED REVOLVING CREDIT FACILITY

### 2004 Unsecured Facility

On November 23, 2004, the Company obtained an unsecured revolving credit facility ("2004 Unsecured Facility") with a borrowing capacity of \$600.0 million (expandable to \$800.0 million). The interest rate on outstanding borrowings (not electing the Company's competitive bid feature) under the 2004 Unsecured Facility is currently LIBOR plus 65 basis points. The facility has a competitive bid feature, which allows the Company to solicit bids from lenders under the facility to borrow up to \$300.0 million at interest rates less than the current LIBOR plus 65 basis point spread. As of September 30, 2006, the Company's outstanding borrowings carried a weighted average interest rate of LIBOR plus 46 points. The Company may also elect an interest rate representing the higher of the lender's prime rate or the Federal Funds rate plus 50 basis points. The 2004 Unsecured Facility, which also required a 20 basis point facility fee on the current borrowing capacity payable quarterly in arrears, was scheduled to mature in November 2007.

On September 16, 2005, the Company extended and modified the 2004 Unsecured Facility with a group of 23 lenders (reduced from 27). The facility was extended for an additional two years and now matures in November 2009, with an extension option of one year, which would require a payment of 25 basis points of the then borrowing capacity of the facility upon exercise. In addition, the facility fee was reduced by five basis points to 15 basis points at the BBB/Baa2 pricing level.

The interest rate and the facility fee are subject to adjustment, on a sliding scale, based upon the operating partnership's unsecured debt ratings. 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<br>Unsecured Debt Ratings:<br>S&P Moody's/Fitch (a) | Interest Rate –<br>Applicable Basis Points<br>Above LIBOR | Facility Fee<br>Basis Points |
|---|---|------------------------------|
| No ratings or less than BBB-/Baa3/BBB-                                      | 112.5   | 25.0                         |
| BBB-/Baa3/BBB-  | 80.0  | 20.0                         |
| BBB/Baa2/BBB (current)  | 65.0  | 15.0                         |
| BBB+/Baa1/BBB+  | 55.0  | 15.0                         |
| A-/A3/A- or higher  | 50.0  | 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 terms of the 2004 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 fixed charge coverage, the maximum amount of unsecured indebtedness, the minimum amount of unencumbered property interest 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 common 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 lending group for the 2004 Unsecured Facility consists of: JPMorgan Chase Bank, N.A., as administrative agent; Bank of America, N.A., as syndication agent; The Bank of Nova Scotia, New York Agency; Wachovia Bank, National Association; and Wells Fargo Bank, National Association, as documentation agents; SunTrust Bank, as senior managing agent; US Bank National Association; Citicorp North America, Inc.; and PNC Bank National Association, as managing agents; and Bank of China, New York Branch; The Bank of New York; Chevy Chase Bank, F.S.B.; The Royal Bank of Scotland, plc; Mizuho Corporate Bank, Ltd.; The Bank of Toyko – Mitsubishi UFJ, Ltd. (successor by merger to UFJ Bank Limited), New York Branch; The Governor and Company of the Bank of Ireland; Bank Hapoalim B.M.; Comerica Bank; Chang Hwa Commercial Bank, Ltd., New York Branch; First Commercial Bank, New York Agency; Chiao Tung Bank Co., Ltd., New York Agency; Deutsche Bank Trust Company Americas; and Hua Nan Commercial Bank, New York Agency.

#### SUMMARY

As of September 30, 2006 and December 31, 2005, the Company had outstanding borrowings of \$412.0 million and \$227.0 million respectively, under the 2004 Unsecured Facility.

#### 9. MORTGAGES, LOANS PAYABLE AND OTHER OBLIGATIONS

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

A summary of the Company's mortgages, loans payable and other obligations as of September 30, 2006 and December 31, 2005 is as follows: (*dollars in thousands*)

| Property Name  | Lender                              | Effective Interest Rate (a) | Principal Balance at |                   | Maturity    |
|--|-------------------------------------|-----------------------------|----------------------|-------------------|-------------|
|  |                                     |                             | September 30, 2006   | December 31, 2005 |             |
| Monmouth Executive Center                            | LaSalle Brothers CMBS               | 4.98%                       | —                    | \$ 16,044         | 08/01/06(b) |
| Mack-Cali Airport                                    | Allstate Life Insurance Co.         | 7.05%                       | \$ 9,479             | 9,644             | 04/01/07    |
| 6406 Ivy Lane  | Morgan Stanley Guaranty Trust Co.   | 5.57%                       | 14,840               | —                 | 06/01/07    |
| 6303 Ivy Lane  | State Farm Life Insurance Co.       | 5.57%                       | 6,114                | —                 | 07/01/07    |
| 6404 Ivy Lane  | TIAA                                | 5.58%                       | 13,819               | —                 | 08/01/08    |
| Assumed obligations                                  | Various                             | 4.90%                       | 42,227               | 53,241            | 05/01/09(c) |
| Various  | Prudential Insurance                | 4.84%                       | 150,000              | 150,000           | 01/15/10(d) |
| 105 Challenger Road                                  | Archon Financial CMBS               | 6.24%                       | 18,693               | —                 | 06/06/10    |
| 2200 Renaissance Boulevard                           | TIAA                                | 5.89%                       | 17,909               | 18,174            | 12/01/12    |
| Soundview Plaza                                      | TIAA                                | 6.02%                       | 18,119               | 18,427            | 01/01/13    |
| 9200 Edmonston Road                                  | Principal Commercial Funding L.L.C. | 5.53%                       | 5,265                | —                 | 05/01/13    |
| 6305 Ivy Lane  | John Hancock Life Insurance Co.     | 5.53%                       | 7,331                | —                 | 01/01/14    |
| 395 West Passaic                                     | State Farm Life Insurance Co.       | 6.00%                       | 13,093               | —                 | 05/01/14    |
| 6301 Ivy Lane  | John Hancock Life Insurance Co.     | 5.52%                       | 6,860                | —                 | 07/01/14    |
| 35 Waterview Blvd.                                   | Wachovia CMBS                       | 6.35%                       | 20,372               | —                 | 08/11/14    |
| 500 West Putnam Avenue                               | New York Life Insurance Co.         | 5.57%                       | 25,000               | 25,000            | 01/10/16    |
| 23 Main Street                                       | JP Morgan CMBS                      | 5.59%                       | 33,500               | 33,500            | 09/01/18    |
| Harborside – Plaza 2 and 3                           | Northwestern/Principal              | —                           | —                    | 144,642           | —(e)        |
| Total mortgages, loans payable and other obligations |                                     |                             | \$ 402,621           | \$ 468,672        |             |

(a) 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) Mortgage is collateralized by three properties. On August 1, 2006, the Company repaid this mortgage loan at par, using borrowings under the 2004 Unsecured Facility.

- (c) The obligations mature at various times through May 2009.
- (d) Mortgage is collateralized by seven properties.
- (e) On January 3, 2006, the Company repaid this mortgage loan at par, using borrowings under the 2004 Unsecured Facility.

#### CASH PAID FOR INTEREST AND INTEREST CAPITALIZED

Cash paid for interest for the nine months ended September 30, 2006 and 2005 was \$112,134,000 and \$96,593,000 respectively. Interest capitalized by the Company for the nine months ended September 30, 2006 and 2005 was \$4,777,000 and \$4,059,000, respectively.

#### SUMMARY OF INDEBTEDNESS

As of September 30, 2006, the Company's total indebtedness of \$2,445,837,000 (weighted average interest rate of 6.07 percent) was comprised of \$412,000,000 of revolving credit facility borrowings (weighted average rate of 5.79 percent) and fixed rate debt and other obligations of \$2,033,837,000 (weighted average rate of 6.13 percent).

As of December 31, 2005, the Company's total indebtedness of \$2,126,181,000 (weighted average interest rate of 6.15 percent) was comprised of \$227,000,000 of revolving credit facility borrowings (weighted average rate of 4.84 percent) and fixed rate debt of \$1,899,181,000 (weighted average rate of 6.30 percent).

#### 10. MINORITY INTERESTS

##### OPERATING PARTNERSHIP

Minority interests in the accompanying consolidated financial statements relate to (i) preferred units ("Preferred Units") and common units in the Operating Partnership, held by parties other than the Company, and (ii) interests in consolidated joint ventures for the portion of such properties not owned by the Company.

##### PREFERRED UNITS

The Operating Partnership has one class of outstanding Preferred Units, the Series C Preferred Units, and one class of Preferred Units, the Series B Preferred Units, which were converted to common units on June 13, 2005, each of which are described as follows:

##### Series C

In connection with the Company's issuance of \$25 million of Series C cumulative redeemable perpetual preferred stock, the Company acquired from the Operating Partnership \$25 million of Series C Preferred Units (the "Series C Preferred Units"), which have terms essentially identical to the Series C preferred stock. See Note 14: Stockholders' Equity – Preferred Stock.

##### Series B

The Series B Preferred Units had a stated value of \$1,000 per unit and were 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 was an amount equal to the greater of (i) \$16.875 (representing 6.75 percent of the Series B 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.

On June 13, 2005, the Operating Partnership caused the mandatory conversion (the "Conversion") of all 215,018 outstanding Series B Preferred Units into 6,205,425.72 Common Units. Each Series B Preferred Unit was converted into whole and fractional Common Units equal to (x) the \$1,000 stated value, divided by (y) the conversion price of \$34.65. A description of the rights, preferences and privileges of the Common Units is set forth below.

##### 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.

On February 28, 2006, in connection with the acquisition of Capital Office Park, the Company issued 1,942,334 common units in the Operating Partnership, valued at approximately \$87.2 million.

On May 9, 2006, in connection with the Gale/Green Transactions, the Company issued 224,719 common units in the Operating Partnership, valued at approximately \$10.3 million.

##### UNIT TRANSACTIONS

The following table sets forth the changes in minority interest which relate to the common units in the Operating Partnership for the nine months ended September 30, 2006: (dollars in thousands)

|   | Common<br>Units | Common<br>Unitholders |
|---|-----------------|-----------------------|
| Balance at January 1, 2006                            | 13,650,439      | \$ 400,819            |
| Net income  | —               | 18,236                |
| Distributions   | —               | (28,766)              |
| Issuance of common units                              | 2,167,053       | 97,517                |
| Redemption of common units for shares of Common Stock | (221,667)       | (6,855)               |
| Balance at September 30, 2006                         | 15,595,825      | \$ 480,951            |

##### MINORITY INTEREST OWNERSHIP

As of September 30, 2006 and December 31, 2005, the minority interest common unitholders owned 20.0 percent and 18.0 percent of the Operating Partnership, respectively.

##### CONSOLIDATED JOINT VENTURES

The Company has ownership interests in certain joint ventures which it consolidates. Various entities and/or individuals hold minority interests in many of these ventures.

#### 11. EMPLOYEE BENEFIT 401(k) PLAN

Employees of the Company, other than those assigned to the Gale Company and affiliated employers, 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 from 1 to 30 percent of their annual compensation, subject to certain limitations imposed by federal law. The amounts contributed by employees are immediately vested and non-forfeitable. The Company, at management's discretion, may match employee contributions and/or make discretionary contributions. Total expense recognized by the Company for the three months ended September 30, 2006 and 2005 was \$100,000 and \$100,000, respectively, and for the nine months ended September 30, 2006 and 2005 was \$300,000 and \$300,000, respectively.

All employees of the Gale Company and other affiliated participating employers, other than certain employees who are represented for collective bargaining purposes by a labor organization, who meet certain minimum age and period of service requirements are eligible to participate in a 401(k) defined contribution plan (the "Gale Plan"). The Gale Plan allows eligible employees to defer from their annual compensation, the maximum amount permitted under federal law. The amounts contributed by employees are immediately vested and non-forfeitable. The Gale Company or the participant's employer matches the employee's deferral at the rate of 50 percent on the first six percent of the employee's annual compensation for employees who have at least 1,000 hours of service and are employed on the last day of the plan year. In addition, the Company, at management's discretion, may make discretionary contributions. Participants become 50 percent vested in employer contributions after two years of service and become 100 percent vested after three years of service. Total expense recognized after the completion of the Gale/Green Transactions by the Company for the three and nine months ended September 30, 2006 was \$146,000 and \$242,000, respectively.

#### 12. COMMITMENTS AND CONTINGENCIES

##### TAX ABATEMENT AGREEMENTS

Pursuant to agreements with the City of Jersey City, New Jersey, the Company is required to make payments in lieu of property taxes ("PILOT") on certain of its properties located in Jersey City, as follows:

The Harborside Plaza 5 agreement, as amended, which commenced in 2002 upon substantial completion of the property, as defined, is for a term of 20 years. The PILOT is equal to two percent of Total Project Costs. Total Project Costs, as defined, are \$159.6 million. The PILOT totaled \$798,000 and \$798,000 for the three months ended September 30, 2006 and 2005, respectively, and \$2.4 million and \$2.4 million for the nine months ended September 30, 2006 and 2005, respectively.

The Harborside Plaza 4-A 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 \$45.5 million. The PILOT totaled \$227,000 and \$227,000 for the three months ended September 30, 2006 and 2005, respectively, and \$682,000 and \$682,000 for the nine months ended September 30, 2006 and 2005, respectively.

The 101 Hudson Street agreement commenced in 1991 for a term of 15 years and expires on December 25, 2006. The PILOT currently provides for the payment of a minimum annual service charge of approximately \$4.2 million, subject to certain adjustments as provided in the PILOT agreement. The PILOT totaled \$1.0 million and \$1.0 million for the three months ended September 30, 2006 and 2005, respectively. The PILOT totaled \$3.1 million for the nine months ended September 30, 2006 and \$2.5 million for the period of time during the nine months ended September 30, 2005 for which the Company owned the property.

At the conclusion of the above-referenced PILOT agreements, it is expected that the properties will be assessed by the municipality and be subject to real estate taxes at the then prevailing rates.

##### LITIGATION

The Company is a defendant in litigation arising in the normal course of its business activities. Management does not believe that the ultimate resolution of these matters will have a materially adverse effect upon the Company's financial condition taken as whole.

##### OPERATING LEASE AGREEMENTS

Future minimum rental payments under the terms of all non-cancelable operating leases under which the Company is the lessee, as of September 30, 2006, are as follows: (dollars in thousands)

| Year  | Amount        |
|-------|---------------|
| 2006  | \$ 291        |
| 2007  | 412           |
| 2008  | 68            |
| 2009  | 16            |
| 2010  | <u>3</u>      |
| Total | <u>\$ 790</u> |

##### GROUND LEASE AGREEMENTS

Future minimum rental payments under the terms of all non-cancelable ground leases under which the Company is the lessee, as of September 30, 2006, are as follows: (dollars in thousands)

| Year              | Amount        |
|-------------------|---------------|
| 2006              | \$ 173        |
| 2007              | 690           |
| 2008              | 645           |
| 2009              | 660           |
| 2010              | 660           |
| 2011 through 2084 | <u>37,107</u> |

Total \$ 39,935

Ground lease expense incurred by the Company during the three months ended September 30, 2006 and 2005 amounted to \$203,000 and \$172,000, respectively, and was \$519,000 and \$454,000 for the nine months ended September 30, 2006 and 2005, respectively.

#### **OTHER**

The Company may not dispose of or distribute certain of its properties, currently comprising 50 properties with an aggregate net book value of approximately \$1.3 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; David S. Mack, director; Earle I. Mack, a former director; and Mitchell E. Hersh, president, chief executive officer and director), the Robert Martin Group (which includes Robert F. Weinberg, director; Martin S. Berger, a former director; and Timothy M. Jones, former president), the Cali Group (which includes John R. Cali, director, and John J. Cali, a former director) or certain other common unitholders without the express written consent of a representative of the Mack Group, the Robert Martin Group, the Cali Group or the specific certain other common unitholders, 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, Cali Group members or the specific certain other common unitholders 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 2016. Upon the expiration of the Property Lock-Ups, the Company is generally 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, Cali Group members or the specific certain other common unitholders. 88 of our properties, with an aggregate net book value of approximately \$868.4 million, have lapsed restrictions and are subject to these conditions.

#### **13. TENANT LEASES**

The Properties are leased to tenants under operating leases with various expiration dates through 2021. 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.

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Future minimum rentals to be received under non-cancelable operating leases at September 30, 2006 are as follows: *(dollars in thousands)*

| <u>Year</u>         | <u>Amount</u>       |
|---------------------|---------------------|
| 2006                | \$ 110,092          |
| 2007                | 540,675             |
| 2008                | 496,174             |
| 2009                | 447,419             |
| 2010                | 392,641             |
| 2011 and thereafter | <u>1,209,526</u>    |
| Total               | <u>\$ 3,196,527</u> |

#### **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 depositary shares (\$25 stated value per depositary share). Each depositary share represents 1/100th of a share of Series C Preferred Stock. The Company received net proceeds of approximately \$24.8 million from the sale.

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, 2006, 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.

#### **SHARE REPURCHASE PROGRAM**

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 million of the Company's outstanding common stock ("Repurchase Program"). From that date through its last purchases on January 10, 2003, the Company purchased and retired, under the Repurchase Program, 3,746,400 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.

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In May 2004, the Company established the 2004 Incentive Stock Plan under which a total of 2,500,000 shares have been reserved for issuance. No options have been granted through September 30, 2006 under this plan. In September 2000, the Company established the 2000 Employee Stock Option Plan (“2000 Employee Plan”) and the Amended and Restated 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 of the 2000 plans from 2,700,000 to 4,350,000 shares 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 had been reserved for issuance (4,980,188 shares under the Employee Plan and 400,000 shares under the Director Plan). As the Employee Plan and Director Plan expired in 2004, stock options may no longer be issued under those plans. Stock options granted under the Employee Plan in 1994 and 1995 became exercisable over a three-year period. Stock options granted under the 2000 Employee Plan and those options granted subsequent to 1995 under the Employee Plan 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, 2006 and December 31, 2005, the stock options outstanding had a weighted average remaining contractual life of approximately 4.9 and 5.7 years, respectively. Stock options exercisable at September 30, 2006 and December 31, 2005 had a weighted average remaining contractual life of approximately 4.4 and 5.2 years, respectively.

Information regarding the Company’s stock option plans for the nine months ended September 30, 2006 is summarized below:

|   | Shares<br>Under<br>Options | Weighted<br>Average<br>Exercise Price | Aggregate Intrinsic<br>Value \$(000's) |
|---|----------------------------|---------------------------------------|--|
| Outstanding at January 1, 2006                        | 1,083,585                  | \$ 29.63                              |  |
| Exercised   | (302,619)                  | \$ 29.21                              |  |
| Lapsed or canceled                                    | (39,360)                   | \$ 28.47                              |  |
| Outstanding at September 30, 2006 (\$24.63 – \$45.47) | 741,606                    | \$ 29.86                              | \$ 16,271                              |
| Options exercisable at September 30, 2006             | 491,286                    | \$ 30.57                              | \$ 10,430                              |
| Available for grant at September 30, 2006             | 4,616,448                  | —                                     | —                                      |

The weighted average fair value at grant date of options granted during 2005 was \$3.62 per option. The fair value of each significant option grant is estimated on the date of grant using the Black-Scholes model. The following weighted average assumptions, based on the analysis of historical Company and market data, are included in the Company’s fair value calculations of stock options granted in 2005:

|                          | 2005   |
|--------------------------|--------|
| Expected life (in years) | 6      |
| Risk-free interest rate  | 3.97%  |
| Volatility               | 15.00% |
| Dividend yield           | 5.54%  |

No stock options were granted during the nine months ended September 30, 2006.

Cash received from options exercised under all stock option plans was \$3.1 million and \$1.4 million for the three months ended September 30, 2006 and 2005, respectively, and \$8.8 million and \$15.5 million for the nine months ended September 30, 2006 and 2005, respectively. The total intrinsic value of options exercised during the three months ended September 30, 2006 and 2005 was \$2.1 million and \$0.7 million, respectively, and \$5.2 million and \$8.6 million for the nine months ended September 30, 2006 and 2005, respectively. The Company has a policy of issuing new shares to satisfy stock option exercises.

The Company recognized stock options expense of \$36,000 and \$329,000 for the three months ended September 30, 2006 and 2005, respectively, and \$212,000 and \$410,000 for the nine months ended September 30, 2006 and 2005,

respectively. Included in stock options expense for the nine months ended September 30, 2006 was a stock option charge of \$0.1 million, which resulted from the accelerated vesting of 6,000 unvested options related to the resignation of a non-executive officer of the Company. As of September 30, 2006, the Company had \$4.3 million of total unrecognized compensation cost related to unvested stock compensation granted under the Company’s stock compensation plans. That cost is expected to be recognized over a weighted average period of 2.2 years.

#### STOCK COMPENSATION

The Company has granted stock awards (“Restricted Stock Awards”) to officers, certain other employees, and non-employee members of the Board of Directors of the Company, which allow the holders to each receive a certain amount of shares of the Company’s common stock generally over a one to five-year vesting period and generally based on time and service, of which 194,946 shares were outstanding at September 30, 2006. Of the outstanding Restricted Stock Awards granted to executive officers and senior management, 93,746 are contingent upon the Company meeting certain performance and/or stock price appreciation objectives. All Restricted Stock Awards provided to the officers and certain other employees were granted under the 2000 Employee Plan and the Employee Plan. Restricted Stock Awards granted to directors were granted under the 2000 Director Plan.

Information regarding the Restricted Stock Awards for the nine months ended September 30, 2006 is summarized below:

|                                   | Shares   | Weighted-Average<br>Grant-Date<br>Fair Value |
|-----------------------------------|----------|--|
| Outstanding at January 1, 2006    | 246,944  | \$ 37.17                                     |
| Granted (a)                       | 10,000   | \$ 44.84                                     |
| Vested                            | (55,248) | \$ 35.66                                     |
| Forfeited                         | (6,750)  | \$ 43.59                                     |
| Outstanding at September 30, 2006 | 194,946  | \$ 37.76                                     |

(a) On May 9, 2006, the Company granted 10,000 shares of Restricted Stock Awards to Mark Yeager, an executive officer of the Company.

#### 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, 2006 and 2005, 4,730 and 5,024 deferred stock units were earned, respectively. As of September 30, 2006 and December 31, 2005, there were 35,802 and 30,903 deferred stock units outstanding, respectively.

#### EARNINGS PER SHARE

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.

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The following information presents the Company's results for the three months ended September 30, 2006 and 2005 in accordance with FASB No. 128: *(dollars in thousands)*

|   | Three Months Ended<br>September 30, |                  |
|---|-------------------------------------|------------------|
|   | 2006                                | 2005             |
| <b>Computation of Basic EPS</b>   |                                     |                  |
| Income from continuing operations   | \$ 13,498                           | \$ 19,332        |
| Deduct: Preferred stock dividends   | (500)                               | (500)            |
| Income from continuing operations available to common shareholders                          | 12,998                              | 18,832           |
| Income from discontinued operations   | 3,013                               | 1,772            |
| Net income available to common shareholders   | <u>\$ 16,011</u>                    | <u>\$ 20,604</u> |
| Weighted average common shares  | <u>62,302</u>                       | <u>61,609</u>    |
| <b>Basic EPS:</b>   |                                     |                  |
| Income from continuing operations   | \$ 0.21                             | \$ 0.30          |
| Income from discontinued operations   | 0.05                                | 0.03             |
| Net income available to common shareholders   | <u>\$ 0.26</u>                      | <u>\$ 0.33</u>   |
| <b>Computation of Diluted EPS</b>   |                                     |                  |
| Three Months Ended<br>September 30,   |                                     |                  |
|   | 2006                                | 2005             |
| Income from continuing operations available to common shareholders                          | \$ 12,998                           | \$ 18,832        |
| Add: Income from continuing operations attributable to Operating Partnership – common units | 3,263                               | 4,205            |
| Income from continuing operations for diluted earnings per share                            | 16,261                              | 23,037           |
| Income from discontinued operations for diluted earnings per share                          | 3,769                               | 2,167            |
| Net income available to common shareholders   | <u>\$ 20,030</u>                    | <u>\$ 25,204</u> |
| Weighted average common shares  | <u>78,258</u>                       | <u>75,760</u>    |
| <b>Diluted EPS:</b>   |                                     |                  |
| Income from continuing operations   | \$ 0.21                             | \$ 0.30          |
| Income from discontinued operations   | 0.05                                | 0.03             |
| Net income available to common shareholders   | <u>\$ 0.26</u>                      | <u>\$ 0.33</u>   |

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The following information presents the Company's results for the nine months ended September 30, 2006 and 2005 in accordance with FASB No. 128: *(dollars in thousands)*

|   | Nine Months Ended<br>September 30, |                  |
|---|------------------------------------|------------------|
|   | 2006                               | 2005             |
| <b>Computation of Basic EPS</b>   |                                    |                  |
| Income from continuing operations   | \$ 64,949                          | \$ 59,344        |
| Deduct: Preferred stock dividends   | (1,500)                            | (1,500)          |
| Income from continuing operations available to common shareholders                          | 63,449                             | 57,844           |
| Income from discontinued operations   | 11,793                             | 21,243           |
| Net income available to common shareholders   | <u>\$ 75,242</u>                   | <u>\$ 79,087</u> |
| Weighted average common shares  | <u>62,158</u>                      | <u>61,397</u>    |
| <b>Basic EPS:</b>   |                                    |                  |
| Income from continuing operations   | \$ 1.02                            | \$ 0.94          |
| Income from discontinued operations   | 0.19                               | 0.35             |
| Net income available to common shareholders   | <u>\$ 1.21</u>                     | <u>\$ 1.29</u>   |
| <b>Computation of Diluted EPS</b>   |                                    |                  |
| Nine Months Ended<br>September 30,  |                                    |                  |
|   | 2006                               | 2005             |
| Income from continuing operations available to common shareholders                          | \$ 63,449                          | \$ 57,844        |
| Add: Income from continuing operations attributable to Operating Partnership – common units | 15,326                             | 11,134           |
| Income from continuing operations for diluted earnings per share                            | 78,775                             | 68,978           |
| Income from discontinued operations for diluted earnings per share                          | 14,703                             | 25,635           |
| Net income available to common shareholders   | <u>\$ 93,478</u>                   | <u>\$ 94,613</u> |
| Weighted average common shares  | <u>77,664</u>                      | <u>73,585</u>    |
| <b>Diluted EPS:</b>   |                                    |                  |

|   |    |             |    |             |
|---|----|-------------|----|-------------|
| Income from continuing operations           | \$ | 1.01        | \$ | 0.94        |
| Income from discontinued operations         |    | 0.19        |    | 0.35        |
| Net income available to common shareholders | \$ | <u>1.20</u> | \$ | <u>1.29</u> |

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

|   | Three Months Ended<br>September 30, |               | Nine Months Ended<br>September 30, |               |
|---|-------------------------------------|---------------|------------------------------------|---------------|
|   | 2006                                | 2005          | 2006                               | 2005          |
| Basic EPS shares                          | 62,302                              | 61,609        | 62,158                             | 61,397        |
| Add: Operating Partnership – common units | 15,643                              | 13,755        | 15,196                             | 11,764        |
| Stock options                             | 313                                 | 396           | 310                                | 424           |
| Diluted EPS Shares                        | <u>78,258</u>                       | <u>75,760</u> | <u>77,664</u>                      | <u>73,585</u> |

Not included in the computations of diluted EPS were 330 stock options and 2,045,745 Series B Preferred Units on an as converted basis into common units, as such securities were anti-dilutive during the nine months ended September 30, 2005. Unvested shares of restricted stock outstanding as of September 30, 2006 and 2005 were 194,946 and 233,744, respectively.

## 15. SEGMENT REPORTING

The Company operates in one business segment - real estate. The Company provides leasing, property and facilities management, acquisition, development, construction and tenant-related services for its portfolio. The Company recognized revenues from foreign operations of \$1,196,000 and \$1,829,000 for the three and nine month periods ended September 30, 2006, respectively. The Company had no long lived assets in foreign locations as of September 30, 2006 and December 31, 2005. The accounting policies of the segment are the same as those described in Note 2: Significant Accounting Policies, excluding depreciation and amortization.

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 month periods ended September 30, 2006 and 2005 and selected asset information as of September 30, 2006 and December 31, 2005 regarding the Company's operating segment are as follows: *(dollars in thousands)*

|  | Total Segment |           | Corporate & Other (d) |           | Total Company |             |
|--|---------------|-----------|-----------------------|-----------|---------------|-------------|
| <b>Total revenues:</b>   |               |           |                       |           |               |             |
| Three months ended:  |               |           |                       |           |               |             |
| September 30, 2006   | \$            | 201,428   | \$                    | 1,789     | \$            | 203,217     |
| September 30, 2005   |               | 153,473   |                       | 679       |               | 154,152     |
| Nine months ended:   |               |           |                       |           |               |             |
| September 30, 2006   | \$            | 537,049   | \$                    | 5,088     | \$            | 542,137     |
| September 30, 2005   |               | 446,137   |                       | 645       |               | 446,782     |
| <b>Total operating and interest expenses(a):</b>                   |               |           |                       |           |               |             |
| Three months ended:  |               |           |                       |           |               |             |
| September 30, 2006   | \$            | 96,809    | \$                    | 44,871    | \$            | 141,680 (e) |
| September 30, 2005   |               | 55,167    |                       | 37,932    |               | 93,099 (f)  |
| Nine months ended:   |               |           |                       |           |               |             |
| September 30, 2006   | \$            | 225,407   | \$                    | 129,322   | \$            | 354,729 (g) |
| September 30, 2005   |               | 153,326   |                       | 113,515   |               | 266,841 (h) |
| <b>Equity in earnings (loss) of unconsolidated joint ventures:</b> |               |           |                       |           |               |             |
| Three months ended:  |               |           |                       |           |               |             |
| September 30, 2006   | \$            | (4,757)   |                       | —         | \$            | (4,757)     |
| September 30, 2005   |               | 322       |                       | —         |               | 322         |
| Nine months ended:   |               |           |                       |           |               |             |
| September 30, 2006   | \$            | (5,356)   |                       | —         | \$            | (5,356)     |
| September 30, 2005   |               | 552       |                       | —         |               | 552         |
| <b>Net operating income (b):</b>                                   |               |           |                       |           |               |             |
| Three months ended:  |               |           |                       |           |               |             |
| September 30, 2006   | \$            | 99,862    | \$                    | (43,082)  | \$            | 56,780 (e)  |
| September 30, 2005   |               | 98,628    |                       | (37,253)  |               | 61,375 (f)  |
| Nine months ended:   |               |           |                       |           |               |             |
| September 30, 2006   | \$            | 306,286   | \$                    | (124,234) | \$            | 182,052 (g) |
| September 30, 2005   |               | 293,363   |                       | (112,870) |               | 180,493 (h) |
| <b>Total assets:</b>   |               |           |                       |           |               |             |
| September 30, 2006   | \$            | 4,572,467 | \$                    | 96,294    | \$            | 4,668,761   |
| December 31, 2005  |               | 4,097,098 |                       | 150,404   |               | 4,247,502   |
| <b>Total long-lived assets (c):</b>                                |               |           |                       |           |               |             |
| September 30, 2006   | \$            | 4,337,317 | \$                    | 1,701     | \$            | 4,339,018   |
| December 31, 2005  |               | 3,921,536 |                       | 2,066     |               | 3,923,602   |



- (a) Total operating and interest expenses represent the sum of: real estate taxes; utilities; operating services; direct construction costs; real estate services salaries, wages and other costs; general and administrative and interest expense (net of interest income). All interest expense, net of interest income, (including for property-level mortgages) is excluded from segment amounts and classified in Corporate & Other for all periods.
- (b) Net operating income represents total revenues less total operating and interest expenses [as defined in Note (a)], plus equity in earnings (loss) of unconsolidated joint ventures, for the period.
- (c) Long-lived assets are comprised of net investment in rental property, unbilled rents receivable and investments in unconsolidated joint ventures.
- (d) 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.
- (e) Excludes \$40,132 of depreciation and amortization.
- (f) Excludes \$37,838 of depreciation and amortization.
- (g) Excludes \$116,980 of depreciation and amortization.
- (h) Excludes \$106,067 of depreciation and amortization.

## 16. IMPACT OF RECENTLY-ISSUED ACCOUNTING STANDARDS

### FASB INTERPRETATION No. 48 (“FIN 48”), *Accounting for Uncertainty in Income Taxes – an interpretation of FASB Statement No. 109*

FIN 48 clarifies the accounting for uncertainty in income taxes recognized in an enterprise’s financial statements in accordance with FASB Statement No. 109, Accounting for Income Taxes. FIN 48 prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. FIN 48 also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure and transition. FIN 48 is effective for fiscal years beginning after December 15, 2006. The Company does not expect that the implementation of FIN 48 will have a material effect on the Company’s consolidated financial position or results of operations.

### FINANCIAL ACCOUNTING STANDARDS BOARD (FASB) STATEMENT NO. 157 (“FASB No. 157”), *Fair Value Measurements*

FASB No. 157 defines fair value, establishes a framework for measuring fair value in generally accepted accounting principles (GAAP), and expands disclosures about fair value measurements. FASB No. 157 applies under other accounting pronouncements that require or permit fair value measurements, FASB having previously concluded in those accounting pronouncements that fair value is their relevant measurement attribute. Accordingly, this statement does not require any new fair value measurements. However, for some entities, the application of this statement will change current practice. This statement is effective for financial statements for fiscal years beginning after November 15, 2007. The Company does not expect that the implementation of FASB No. 157 will have a material effect on the Company’s consolidated financial position or results of operations.

### FASB STATEMENT NO. 158 (“FASB No. 158”), *Employers’ Accounting for Defined Benefit Pension and Other Post Retirement Plans – an amendment of FASB No.’s 87, 88, 106 and 132(R)*

FASB No. 158 improves financial reporting by requiring an employer to recognize the overfunded or underfunded status of a defined benefit postretirement plan (other than a multi-employer plan) as an asset or liability in its statement of financial position and to recognize changes in that funded status in the year in which the changes occur through comprehensive income of a business entity or changes in unrestricted net assets of a not-for-profit organization. This statement also improves financial reporting by requiring an employer to measure the funded status of a plan as of the date of its year-end statement of financial position, with limited exceptions. This statement is effective for fiscal years ending after December 15, 2006. The Company does not expect that the implementation of FASB No. 158 will have a material effect on the Company’s consolidated financial position or results of operations.

### STAFF ACCOUNTING BULLETIN NO. 108 (“SAB No. 108”)

The interpretations in SAB 108 express the staff’s views regarding the process of quantifying financial statement misstatements. The SEC staff is aware of diversity in practice. For example, certain registrants do not consider the effects of prior year errors on current year financial statements, thereby allowing improper assets or liabilities to remain unadjusted. While these errors may not be material if considered only in relation to the balance sheet, correcting the errors could be material to the current year income statement. Certain registrants have proposed to the staff that allowing these errors to remain on the balance sheet as assets or liabilities in perpetuity is an appropriate application of generally accepted accounting principles. The staff believes that approach is not in the best interest of the users of financial statements. The interpretations in this SAB 108 are being issued to address diversity in practice in quantifying financial statement misstatements and the potential under current practice for the build up of improper amounts on the balance sheet. There have been two widely-recognized methods for quantifying the effects of financial statement errors: the “roll-over” method and the “iron curtain” method. The roll-over method focuses primarily on the impact of a misstatement on the income statement—including the reversing effect of prior year misstatements—but its use can lead to the accumulation of misstatements in the balance sheet. The iron-curtain method, on the other hand, focuses primarily on the effect of correcting the period-end balance sheet with less emphasis on the reversing effects of prior year errors on the income statement. In SAB 108, the SEC staff establishes an approach that requires quantification of financial statement errors based on the effects of the error on each of the company’s financial statements and the related financial statement disclosures. This model is commonly referred to as a “dual approach” because it essentially requires quantification of errors under both the iron-curtain and the roll-over methods. SAB 108 is effective for financial statements for fiscal years ending after November 15, 2006. The Company does not expect that SAB 108 will have a material effect on the Company’s consolidated financial position or results of operations.

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

### GENERAL

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.

#### *Executive Overview*

Mack-Cali Realty Corporation (the “Company”) is one of the largest real estate investment trusts (REITs) in the United States, with a total market capitalization of approximately \$6.5 billion at September 30, 2006. The Company has been involved in all aspects of commercial real estate development, management and ownership for over 50 years and has been a publicly-traded REIT since 1994. The Company owns or has interests in 321 properties (collectively, the “Properties”), primarily class A office and office/flex buildings, totaling approximately 36.1 million square feet, leased to approximately 2,600 tenants. The properties are located primarily in suburban markets of the Northeast, some with adjacent, Company-controlled developable land sites able to accommodate up to 11.3 million square feet of additional commercial space.

The Company’s strategy is to be a significant real estate owner and operator in its core, high-barriers-to-entry markets, primarily in the Northeast.

As an owner of real estate, almost all of the Company’s earnings and cash flow is derived from rental revenue received pursuant to leased space at the Properties. Key factors

that affect the Company's business and financial results include the following:

- the general economic climate;
- the occupancy rates of the Properties;
- rental rates on new or renewed leases;
- tenant improvement and leasing costs incurred to obtain and retain tenants;
- the extent of early lease terminations;
- operating expenses;
- cost of capital; and
- the extent of acquisitions, development and sales of real estate.

Any negative effects of the above key factors could potentially cause a deterioration in the Company's revenue and/or earnings. Such negative effects could include: (1) failure to renew or execute new leases as current leases expire; (2) failure to renew or execute new leases with rental terms at or above the terms of in-place leases; and (3) tenant defaults.

A failure to renew or execute new leases as current leases expire or to execute new leases with rental terms at or above the terms of in-place leases may be affected by several factors such as: (1) the local economic climate, which may be adversely impacted by business layoffs or downsizing, industry slowdowns, changing demographics and other factors; and (2) local real estate conditions, such as oversupply of office and office/flex space or competition within the market.

The Company's core markets continue to be weak. The percentage leased in the Company's consolidated portfolio of stabilized operating properties was 91.4 percent at September 30, 2006 as compared to 90.7 percent at June 30, 2006 and 91.0 percent at December 31, 2005. Percentage leased includes all leases in effect as of the period end date, some of which have commencement dates in the future (including, at September 30, 2006, a lease with a commencement date substantially in the future consisting of 15,125 square feet scheduled to commence in 2009), and leases that expire at the period end date. Leases that expired as of September 30, 2006, June 30, 2006 and December 31, 2005 aggregate 62,981, 100,121 and 311,623 square feet, respectively, or 0.2, 0.3 and 1.1 percentage of the net rentable square footage, respectively. Rental rates on the Company's space that was re-leased (based on

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first rents payable) during the three months ended September 30, 2006 decreased an average of 1.1 percent compared to rates that were in effect under the prior leases, as compared to a 5.4 percent decrease for the three months ended September 30, 2005. The Company believes that vacancy rates may continue to increase in some of its markets in 2006. As a result, the Company's future earnings and cash flow may continue to be negatively impacted by current market conditions.

The remaining portion of this Management's Discussion and Analysis of Financial Condition and Results of Operations should help the reader understand:

- property transactions during the period;
- critical accounting policies and estimates;
- results of operations for the current periods as compared to the same periods last year; and
- liquidity and capital resources.

#### *Property Transactions in 2006*

##### **Gale/Green Transactions**

On May 9, 2006, the Company completed the acquisitions of: (i) The Gale Company and certain of its related businesses, which engage in construction, property management, facilities management, and leasing services (collectively, the "Gale Company"); (ii) three office properties; and (iii) indirect interests in a portfolio of office properties, located primarily in New Jersey, which were owned indirectly by The Gale Company and its affiliates ("Gale") and affiliates of SL Green Realty Corp. ("SL Green"). The agreements to complete the aforementioned acquisitions (collectively, the "Gale/Green Transactions") required that the Company complete all of the acquisitions.

The Gale Company was acquired by the Company for initial purchase consideration of approximately \$22.3 million consisting of the issuance by the Company of 224,719 common units of the Operating Partnership and the payment of approximately \$12 million in cash, which was primarily funded through borrowing under the Company's revolving credit facility. Additionally, the agreement to acquire the Gale Company ("Gale Agreement") contains earn-out provisions providing for the payment of contingent purchase consideration of up to \$18 million in cash based upon the achievement of Gross Income and NOI (as such terms are defined in the Gale Agreement) targets and other events for the three years following the closing date.

In connection with the Company's acquisition of the Gale Company, Mr. Stanley C. Gale and certain other affiliates of Gale are restricted from competing with the Company or hiring the Company's employees for a period of four years expiring on May 9, 2010.

In addition, the Gale Agreement provides for the Company to acquire certain other ownership interests in up to 11 real estate projects (the "Non-Portfolio Properties"), subject to obtaining certain third party consents and the satisfaction of various project-related and/or other conditions. Each of the Company's acquired interests in the Non-Portfolio Properties will provide for the initial distributions of net cash flow solely to the Company, and thereafter an affiliate of Gale controlled by Stanley C. Gale ("Gale Affiliate") has participation rights ("Gale Participation Rights") in 50 percent of the excess net cash flow remaining after the distribution to the Company of the aggregate amount equal to the sum of: (a) the Company's capital contributions, plus (b) an internal rate of return of 10 percent per annum, accruing on the date or dates of the Company's investments. Mr. Gale has caused the Gale Affiliate to transfer certain of his interests in the Non-Portfolio Properties to several former employees of Gale, some of whom are current employees of the Company, including Mark Yeager, one of the Company's officers.

Through September 30, 2006, the Company completed seven of the acquisitions of interests in the Non-Portfolio Properties, which included the acquisitions of: a 530,000 square foot, mixed-use office/retail complex; a 139,750 square-foot, fully-leased office property; an office property in development; two vacant land parcels and two pre-developed projects. The aggregate cost of the completed acquisitions was approximately \$24.7 million.

In connection with the execution of the Gale Agreement, the Company entered into agreements to acquire three office properties directly and indirect ownership interests in entities which own a portfolio of office properties

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(collectively, the "Gale/Green Agreements"). Under the Gale/Green Agreements, the Company acquired 100 percent of the ownership interests in three office properties located in New Jersey, aggregating 516,162 square feet, (the "Wholly-Owned Properties"). The Wholly-Owned Properties were acquired for approximately \$106 million,

consisting of the assumption of \$39.9 million in existing mortgage indebtedness and the payment of \$66.1 million in cash, which was funded primarily through borrowing under the Company's revolving credit facility.

Also, as part of the Gale/Green Agreements, the Company entered into a joint venture with SL Green, known as Mack-Green-Gale LLC ("Mack-Green"), to hold an approximate 96 percent interest and act as general partner of Gale SLG NJ Operating Partnership, L.P. (the "OP LP"). The Company acquired its interest in Mack-Green for approximately \$116 million, which was funded primarily through borrowing under the Company's revolving credit facility. The OP LP owns 100 percent of entities which own 25 office properties (collectively, the "OP LP Properties") which aggregate 3.5 million square feet (consisting of 17 office properties aggregating 2.3 million square feet located in New Jersey and eight properties aggregating 1.2 million square feet located in Troy, Michigan), as well as a minor, non-controlling interest in four office properties aggregating 419,000 square feet located in Naperville, Illinois. For a discussion of the ownership interests in Mack-Green, see Note 4: Investments in Unconsolidated Joint Ventures — Mack-Green-Gale LLC.

#### Property Acquisitions

The Company acquired the following office properties during the nine months ended September 30, 2006: *(dollars in thousands)*

| Acquisition Date             | Property/Address               | Location                    | # of Bldgs. | Rentable Square Feet | Acquisition Cost |
|------------------------------|--------------------------------|-----------------------------|-------------|----------------------|------------------|
| 02/28/06                     | Capital Office Park (a)        | Greenbelt, Maryland         | 7           | 842,258              | \$ 166,011       |
| 05/09/06                     | 35 Waterview Boulevard (b) (c) | Parsippany, New Jersey      | 1           | 172,498              | 32,600           |
| 05/09/06                     | 105 Challenger Road (b) (d)    | Ridgefield Park, New Jersey | 1           | 150,050              | 31,792           |
| 05/09/06                     | 343 Thornall Street (b) (e)    | Edison, New Jersey          | 1           | 195,709              | 41,113           |
| 07/31/06                     | 395 W. Passaic Street (f)      | Rochelle Park, New Jersey   | 1           | 100,589              | 22,219           |
| Total Property Acquisitions: |                                |                             | 11          | 1,461,104            | \$ 293,735       |

- (a) This transaction was funded primarily through the assumption of \$63.2 million of mortgage debt and the issuance of 1.9 million common operating partnership units valued at \$87.2 million.
- (b) The property was acquired as part of the Gale/Green Transactions.
- (c) Transaction was funded primarily through borrowing on the Company's revolving credit facility and the assumption of \$20.4 million of mortgage debt.
- (d) Transaction was funded primarily through borrowing on the Company's revolving credit facility and the assumption of \$19.5 million of mortgage debt.
- (e) Transaction was funded primarily through borrowing on the Company's revolving credit facility.
- (f) Transaction was funded primarily through borrowing on the Company's revolving credit facility and the assumption of \$13.1 million of mortgage debt.

#### Property Sales

The Company sold the following office properties during the nine months ended September 30, 2006: *(dollars in thousands)*

| Sale Date                    | Property/Address        | Location               | # of Bldgs. | Rentable Square Feet | Net Sales Proceeds | Net Book Value | Realized Gain/(Loss) |
|------------------------------|-------------------------|------------------------|-------------|----------------------|--------------------|----------------|----------------------|
| 06/28/06                     | Westage Business Center | Fishkill, New York     | 1           | 118,727              | \$ 14,765          | \$ 10,872      | \$ 3,893             |
| 06/30/06                     | 1510 Lancer Drive       | Moorestown, New Jersey | 1           | 88,000               | 4,146              | 3,134          | 1,012                |
| Total Office Property Sales: |                         |                        | 2           | 206,727              | \$ 18,911          | \$ 14,006      | \$ 4,905             |

#### Critical Accounting Policies and Estimates

The Financial Statements have been prepared in conformity with generally accepted accounting principles. The preparation of the Financial Statements 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 reported period. These estimates and assumptions are based on management's historical experience that are believed to be reasonable at the time. However, because future events and their effects cannot be determined with certainty, the determination of estimates requires the exercise of judgment. The Company's critical accounting policies are those which require assumptions to be made about matters that are highly uncertain. Different estimates could have a material effect on the Company's financial results. Judgments and uncertainties affecting the application of these policies and estimates may result in materially different amounts being reported under different conditions and circumstances.

#### 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, 2006 and 2005 was \$1.7 million and \$1.4 million, respectively, and \$4.8 million and \$4.1 million for the nine months ended September 30, 2006 and 2005, 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.

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

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above-market leases and the remaining 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 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. 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. Properties identified as held for sale and/or sold are presented in discontinued operations for all periods presented.

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.

#### **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 for acquired properties are amortized as a reduction of base rental revenue over the remaining term of the respective leases, and the capitalized

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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. Escalations and recoveries from tenants 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.

Construction services revenue includes fees earned and reimbursements received by the Company for providing construction management and general contractor services to clients. Construction services revenue is recognized on the percentage of completion method. Using this method, profits are recorded on the basis of our estimates of the overall profit and percentage of completion of individual contracts. A portion of the estimated profits is accrued based upon estimates of the percentage of completion of the construction contract. This revenue recognition method involves inherent risks relating to profit and cost estimates. Real estate services revenue includes property management, facilities management, leasing commission fees and other services, and payroll and related costs reimbursed from clients. Other income includes income from parking spaces leased to tenants, income from tenants for additional services arranged for the Company and income from tenants for early lease terminations.

#### **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***

The following comparisons for the three and nine months ended September 30, 2006 ("2006"), as compared to the three and nine months ended September 30, 2005 ("2005"), make reference to the following: (i) the effect of the "Same-Store Properties," which represent all in-service properties owned by the Company at June 30, 2005 (for the three-month period comparisons), and which represent all in-service properties owned by the Company at December 31, 2004 (for the nine-month period comparisons), excluding properties sold or held for sale through September 30, 2006, and (ii) the effect of the "Acquired Properties," which represent all properties acquired by the Company or commencing initial operations from July 1, 2005 through September 30, 2006 (for three-month period comparisons), and which represents all properties acquired

*Three Months Ended September 30, 2006 Compared to Three Months Ended September 30, 2005*

| (dollars in thousands)   | Three Months Ended<br>September 30, |                  | Dollar<br>Change  | Percent<br>Change |
|--|-------------------------------------|------------------|-------------------|-------------------|
|  | 2006                                | 2005             |                   |                   |
| <b>Revenue from rental operations and other:</b>                                     |                                     |                  |                   |                   |
| Base rents   | \$ 140,356                          | \$ 127,770       | \$ 12,586         | 9.9%              |
| Escalations and recoveries from tenants  | 25,045                              | 21,163           | 3,882             | 18.3              |
| Other income   | 3,927                               | 4,583            | (656)             | (14.3)            |
| Total revenues from rental operations  | <u>169,328</u>                      | <u>153,516</u>   | <u>15,812</u>     | <u>10.3</u>       |
| <b>Property expenses:</b>  |                                     |                  |                   |                   |
| Real estate taxes  | 22,652                              | 19,885           | 2,767             | 13.9              |
| Utilities  | 18,766                              | 15,867           | 2,899             | 18.3              |
| Operating services   | 23,534                              | 19,544           | 3,990             | 20.4              |
| Total property expenses  | <u>64,952</u>                       | <u>55,296</u>    | <u>9,656</u>      | <u>17.5</u>       |
| <b>Non-property revenues:</b>  |                                     |                  |                   |                   |
| Construction services  | 23,236                              | —                | 23,236            | —                 |
| Real estate services   | 10,653                              | 636              | 10,017            | 1,575.0           |
| Total non-property revenues  | <u>33,889</u>                       | <u>636</u>       | <u>33,253</u>     | <u>5,228.5</u>    |
| <b>Non-property expenses:</b>  |                                     |                  |                   |                   |
| Direct construction costs  | 22,568                              | —                | 22,568            | —                 |
| Real estate services salaries, wages and other costs                                 | 6,686                               | —                | 6,686             | —                 |
| General and administrative   | 12,173                              | 7,952            | 4,221             | 53.1              |
| Depreciation and amortization  | 40,132                              | 37,838           | 2,294             | 6.1               |
| Total non-property expenses  | <u>81,559</u>                       | <u>45,790</u>    | <u>35,769</u>     | <u>78.1</u>       |
| Operating income   | 56,706                              | 53,066           | 3,640             | 6.9               |
| <b>Other (expense) income:</b>   |                                     |                  |                   |                   |
| Interest expense   | (35,815)                            | (30,159)         | (5,656)           | (18.8)            |
| Interest and other investment income   | 514                                 | 308              | 206               | 66.9              |
| Equity in earnings (loss) of unconsolidated joint ventures                           | (4,757)                             | 322              | (5,079)           | (1,577.3)         |
| Minority interest in consolidated joint ventures                                     | 113                                 | —                | 113               | —                 |
| Gain on sale of investment in marketable securities                                  | —                                   | —                | —                 | —                 |
| Gain on sale of investment in unconsolidated joint ventures                          | —                                   | —                | —                 | —                 |
| Total other (expense) income   | <u>(39,945)</u>                     | <u>(29,529)</u>  | <u>(10,416)</u>   | <u>(35.3)</u>     |
| Income from continuing operations before minority interest in Operating Partnership  | 16,761                              | 23,537           | (6,776)           | (28.8)            |
| Minority interest in Operating Partnership   | (3,263)                             | (4,205)          | 942               | 22.4              |
| Income from continuing operations  | 13,498                              | 19,332           | (5,834)           | (30.2)            |
| Discontinued operations (net of minority interest):                                  |                                     |                  |                   |                   |
| Income from discontinued operations  | 3,013                               | 1,772            | 1,241             | 70.0              |
| Realized gains (losses) and unrealized losses on disposition of rental property, net | —                                   | —                | —                 | —                 |
| Total discontinued operations, net   | <u>3,013</u>                        | <u>1,772</u>     | <u>1,241</u>      | <u>70.0</u>       |
| Net income   | 16,511                              | 21,104           | (4,593)           | (21.8)            |
| Preferred stock dividends  | (500)                               | (500)            | —                 | —                 |
| Net income available to common shareholders  | <u>\$ 16,011</u>                    | <u>\$ 20,604</u> | <u>\$ (4,593)</u> | <u>(22.3)%</u>    |

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

| (dollars in thousands)                           | Total<br>Company |                   | Same-Store<br>Properties |                   | Acquired<br>Properties |                   |
|--|------------------|-------------------|--------------------------|-------------------|------------------------|-------------------|
|  | Dollar<br>Change | Percent<br>Change | Dollar<br>Change         | Percent<br>Change | Dollar<br>Change       | Percent<br>Change |
| <b>Revenue from rental operations and other:</b> |                  |                   |                          |                   |                        |                   |
| Base rents                                       | \$ 12,586        | 9.9%              | \$ 5,579                 | 4.4%              | \$ 7,007               | 5.5%              |
| Escalations and recoveries from tenants          | 3,882            | 18.3              | 3,301                    | 15.6              | 581                    | 2.7               |
| Other income                                     | (656)            | (14.3)            | (1,006)                  | (21.9)            | 350                    | 7.6               |
| Total  | <u>\$ 15,812</u> | <u>10.3%</u>      | <u>\$ 7,874</u>          | <u>5.1%</u>       | <u>\$ 7,938</u>        | <u>5.2%</u>       |
| <b>Property expenses:</b>                        |                  |                   |                          |                   |                        |                   |
| Real estate taxes                                | \$ 2,767         | 13.9%             | \$ 1,714                 | 8.6%              | \$ 1,053               | 5.3%              |
| Utilities  | 2,899            | 18.3              | 1,984                    | 12.5              | 915                    | 5.8               |
| Operating services                               | 3,990            | 20.4              | 1,743                    | 8.9               | 2,247                  | 11.5              |
| Total  | <u>\$ 9,656</u>  | <u>17.5%</u>      | <u>\$ 5,441</u>          | <u>9.8%</u>       | <u>\$ 4,215</u>        | <u>7.7%</u>       |
| <b>OTHER DATA:</b>                               |                  |                   |                          |                   |                        |                   |

|  |        |        |       |
|--|--------|--------|-------|
| Number of Consolidated Properties<br>(excluding properties held for sale): | 255    | 240    | 15    |
| Square feet (in thousands)   | 28,866 | 27,169 | 1,697 |

Base rents for the Same-Store Properties increased \$5.6 million, or 4.4 percent, for 2006 as compared to 2005, due primarily to an increase in the percentage of space leased at the properties in 2006 from 2005. Escalations and recoveries from tenants for the Same-Store Properties increased \$3.3 million, or 15.6 percent, for 2006 over 2005, due primarily to an increased amount of total property expenses in 2006. Other income for the Same-Store Properties decreased \$1.0 million, or 21.9 percent, due primarily to a decrease in lease termination fees in 2006, partially offset by \$1.4 million recognized in 2006 for additional purchase consideration earned from a past sale of a joint venture interest.

Real estate taxes on the Same-Store Properties increased \$1.7 million, or 8.6 percent, for 2006 as compared to 2005, due primarily to property tax rate increases in certain municipalities in 2006. Utilities for the Same-Store Properties increased \$2.0 million, or 12.5 percent, for 2006 as compared to 2005, due primarily to increased electric rates in 2006 as compared to 2005. Operating services for the Same-Store Properties increased \$1.7 million, or 8.9 percent due primarily to increased insurance costs of \$1.0 million and increased maintenance costs of \$0.9 million, partially offset by a decrease in salaries and related expenses of \$0.2 million, for 2006 as compared to 2005.

Construction services amounted to \$23.2 million in 2006, due to the effect of the Company's acquisitions of The Gale Company and its related businesses (the "Gale/Green Transactions"). Real estate services increased by \$10.7 million, for 2006 as compared to 2005, due primarily to the effect of the Gale/Green Transactions.

Direct construction costs totaled \$22.6 million in 2006, due primarily to the effect of the Gale/Green Transactions. Real estate service salaries, wages and other costs equaled \$6.7 million in 2006 due primarily to the effect of the Gale/Green Transactions. General and administrative increased by \$4.2 million, or 53.1 percent, for 2006 as compared to 2005 due primarily to the effect of the Gale/Green Transactions.

Depreciation and amortization increased by \$2.3 million, or 6.1 percent, for 2006 over 2005. Of this increase, \$2.8 million, or 7.3 percent, is attributable to the Acquired Properties, partially offset by a decrease of \$0.5 million, or 1.2 percent, which is attributable to the Same-Store Properties.

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Interest expense increased \$5.7 million, or 18.8 percent, for 2006 as compared to 2005. This increase was due primarily to higher average debt balances in 2006 as compared to 2005.

Interest and other investment income increased \$0.2 million, or 66.9 percent, for 2006 as compared to 2005. This increase was due primarily to higher cash balances invested during the period as well as an overall increase in interest rates.

Equity in earnings of unconsolidated joint ventures decreased \$5.1 million, or 1,577.3 percent, for 2006 as compared to 2005. The decrease was due primarily to a loss of \$2.7 million in the Mack-Green joint venture, a loss of \$1.9 million in the Meadowlands Xanadu joint venture, and an increased loss of \$0.4 million due to the G&G Martco joint venture.

Income from continuing operations before minority interest in Operating Partnership decreased to approximately \$16.8 million in 2006 from \$23.5 million in 2005. The decrease of approximately \$6.7 million is due to the factors discussed above.

Net income available to common shareholders decreased by approximately \$4.6 million, from \$20.6 million in 2005 to \$16.0 million in 2006. This decrease was the result of a decrease in income from continuing operations before minority interest in Operating Partnership of \$6.7 million, partially offset by an increase in income from discontinued operations of \$1.2 million and a decrease in minority interest in Operating Partnership of approximately \$0.9 million.

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*Nine Months Ended September 30, 2006 Compared to Nine Months Ended September 30, 2005*

| (dollars in thousands)                               | Nine Months Ended<br>September 30, |            | Dollar<br>Change | Percent<br>Change |
|--|------------------------------------|------------|------------------|-------------------|
|  | 2006                               | 2005       |                  |                   |
| <b>Revenue from rental operations and other:</b>     |                                    |            |                  |                   |
| Base rents   | \$ 406,989                         | \$ 380,284 | \$ 26,705        | 7.0%              |
| Escalations and recoveries from tenants              | 69,862                             | 57,128     | 12,734           | 22.3              |
| Other income   | 9,985                              | 7,517      | 2,468            | 32.8              |
| Total revenues from rental operations                | 486,836                            | 444,929    | 41,907           | 9.4               |
| <b>Property expenses:</b>                            |                                    |            |                  |                   |
| Real estate taxes                                    | 64,891                             | 56,890     | 8,001            | 14.1              |
| Utilities  | 46,789                             | 38,648     | 8,141            | 21.1              |
| Operating services                                   | 66,024                             | 59,428     | 6,596            | 11.1              |
| Total property expenses                              | 177,704                            | 154,966    | 22,738           | 14.7              |
| <b>Non-property revenues:</b>                        |                                    |            |                  |                   |
| Construction services                                | 36,286                             | —          | 36,286           | —                 |
| Real estate services                                 | 19,015                             | 1,853      | 17,162           | 926.4             |
| Total non-property revenues                          | 55,301                             | 1,853      | 53,448           | 2,884.4           |
| <b>Non-property expenses:</b>                        |                                    |            |                  |                   |
| Direct construction costs                            | 35,148                             | —          | 35,148           | —                 |
| Real estate services salaries, wages and other costs | 10,820                             | —          | 10,820           | —                 |
| General and administrative                           | 32,796                             | 23,449     | 9,347            | 39.9              |
| Depreciation and amortization                        | 116,980                            | 106,067    | 10,913           | 10.3              |
| Total non-property expenses                          | 195,744                            | 129,516    | 66,228           | 51.1              |
| Operating income                                     | 168,689                            | 162,300    | 6,389            | 3.9               |
| <b>Other (expense) income:</b>                       |                                    |            |                  |                   |

|  |                  |                  |                   |               |
|--|------------------|------------------|-------------------|---------------|
| Interest expense   | (100,620)        | (88,919)         | (11,701)          | (13.2)        |
| Interest and other investment income   | 2,359            | 493              | 1,866             | 378.5         |
| Equity in earnings (loss) of unconsolidated joint ventures                           | (5,356)          | 552              | (5,908)           | (1,070.3)     |
| Minority interest in consolidated joint ventures                                     | 143              | (74)             | 217               | 293.2         |
| Gain on sale of investment in marketable securities                                  | 15,060           | —                | 15,060            | —             |
| Gain on sale of investment in unconsolidated joint ventures                          | —                | 35               | (35)              | (100.0)       |
| Total other (expense) income   | <u>(88,414)</u>  | <u>(87,913)</u>  | <u>(501)</u>      | <u>(0.6)</u>  |
| Income from continuing operations before minority interest in Operating Partnership  | 80,275           | 74,387           | 5,888             | 7.9           |
| Minority interest in Operating Partnership   | <u>(15,326)</u>  | <u>(15,043)</u>  | <u>(283)</u>      | <u>(1.9)</u>  |
| Income from continuing operations  | 64,949           | 59,344           | 5,605             | 9.4           |
| Discontinued operations (net of minority interest):                                  |                  |                  |                   |               |
| Income from discontinued operations  | 7,872            | 12,270           | (4,398)           | (35.8)        |
| Realized gains (losses) and unrealized losses on disposition of rental property, net | <u>3,921</u>     | <u>8,973</u>     | <u>(5,052)</u>    | <u>(56.3)</u> |
| Total discontinued operations, net   | <u>11,793</u>    | <u>21,243</u>    | <u>(9,450)</u>    | <u>(44.5)</u> |
| Net income   | 76,742           | 80,587           | (3,845)           | (4.8)         |
| Preferred stock dividends  | <u>(1,500)</u>   | <u>(1,500)</u>   | <u>—</u>          | <u>—</u>      |
| Net income available to common shareholders  | <u>\$ 75,242</u> | <u>\$ 79,087</u> | <u>\$ (3,845)</u> | <u>(4.9)%</u> |

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

| (dollars in thousands)                           | Total Company    |                | Same-Store Properties |                | Acquired Properties |                |
|--|------------------|----------------|-----------------------|----------------|---------------------|----------------|
|  | Dollar Change    | Percent Change | Dollar Change         | Percent Change | Dollar Change       | Percent Change |
| <b>Revenue from rental operations and other:</b> |                  |                |                       |                |                     |                |
| Base rents                                       | \$ 26,705        | 7.0%           | \$ 5,242              | 1.4%           | \$ 21,463           | 5.6%           |
| Escalations and recoveries from tenants          | 12,734           | 22.3           | 7,396                 | 12.9           | 5,338               | 9.4            |
| Other income                                     | 2,468            | 32.8           | 2,962                 | 39.4           | (494)               | (6.6)          |
| Total  | <u>\$ 41,907</u> | <u>9.4%</u>    | <u>\$ 15,600</u>      | <u>3.5%</u>    | <u>\$ 26,307</u>    | <u>5.9%</u>    |
| <b>Property expenses:</b>                        |                  |                |                       |                |                     |                |
| Real estate taxes                                | \$ 8,001         | 14.1%          | \$ 4,993              | 8.8%           | \$ 3,008            | 5.3%           |
| Utilities  | 8,141            | 21.1           | 4,806                 | 12.4           | 3,335               | 8.7            |
| Operating services                               | 6,596            | 11.1           | 1,262                 | 2.1            | 5,334               | 9.0            |
| Total  | <u>\$ 22,738</u> | <u>14.7%</u>   | <u>\$ 11,061</u>      | <u>7.1%</u>    | <u>\$ 11,677</u>    | <u>7.6%</u>    |

**OTHER DATA:**

|  |        |        |       |
|--|--------|--------|-------|
| Number of Consolidated Properties<br>(excluding properties held for sale): | 255    | 238    | 17    |
| Square feet (in thousands)   | 28,866 | 25,573 | 3,293 |

Base rents for the Same-Store Properties increased \$5.2 million, or 1.4 percent, for 2006 as compared to 2005, due primarily to an increase in the percentage of space leased at the properties in 2006 from 2005. Escalations and recoveries from tenants for the Same-Store Properties increased \$7.4 million, or 12.9 percent, for 2006 over 2005, due primarily to an increased amount of total property expenses in 2006. Other income for the Same-Store Properties increased \$3.0 million, or 39.4 percent, due primarily to the receipt of a legal settlement by the Company of \$2.0 million in 2006 and \$1.4 million recognized in 2006 for additional purchase consideration earned from a past sale of a joint venture interest.

Real estate taxes on the Same-Store Properties increased \$5.0 million, or 8.8 percent, for 2006 as compared to 2005, due primarily to property tax rate increases in certain municipalities in 2006. Utilities for the Same-Store Properties increased \$4.8 million, or 12.4 percent, for 2006 as compared to 2005, due primarily to increased electric rates in 2006 as compared to 2005. Operating services for the Same-Store Properties increased \$1.3 million, or 2.1 percent, due primarily to increased maintenance and related labor costs of \$3.0 million for 2006 as compared to 2005, partially offset by a decrease in snow removal costs of \$1.9 million.

Construction services amounted to \$36.3 million in 2006, due to the effect of the Gale/Green Transactions. Real estate services increased by \$17.2 million, or 926.2 percent, for the 2006 as compared to 2005, due primarily to the effect of the Gale/Green Transactions.

Direct construction costs totaled \$35.1 million in 2006, due primarily to the effect of the Gale/Green Transactions. Real estate service salaries, wages and other costs equaled \$10.8 million in 2006, due primarily to the effect of the Gale/Green Transactions. General and administrative increased by \$9.3 million, or 39.9 percent, for 2006 as compared to 2005 due primarily to the effect of the Gale/Green Transactions.

Depreciation and amortization increased by \$10.9 million, or 10.3 percent, for 2006 over 2005. Of this increase, approximately \$9.2 million, or 8.7 percent, is attributable to the Acquired Properties, and \$1.7 million, or 1.6 percent is attributable to the Same-Store Properties.

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Interest expense increased \$11.7 million, or 13.2 percent, for 2006 as compared to 2005. This increase was due primarily to higher average debt balances in 2006 as compared to 2005.

Interest and other investment income increased \$1.9 million, or 378.5 percent, for 2006 as compared to 2005. This increase was due primarily to the receipt of approximately \$1.1 million of dividends on the Company's investment in marketable securities, as well as higher cash balances invested in 2006 as compared to 2005.

Equity in earnings of unconsolidated joint ventures decreased \$5.9 million, or 1,070.3 percent, for 2006 as compared to 2005. The decrease was due primarily to a loss of \$4.0 million in 2006 in the Mack-Green joint venture and a loss of \$1.9 million in 2006 in the Meadowlands Xanadu joint venture.

The Company recognized a gain on sale of investment in marketable securities of \$15.1 million in 2006.

Income from continuing operations before minority interest in Operating Partnership increased to approximately \$80.3 million in 2006 from \$74.4 million in 2005. The increase of approximately \$5.9 million is due to the factors discussed above.

Net income available to common shareholders decreased by approximately \$3.9 million, from \$79.1 million in 2005 to \$75.2 million in 2006. This decrease was the result of realized gains (losses) and unrealized losses on disposition of rental property of \$9.0 million in 2005, a decrease in income from discontinued operations of \$4.4 million, and an increase in minority interest in Operating Partnership of \$0.3 million. These were partially offset by an increase in income from continuing operations before minority interest in Operating Partnership of \$5.9 million for 2006 as compared to 2005 and realized gains (losses) and unrealized losses on disposition of rental property of \$3.9 million in 2006.

## LIQUIDITY AND CAPITAL RESOURCES

### *Liquidity*

#### **Overview:**

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 acquisitions, 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 general downturn in the economy in recent years, 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 in 2006. As a result of the potential negative effects on the Company's 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.

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.

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#### **Gale Company Earn-Out:**

The agreement to acquire the Gale Company ("Gale Agreement"), which was acquired for initial purchase consideration of approximately \$22.3 million on May 9, 2006, contains earn-out provisions providing for the payment of contingent purchase consideration of up to \$18 million in cash based upon the achievement of Gross Income and NOI (as such terms are defined in the Gale Agreement) targets and other events for the three years following the closing date.

#### **Construction Projects:**

The Company entered into a 15-year lease with AAA Mid-Atlantic ("AAA") for a 120,000 square foot office building to be constructed by the Company in its Horizon Center Business Park located in Hamilton Township, New Jersey. The building is expected to be completed during the latter part of 2006 at an estimated cost of approximately \$19.2 million (of which the Company has incurred \$12.9 million through September 30, 2006), which is expected to be funded through borrowings on the Company's unsecured credit facility. Concurrent with the signing of the lease, the Company executed a purchase and sale agreement with AAA pursuant to which the Company, upon the commencement of the 120,000 square foot lease, will acquire AAA's three office and office/flex buildings, totaling approximately 84,000, square feet and certain vacant, developable land, all located in Hamilton Township, New Jersey, for a total purchase price of approximately \$10 million, subject to certain conditions.

Additionally, the Company, through a joint venture with the PRC Group, is constructing a 92,878 square-foot office property, to be known as Red Bank Corporate Plaza, located in Red Bank, New Jersey, on land contributed by its joint venture partner. The project is fully leased to Hovnanian Enterprise, Inc. for a 10-year term. The total cost of the project, which is expected to be completed in the third quarter 2007, is estimated to be approximately \$27 million, of which the Company currently expects to fund approximately \$3 million. On October 20, 2006, the venture entered into a \$22.0 million construction loan with a commercial bank. The loan carries an interest rate of LIBOR plus 130 basis points and matures in April 2008. The loan currently has three one-year extension options subject to certain conditions, each of which require payment of a fee.

#### **Property Sales:**

In the third quarter 2006, the Company entered into agreements to sell its 19 remaining office buildings, aggregating 1.4 million square feet, and land holdings in Denver and Colorado Springs, Colorado; and its remaining holdings in San Francisco, California, comprised of two office properties, aggregating 451,000 square feet, and a joint venture interest in a 306,000 square foot office property. The Company is anticipating to receive total proceeds of approximately \$337 million from the sales, which are expected to be completed in three separate transactions by the end of 2006. The Company intends to use the sales proceeds to repay approximately \$250 million of outstanding borrowings on its revolving credit facility, for investments in property acquisitions and for general corporate purposes.

#### **REIT Restrictions:**

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 \$160.3 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, including borrowings and other sources, after meeting operating requirements, preferred stock dividends and distributions, and scheduled debt service on the Company's debt.

#### **Property Lock-Ups:**

The Company may not dispose of or distribute certain of its properties, currently comprising 50 properties with an aggregate net book value of approximately \$1.3 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; David S. Mack, director; Earle I. Mack, a former director; and Mitchell E. Hersh, president, chief executive officer and director), the Robert Martin Group (which includes Robert F. Weinberg, director; Martin S. Berger, a former director; and Timothy M. Jones, former president), the Cali Group (which includes John R. Cali, director, and John J. Cali, a former director) or certain other common unitholders, without the express written consent of a representative of the Mack Group, the Robert Martin Group, the Cali Group or the specific certain other common unitholders, as

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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, Cali Group members or the specific certain other common unitholders 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 2016. Upon the expiration of the Property Lock-Ups, the Company generally 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, Cali Group members or the specific certain other common unitholders. 88 of our properties, with an aggregate net book value of approximately \$868.4 million, have lapsed restrictions and are subject to these conditions.

#### **Unencumbered Properties:**

As of September 30, 2006, the Company had 256 unencumbered properties, totaling 26.5 million square feet, representing 86.1 percent of the Company's total portfolio on a square footage basis.

#### **Credit Ratings:**

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.

#### **Cash Flows**

Cash and cash equivalents decreased by \$39.6 million to \$20.8 million at September 30, 2006, compared to \$60.4 million at December 31, 2005. The decrease is comprised of the following net cash flow items:

- (1) \$157.0 million provided by operating activities.
- (2) \$262.2 million used in investing activities, consisting primarily of the following:
  - (a) \$192.1 million used for additions to rental property and related intangibles; plus
  - (b) \$149.0 million used in investing in unconsolidated joint ventures; plus
  - (c) \$11.9 million used for the purchase of marketable securities; minus
  - (d) \$78.6 million received from proceeds from the sale of marketable securities; minus
  - (e) \$18.9 million received from proceeds from the sales of rental property.
- (3) \$65.6 million provided by financing activities, consisting primarily of the following:
  - (a) \$660.3 million from borrowings under the Company's unsecured credit facility; plus
  - (b) \$199.9 million from proceeds from the sale of senior unsecured notes; minus
  - (c) \$550.2 million used for the repayment of borrowings under the Company's unsecured credit facility; minus
  - (d) \$156.4 million used for the repayment of mortgages, loans payable and other obligations; minus
  - (e) \$146.5 million used for the payment of dividends and distributions.

#### **Debt Financing**

#### **Summary of Debt:**

The following is a breakdown of the Company's debt between fixed and variable-rate financing as of September 30, 2006:

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|   | Balance<br>(\$000's) | % of<br>Total  | Weighted Average<br>Interest Rate (a) | Weighted Average<br>Maturity<br>in Years |
|---|----------------------|----------------|---------------------------------------|--|
| Fixed Rate Unsecured Debt                     | \$ 1,673,443         | 68.43%         | 6.28%                                 | 5.53                                     |
| Fixed Rate Secured Debt and Other Obligations | 360,394              | 14.73%         | 5.44%                                 | 5.17                                     |
| Variable Rate Unsecured Debt                  | 412,000              | 16.84%         | 5.79%                                 | 3.15                                     |
| <b>Totals/Weighted Average:</b>               | <b>\$ 2,445,837</b>  | <b>100.00%</b> | <b>6.07%</b>                          | <b>5.08</b>                              |

#### **Debt Maturities:**

Scheduled principal payments and related weighted average annual interest rates for the Company's debt as of September 30, 2006 are as follows:

| Period  | Scheduled<br>Amortization<br>(\$000's) | Principal<br>Maturities<br>(\$000's) | Total<br>(\$000's)  | Weighted Average<br>Interest Rate of<br>Future Repayments (a) |
|---|--|--------------------------------------|---------------------|---|
| 2006  | \$ 6,849                               | —                                    | \$ 6,849            | 5.00%   |
| 2007  | 19,691                                 | 29,441                               | 49,132              | 5.64%   |
| 2008  | 17,993                                 | 12,563                               | 30,556              | 5.25%   |
| 2009  | 9,752                                  | 712,000                              | 721,752             | 6.49%   |
| 2010  | 2,794                                  | 334,500                              | 337,294             | 5.26%   |
| Thereafter  | 15,267                                 | 1,293,091                            | 1,308,358           | 6.11%   |
| Sub-total   | 72,346                                 | 2,381,595                            | 2,453,941           | 6.07%   |
| Adjustment for unamortized debt<br>discount/premium, net, as of September 30,<br>2006 | (8,104)                                | —                                    | (8,104)             |   |
| <b>Totals/Weighted Average</b>  | <b>\$ 64,242</b>                       | <b>\$ 2,381,595</b>                  | <b>\$ 2,445,837</b> | <b>6.07%</b>  |

(a) Actual weighted average LIBOR contract rates relating to the Company's outstanding debt as of September 30, 2006 of 5.33 percent was used in calculating revolving credit facility.

**Senior Unsecured Notes:**

On January 24, 2006, the Company issued \$100 million face amount of 5.80 percent senior unsecured notes due January 15, 2016 with interest payable semi-annually in arrears, and \$100 million face amount of 5.25 percent senior unsecured notes due January 15, 2012 with interest payable semi-annually in arrears. The total proceeds from the issuances, including accrued interest on the 5.80 percent notes, of approximately \$200.8 million were used to reduce outstanding borrowings under the Company's unsecured facility.

The terms of the Company's senior unsecured notes (which totaled approximately \$1.6 billion as of September 30, 2006) 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.

**Unsecured Revolving Credit Facility:**

The Company has an unsecured revolving credit facility with a current borrowing capacity of \$600 million from a group of 23 lenders, which is expandable to \$800 million ("2004 Unsecured Facility"). As of October 25, 2006, the Company had \$428 million of outstanding borrowings under the 2004 Unsecured Facility.

The interest rate on outstanding borrowings (not electing the Company's competitive bid feature) under the 2004 Unsecured Facility is currently LIBOR plus 65 basis points. The facility has a competitive bid feature, which allows the Company to solicit bids from lenders under the facility to borrow up to \$300 million at interest rates less than the current LIBOR plus 65 basis point spread. As of September 30, 2006, the Company's outstanding borrowings carried a weighted average interest rate of LIBOR plus 46 points. The Company may also elect an interest rate

representing the higher of the lender's prime rate or the Federal Funds rate plus 50 basis points. The 2004 Unsecured Facility also currently requires a 15 basis point facility fee on the current borrowing capacity payable quarterly in arrears. The 2004 Unsecured Facility matures in November 2009, with an extension option of one year, which would require a payment of 25 basis points of the then borrowing capacity of the facility upon exercise.

The interest rate and the facility fee are subject to adjustment, on a sliding scale, based upon the operating partnership's unsecured debt ratings. 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:

| <b>Operating Partnership's<br/>Unsecured Debt Ratings:<br/>S&amp;P Moody's/Fitch (a)</b> | <b>Interest Rate –<br/>Applicable Basis Points<br/>Above LIBOR</b> | <b>Facility Fee<br/>Basis Points</b> |
|--|--|--------------------------------------|
| No ratings or less than BBB-/Baa3/BBB-   | 112.5  | 25.0                                 |
| BBB-/Baa3/BBB-   | 80.0   | 20.0                                 |
| BBB/Baa2/BBB (current)   | 65.0   | 15.0                                 |
| BBB+/Baa1/BBB+   | 55.0   | 15.0                                 |
| A-/A3/A- or higher   | 50.0   | 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 believes that the 2004 Unsecured Facility is sufficient to meet its revolving credit facility needs.

The terms of the 2004 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 fixed charge coverage, the maximum amount of unsecured indebtedness, the minimum amount of unencumbered property interest 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 common 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.

**Mortgages, Loans Payable and Other Obligations:**

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

On January 3, 2006, the Company repaid its \$144.6 million loan with Northwestern Mutual Life/Principal Life Insurance companies collateralized by Harborside Financial Center Plazas 2 and 3, which were scheduled to mature on that date, using borrowings under the 2004 Unsecured Facility.

On July 3, 2006, the Company repaid its \$9.4 million loan with Massachusetts Mutual Life Insurance Company collateralized by 6411 Ivy Lane, which was scheduled to mature on October 1, 2006, at par, using borrowings under the 2004 Unsecured Facility.

On August 1, 2006, the Company repaid its \$15.6 million loan with LaSalle Bank National Banking Association collateralized by 2 Paragon Way, 3 Paragon Way and 100 Willowbrook Road, which was scheduled to mature on September 1, 2006, at par, using borrowings under the 2004 Unsecured Facility.

**Debt Strategy:**

The Company does not intend to reserve funds to retire the Company's senior unsecured notes or its mortgages, loans payable and other obligations 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 raise sufficient proceeds to retire the maturing debt, 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 October 23, 2006, the Company had \$428 million of outstanding borrowings under its \$600 million unsecured revolving credit facility. The Company has approximately \$30.4 million of mortgage indebtedness maturing from October 1, 2006 through September 30, 2007.

The Company is reviewing various refinancing options, including the public issuance of additional unsecured debt, the issuance in public or private transactions of preferred equity instruments and/or obtaining additional mortgage debt, some or all of which may be completed during 2006. 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.

### *Equity Financing and Registration Statements*

#### **Equity Activity:**

The following table presents the changes in the Company's issued and outstanding shares of Common Stock and the Operating Partnership's common units since December 31, 2005:

|   | Common<br>Stock   | Common<br>Units   | Total             |
|---|-------------------|-------------------|-------------------|
| Outstanding at January 1, 2006                                    | 62,019,646        | 13,650,439        | 75,670,085        |
| Stock options exercised   | 302,619           | —                 | 302,619           |
| Common units redeemed for Common Stock                            | 221,666           | (221,666)         | —                 |
| Common units redeemed for cash                                    | —                 | (1)               | (1)               |
| Common units issued   | —                 | 2,167,053         | 2,167,053         |
| Shares issued under Dividend Reinvestment and Stock Purchase Plan | 4,025             | —                 | 4,025             |
| Restricted shares issued, net of cancellations                    | 3,250             | —                 | 3,250             |
| Outstanding at September 30, 2006                                 | <u>62,551,206</u> | <u>15,595,825</u> | <u>78,147,031</u> |

#### **Share Repurchase Program:**

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 its last purchases on January 10, 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.

#### **Shelf Registration Statements:**

The Company has an effective shelf registration statement on Form S-3 filed with the Securities and Exchange Commission ("SEC") for an aggregate amount of \$2.0 billion in common stock, preferred stock, depository shares, and/or warrants of the Company, under which no securities have been sold.

The Company and the Operating Partnership also have an effective shelf registration statement on Form S-3 filed with the SEC for an aggregate amount of \$2.5 billion in common stock, preferred stock, depository shares and guarantees of the Company and debt securities of the Operating Partnership, under which \$600 million of securities have been sold through October 23, 2006 and \$1.9 billion remains available for future issuances.

### *Off-Balance Sheet Arrangements*

#### **Unconsolidated Joint Venture Debt:**

The debt of the Company's unconsolidated joint ventures aggregating \$571 million at September 30, 2006, is non-recourse to the Company except for customary exceptions pertaining to such matters as intentional misuse of funds, environmental conditions and material misrepresentations. The Company has also posted a \$7.3 million letter of credit in support of the Harborside South Pier joint venture, \$3.6 million of which is indemnified by Hyatt.

The Company's off-balance sheet arrangements are further discussed in Note 4: Investments in Unconsolidated Joint Ventures to the Financial Statements.

### *Contractual Obligations*

The following table outlines the timing of payment requirements related to the Company's debt (principal and interest), PILOT agreements, and ground lease agreements as of September 30, 2006:

| (dollars in thousands)                         | Payments Due by Period |                     |                   |                     |                   |                   |
|--|------------------------|---------------------|-------------------|---------------------|-------------------|-------------------|
|  | Total                  | Less than 1<br>year | 1 – 3<br>Years    | 4 – 5<br>years      | 6 – 10<br>Years   | After 10<br>years |
| Senior unsecured notes                         | \$ 1,992,000           | \$ 100,494          | \$ 490,114        | \$ 602,701          | \$ 798,691        | —                 |
| Revolving credit facility (1)                  | 487,539                | 23,854              | 47,709            | 415,976             | —                 | —                 |
| Mortgages, loans payable and other obligations | 506,721                | 76,756              | 77,057            | 192,308             | 129,513           | \$ 31,087         |
| Payments in lieu of taxes<br>(PILOT)           | 72,160                 | 5,202               | 12,655            | 8,587               | 23,051            | 22,665            |
| Operating lease payments                       | 790                    | 291                 | 496               | 3                   | —                 | —                 |
| Ground lease payments                          | 39,935                 | 690                 | 1,972             | 1,320               | 3,339             | 32,614            |
| Total  | <u>\$ 3,099,145</u>    | <u>\$ 207,287</u>   | <u>\$ 630,003</u> | <u>\$ 1,220,895</u> | <u>\$ 954,594</u> | <u>\$ 86,366</u>  |

(1) Interest payments assume current credit facility borrowings and interest rates remain at the September 30, 2006 level until maturity.

### *Other Commitments and Contingencies*

#### **Legal Proceedings:**

On February 12, 2003, the NJSEA selected The Mills Corporation and the Company to redevelop the Continental Airlines Arena site ("Arena Site") for mixed uses, including retail. In March 2003, Hartz Mountain Industries, Inc., ("Hartz"), filed a lawsuit in the Superior Court of New Jersey, Law Division, for Bergen County, seeking to enjoin NJSEA from entering into a contract with the Meadowlands Venture for the redevelopment of the Continental Airlines Arena site. In May 2003, the court denied Hartz's request for an injunction and dismissed its suit for failure to exhaust administrative remedies. In June 2003, the NJSEA held hearings on Hartz's protest, and on a parallel protest filed by another rejected developer, Westfield, Inc. ("Westfield"). On September 10, 2003, the NJSEA ruled against Hartz's and Westfield's protests. Hartz and Westfield, as well as Elliot Braha and three other taxpayers (collectively "Braha"), thereafter filed appeals from the NJSEA's final decision. By decision dated May 14, 2004, the Appellate Division of the Superior Court of New Jersey rejected the appellants' contention that the NJSEA lacks statutory authority to allow retail development of its property. The Appellate Division also remanded Hart's claim under the Open Public Records Acts, seeking disclosure of additional documents from NJSEA, to the Law

Division for further proceedings. The Supreme Court of New Jersey declined to review the Appellate Division's decision. On August 19, 2004, the Law Division issued a decision resolving Hartz's Open Public Records Act claim and ordered NJSEA to disclose some, but not all, of the documents Hartz was seeking. The Appellate Division, in a decision rendered on November 24, 2004, upheld the findings of the Law Division in the remand proceeding. The Supreme Court of New Jersey declined to review the Appellate Division's decision. At Hartz's request, the NJSEA thereafter held further hearings on December 15 and 16, 2004, to review certain additional facts in support of Hartz's and Westfield's bid protest. Braha, as a taxpayer, did not have standing to participate in the supplemental

protest hearing. On March 4, 2005, the Hearing Officer rendered his Supplemental Report and Recommendation to the NJSEA, finding no merit in the protests presented by Hartz and Westfield. The NJSEA accepted the Hearing Officer's Supplemental Report and Recommendation on March 30, 2005 and Hartz and Braha have appealed that decision to the Appellate Division.

In January 2004, Hartz and Westfield also appealed to the Appellate Division of the Superior Court of New Jersey from the NJSEA's December 2003 approval and execution of the Redevelopment Agreement with the Meadowlands Venture.

In November 2004, Hartz and Westfield filed additional appeals in the Appellate Division challenging NJSEA's resolution authorizing the execution of the First Amendment to the Redevelopment Agreement with Meadowlands Venture and the ground lease with the Meadowlands Venture.

All of the above appeals have been consolidated by the Appellate Division. On August 17, 2006, the Appellate Division issued an opinion affirming NJSEA's selection of the Meadowlands Venture and rejecting the appellants' arguments in all respects. On August 28, 2006, Hartz made a motion before the Appellate Division for reconsideration of this decision and for supplementation of the record. That motion is pending.

On September 30, 2004, the Borough of Carlstadt filed an action in the Superior Court of New Jersey Law Division, challenging Meadowlands Xanadu, which asserted claims that are substantially the same as claims asserted by Hartz and Braha in the above appeals. By Order dated November 19, 2004, the Law Division transferred that matter to the Superior Court of New Jersey, Appellate Division. This matter was voluntarily dismissed by Carlstadt in accordance with a March 22, 2006 Settlement Agreement and Release between Carlstadt and the Meadowlands Venture.

Several appeals filed by Hartz, the Sierra Club and others, including certain environmental groups, that challenge certain approvals received by the Meadowlands Venture from the NJSEA, the New Jersey Meadowlands Commission ("NJMC") and the New Jersey Department of Environmental Protection ("NJDEP") remain pending before the Appellate Division. Some of these appeals challenge NJDEP's issuance of a stream encroachment permit, waterfront development permit, and coastal zone consistency determination for Meadowlands Xanadu. Other of these appeals are from NJDEP's and NJMC's issuance of reports in connection with a consultation process the NJSEA was statutorily required to undertake in connection with any NJSEA-development project.

A Hartz affiliate and a trade association have filed an appeal from an advisory opinion favorable to the Meadowlands Venture issued by the Director of the Division of Alcoholic Beverage Control concerning the availability of special concessionaire permits. That appeal is also pending in the Appellate Division of the Superior Court of New Jersey.

Three separate lawsuits have been filed in the United States District Court for the District of New Jersey, challenging a permit issued by the U.S. Army Corps of Engineers ("USACE") in connection with the project. The first suit was filed on March 30, 2005, by the Sierra Club, the New Jersey Public Interest Research Group, Citizen Lobby, Inc. and the New Jersey Environmental Federation. Additional suits were filed on May 16 and May 31, 2005, respectively, by Hartz (together with one of its officers as an individually-named plaintiff) and the Borough of Carlstadt. The Sierra Club also filed a motion for a preliminary injunction to stop certain construction activities on the project, which the Court denied on July 6, 2005. On October 26, 2005, the court granted the motions of the Meadowlands Venture and the USACE to dismiss the Hartz complaint for lack of standing. The deadline for appealing that decision has passed, so the Hartz action is ended. On October 31, 2005, the USACE filed a motion to dismiss the complaint filed by the Borough of Carlstadt for lack of standing. On February 7, 2006, the Court granted the motion and dismissed the Borough of Carlstadt's complaint in its entirety. On March 9, 2006, Carlstadt filed a notice of appeal of this decision to the United States Court of Appeals for the Third Circuit. This appeal has been dismissed pursuant to the Settlement Agreement and Release executed by Carlstadt and the Meadowlands Venture.

On April 5, 2005, the New York Football Giants ("Giants") filed an emergent application with the Supreme Court of New Jersey, Chancery Division, seeking an injunction stopping all work on the Meadowlands Xanadu project as being in violation of its existing lease with the NJSEA. After hearing oral argument on the application on August 5, 2005,

the court denied the Giants' motion for preliminary injunctive relief. On June 22, 2006, the court entered a Stipulation and Consent Order that dismissed without prejudice the parties' respective claims.

The New Jersey Builders' Association ("NJBA") has commenced an action, which is pending in the Appellate Division, alleging that the NJSEA has failed to meet a purported obligation to provide affordable housing at the Meadowlands Complex and seeking, among other relief, an order enjoining the construction of Meadowlands Xanadu. NJBA filed an application for preliminary injunctive relief seeking to enjoin further construction of Meadowlands Xanadu, which the Appellate Division denied on July 28, 2005. The Meadowlands Venture is not a party to that action.

On January 25, 2006, the Bergen Cliff Hawks Baseball Club, LLC (the "Cliff Hawks"), filed a complaint against the Company and Mills, alleging that the Company and Mills breached an agreement to provide the Cliff Hawks with a minor league baseball park as part of the Xanadu Project. This matter is pending.

The Company believes that the Meadowlands Venture's proposal and the planned project comply with applicable laws, and the Meadowlands Venture intends to continue its vigorous defense of its rights under the Redevelopment Agreement and Ground Lease. Although there can be no assurance, the Company does not believe that the pending lawsuits will have any material affect on its ability to develop the Meadowlands Xanadu project.

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.

#### *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

We consider portions of this information, including the documents incorporated by reference, to be forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended. We intend such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in Section 21E of such act. Such forward-looking statements relate to, without limitation, our 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,” “plan,” “should,” “expect,” “anticipate,” “estimate,” “continue” or comparable terminology. Forward-looking statements are inherently subject to risks and uncertainties, many of which we cannot predict with accuracy and some of which we might not even anticipate. Although we believe that the expectations reflected in such forward-looking statements are based upon reasonable assumptions at the time made, we can give no assurance that such 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 we have made assumptions are:

- changes in the general economic climate and conditions, including those affecting industries in which our principal tenants compete;
- any failure of the general economy to recover from the current economic downturn;
- the extent of any tenant bankruptcies or of any early lease terminations;
- our 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;

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- changes in interest rate levels;
- changes in operating costs;
- our ability to obtain adequate insurance, including coverage for terrorist acts;
- the availability of financing;
- changes in governmental regulation, tax rates and similar matters; 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.

### 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 \$2.0 billion of the Company’s long-term debt and other obligations 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 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 rates on the variable rate debt as of September 30, 2006 was LIBOR plus 65 basis points.

(dollars in thousands)

| September 30, 2006<br>Debt,<br>including current portion | Maturity Date         |           |           |            |            |              |              | Total        | Fair Value |
|--|-----------------------|-----------|-----------|------------|------------|--------------|--------------|--------------|------------|
|  | 10/1/06 –<br>12/31/06 | 2007      | 2008      | 2009       | 2010       | Thereafter   |              |              |            |
| Fixed Rate   | \$ 4,557              | \$ 47,612 | \$ 29,399 | \$ 308,898 | \$ 336,398 | \$ 1,306,973 | \$ 2,033,837 | \$ 2,055,497 |            |
| Average Interest Rate                                    | 5.00%                 | 5.64%     | 5.25%     | 7.41%      | 5.26%      | 6.11%        | 6.13%        |              |            |
| Variable Rate  |                       |           |           | \$ 412,000 |            |              | \$ 412,000   | \$ 412,000   |            |

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 president and 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 Exchange Act) as of the end of the period covered by this report. Based on such evaluation, the Company’s president and 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.

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*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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**MACK-CALI REALTY CORPORATION**
**Part II – Other Information**
**Item 1. Legal Proceedings**

On February 12, 2003, the NJSEA selected The Mills Corporation and the Company to redevelop the Continental Airlines Arena site (“Arena Site”) for mixed uses, including retail. In March 2003, Hartz Mountain Industries, Inc., (“Hartz”), filed a lawsuit in the Superior Court of New Jersey, Law Division, for Bergen County, seeking to enjoin NJSEA from entering into a contract with the Meadowlands Venture for the redevelopment of the Continental Airlines Arena site. In May 2003, the court denied Hartz’s request for an injunction and dismissed its suit for failure to exhaust administrative remedies. In June 2003, the NJSEA held hearings on Hartz’s protest, and on a parallel protest filed by another rejected developer, Westfield, Inc. (“Westfield”). On September 10, 2003, the NJSEA ruled against Hartz’s and Westfield’s protests. Hartz and Westfield, as well as Elliot Braha and three other taxpayers (collectively “Braha”), thereafter filed appeals from the NJSEA’s final decision. By decision dated May 14, 2004, the Appellate Division of the Superior Court of New Jersey rejected the appellants’ contention that the NJSEA lacks statutory authority to allow retail development of its property. The Appellate Division also remanded Hart’s claim under the Open Public Records Acts, seeking disclosure of additional documents from NJSEA, to the Law Division for further proceedings. The Supreme Court of New Jersey declined to review the Appellate Division’s decision. On August 19, 2004, the Law Division issued a decision resolving Hartz’s Open Public Records Act claim and ordered NJSEA to disclose some, but not all, of the documents Hartz was seeking. The Appellate Division, in a decision rendered on November 24, 2004, upheld the findings of the Law Division in the remand proceeding. The Supreme Court of New Jersey declined to review the Appellate Division’s decision. At Hartz’s request, the NJSEA thereafter held further hearings on December 15 and 16, 2004, to review certain additional facts in support of Hartz’s and Westfield’s bid protest. Braha, as a taxpayer, did not have standing to participate in the supplemental protest hearing. On March 4, 2005, the Hearing Officer rendered his Supplemental Report and Recommendation to the NJSEA, finding no merit in the protests presented by Hartz and Westfield. The NJSEA accepted the Hearing Officer’s Supplemental Report and Recommendation on March 30, 2005 and Hartz and Braha have appealed that decision to the Appellate Division.

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The Company believes that the Meadowlands Venture's proposal and the planned project comply with applicable laws, and the Meadowlands Venture intends to continue its vigorous defense of its rights under the Redevelopment Agreement and Ground Lease. Although there can be no assurance, the Company does not believe that the pending lawsuits will have any material affect on its ability to develop the Meadowlands Xanadu project.

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.

**Item 1A. Risk Factors**

Not Applicable.

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

(a) **COMMON UNITS**

During the three months ended September 30, 2006, the Company issued 85,800 shares of common stock to holders of common units in the Operating Partnership upon the redemption of such common units in private offerings pursuant to Section 4(2) of the Securities Act. The holders of the common units were limited partners of the Operating Partnership and accredited investors under Rule 501 of the Securities Act. The common units were converted into an equal number of shares of common stock. The Company has registered the resale of such shares under the Securities Act.

(b) Not Applicable.

(c) None.

**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**

(a) None.

(b) None.

**Item 6. Exhibits**

The exhibits required by this item are set forth on the Exhibit Index attached hereto.

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**MACK-CALI REALTY CORPORATION**

**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 1, 2006

By: /s/ Mitchell E. Hersh  
Mitchell E. Hersh  
President and  
Chief Executive Officer

Date: November 1, 2006

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            | Amendment No. 2 to the Mack-Cali Realty Corporation Amended and Restated Bylaws dated May 24, 2006 (filed as Exhibit 3.1 to the Company's Form 8-K dated May 24, 2006 and incorporated herein by reference).  |
| 3.5            | 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).  |
| 3.6            | 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). |
| 3.7            | 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).  |
| 3.8            | Third Amendment to the Second Amended and Restated Agreement of Limited Partnership of Mack-Cali Realty, L.P. dated September 30, 2003 (filed as Exhibit 3.7 to the Company's Form 10-Q dated September 30, 2003 and incorporated herein by reference).   |
| 3.9            | 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).  |
| 3.10           | 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).   |
| 3.11           | 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).   |

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| Exhibit Number | Exhibit Title  |
|----------------|--|
| 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).  |
| 4.11           | Supplemental Indenture No. 8 dated as of February 9, 2004, 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 February 9, 2004 and incorporated herein by reference).                                  |



| Exhibit Number | Exhibit Title   |
|----------------|---|
| 4.12           | Supplemental Indenture No. 9 dated as of March 22, 2004, 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 22, 2004 and incorporated herein by reference).   |
| 4.13           | Supplemental Indenture No. 10 dated as of January 25, 2005, 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 January 25, 2005 and incorporated herein by reference).  |
| 4.14           | Supplemental Indenture No. 11 dated as of April 15, 2005, 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 April 15, 2005 and incorporated herein by reference).  |
| 4.15           | Supplemental Indenture No. 12 dated as of November 30, 2005, 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 November 30, 2005 and incorporated herein by reference).                                      |
| 4.16           | Supplemental Indenture No. 13 dated as of January 24, 2006, 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 January 18, 2006 and incorporated herein by reference).  |
| 4.17           | 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 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).   |
| 10.3           | 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).   |
| 10.4           | 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).   |
| 10.5           | Employment Agreement dated as of May 9, 2006 by and between Mark Yeager and Mack-Cali Realty Corporation (filed as Exhibit 10.15 to the Company's Form 8-K dated May 9, 2006 and incorporated herein by reference).   |

| Exhibit Number | Exhibit Title   |
|----------------|---|
| 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 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).  |
| 10.8           | 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).  |
| 10.9           | 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).   |
| 10.10          | 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).  |
| 10.11          | 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).                                    |
| 10.12          | 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).  |
| 10.13          | 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). |
| 10.14          | 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).                                      |
| 10.15          | 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).  |

10.16 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).

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| <b>Exhibit Number</b> | <b>Exhibit Title</b>   |
|-----------------------|--|
| 10.17                 | 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).  |
| 10.18                 | Tax Gross Up Agreement effective as of January 2, 2003 by and between Mack-Cali Realty Corporation and Roger W. Thomas (filed as Exhibit 10.11 to the Company's Form 8-K dated January 2, 2003 and incorporated herein by reference).  |
| 10.19                 | First Amendment effective as of January 2, 2003 to the Restricted Share Award Agreement dated July 1, 1999 between Mack-Cali Realty Corporation and Roger W. Thomas (filed as Exhibit 10.12 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 March 12, 2001 between Mack-Cali Realty Corporation and Roger W. Thomas (filed as Exhibit 10.13 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 Michael A. Grossman (filed as Exhibit 10.14 to the Company's Form 8-K dated January 2, 2003 and incorporated herein by reference).  |
| 10.22                 | Tax Gross Up Agreement effective as of January 2, 2003 by and between Mack-Cali Realty Corporation and Michael A. Grossman (filed as Exhibit 10.15 to the Company's Form 8-K dated January 2, 2003 and incorporated herein by reference).  |
| 10.23                 | Restricted Share Award Agreement dated December 6, 1999 by and between Mack-Cali Realty Corporation and Michael A. Grossman (filed as Exhibit 10.16 to the Company's Form 8-K dated January 2, 2003 and incorporated herein by reference).   |
| 10.24                 | First Amendment effective as of January 2, 2003 to the Restricted Share Award Agreement dated December 6, 1999 between Mack-Cali Realty Corporation and Michael A. Grossman (filed as Exhibit 10.17 to the Company's Form 8-K dated January 2, 2003 and incorporated herein by reference). |
| 10.25                 | First Amendment effective as of January 2, 2003 to the Restricted Share Award Agreement dated March 12, 2001 between Mack-Cali Realty Corporation and Michael A. Grossman (filed as Exhibit 10.18 to the Company's Form 8-K dated January 2, 2003 and incorporated herein by reference).   |
| 10.26                 | Restricted Share Award Agreement effective as of December 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 December 2, 2003 and incorporated herein by reference).   |

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| <b>Exhibit Number</b> | <b>Exhibit Title</b>  |
|-----------------------|---|
| 10.27                 | Tax Gross Up Agreement effective as of December 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 December 2, 2003 and incorporated herein by reference).          |
| 10.28                 | Restricted Share Award Agreement effective as of December 2, 2003 by and between Mack-Cali Realty Corporation and Barry Lefkowitz (filed as Exhibit 10.5 to the Company's Form 8-K dated December 2, 2003 and incorporated herein by reference).  |
| 10.29                 | Tax Gross Up Agreement effective as of December 2, 2003 by and between Mack-Cali Realty Corporation and Barry Lefkowitz (filed as Exhibit 10.6 to the Company's Form 8-K dated December 2, 2003 and incorporated herein by reference).            |
| 10.30                 | Restricted Share Award Agreement effective as of December 2, 2003 by and between Mack-Cali Realty Corporation and Roger W. Thomas (filed as Exhibit 10.7 to the Company's Form 8-K dated December 2, 2003 and incorporated herein by reference).  |
| 10.31                 | Tax Gross Up Agreement effective as of December 2, 2003 by and between Mack-Cali Realty Corporation and Roger W. Thomas (filed as Exhibit 10.8 to the Company's Form 8-K dated December 2, 2003 and incorporated herein by reference).            |
| 10.32                 | Restricted Share Award Agreement effective as of December 2, 2003 by and between Mack-Cali Realty Corporation and Michael Grossman (filed as Exhibit 10.9 to the Company's Form 8-K dated December 2, 2003 and incorporated herein by reference). |
| 10.33                 | Tax Gross Up Agreement effective as of December 2, 2003 by and between Mack-Cali Realty Corporation and Michael Grossman (filed as Exhibit 10.10 to the Company's Form 8-K dated December 2, 2003 and incorporated herein by reference).          |
| 10.34                 | Restricted Share Award Agreement effective December 7, 2004 by and between Mack-Cali Realty Corporation and Mitchell E. Hersh (filed as Exhibit 10.2 to the Company's Form 8-K dated December 7, 2004 and incorporated herein by reference).      |
| 10.35                 | Tax Gross Up Agreement effective December 7, 2004 by and between Mack-Cali Realty Corporation and Mitchell E. Hersh (filed as Exhibit 10.3 to the Company's Form 8-K dated December 7, 2004 and incorporated herein by reference).                |
| 10.36                 | Restricted Share Award Agreement effective December 7, 2004 by and between Mack-Cali Realty Corporation and Barry Lefkowitz (filed as Exhibit 10.4 to the Company's Form 8-K dated December 7, 2004 and incorporated herein by reference).        |
| 10.37                 | Tax Gross Up Agreement effective December 7, 2004 by and between Mack-Cali Realty Corporation and Barry Lefkowitz (filed as Exhibit 10.5 to the Company's Form 8-K dated December 7, 2004 and incorporated herein by reference).                  |

- 10.38 Restricted Share Award Agreement effective December 7, 2004 by and between Mack-Cali Realty Corporation and Roger W. Thomas (filed as Exhibit 10.6 to the Company's Form 8-K dated December 7, 2004 and incorporated herein by reference).
- 10.39 Tax Gross Up Agreement effective December 7, 2004 by and between Mack-Cali Realty Corporation and Roger W. Thomas (filed as Exhibit 10.7 to the Company's Form 8-K dated December 7, 2004 and incorporated herein by reference).

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| Exhibit Number | Exhibit Title  |
|----------------|--|
| 10.40          | Restricted Share Award Agreement effective December 7, 2004 by and between Mack-Cali Realty Corporation and Michael A. Grossman (filed as Exhibit 10.8 to the Company's Form 8-K dated December 7, 2004 and incorporated herein by reference). |
| 10.41          | Tax Gross Up Agreement effective December 7, 2004 by and between Mack-Cali Realty Corporation and Michael A. Grossman (filed as Exhibit 10.9 to the Company's Form 8-K dated December 7, 2004 and incorporated herein by reference).           |
| 10.42          | Restricted Share Award Agreement effective December 6, 2005 by and between Mack-Cali Realty Corporation and Mitchell E. Hersh (filed as Exhibit 10.2 to the Company's Form 8-K dated December 6, 2005 and incorporated herein by reference).   |
| 10.43          | Tax Gross Up Agreement effective December 6, 2005 by and between Mack-Cali Realty Corporation and Mitchell E. Hersh (filed as Exhibit 10.3 to the Company's Form 8-K dated December 6, 2005 and incorporated herein by reference).             |
| 10.44          | Restricted Share Award Agreement effective December 6, 2005 by and between Mack-Cali Realty Corporation and Barry Lefkowitz (filed as Exhibit 10.4 to the Company's Form 8-K dated December 6, 2005 and incorporated herein by reference).     |
| 10.45          | Tax Gross Up Agreement effective December 6, 2005 by and between Mack-Cali Realty Corporation and Barry Lefkowitz (filed as Exhibit 10.5 to the Company's Form 8-K dated December 6, 2005 and incorporated herein by reference).               |
| 10.46          | Restricted Share Award Agreement effective December 6, 2005 by and between Mack-Cali Realty Corporation and Roger W. Thomas (filed as Exhibit 10.6 to the Company's Form 8-K dated December 6, 2005 and incorporated herein by reference).     |
| 10.47          | Tax Gross Up Agreement effective December 6, 2005 by and between Mack-Cali Realty Corporation and Roger W. Thomas (filed as Exhibit 10.7 to the Company's Form 8-K dated December 6, 2005 and incorporated herein by reference).               |
| 10.48          | Restricted Share Award Agreement effective December 6, 2005 by and between Mack-Cali Realty Corporation and Michael A. Grossman (filed as Exhibit 10.8 to the Company's Form 8-K dated December 6, 2005 and incorporated herein by reference). |
| 10.49          | Tax Gross Up Agreement effective December 6, 2005 by and between Mack-Cali Realty Corporation and Michael A. Grossman (filed as Exhibit 10.9 to the Company's Form 8-K dated December 6, 2005 and incorporated herein by reference).           |
| 10.50          | Restricted Share Award Agreement by and between Mack-Cali Realty Corporation and Mark Yeager (filed as Exhibit 10.16 to the Company's Form 8-K dated May 9, 2006 and incorporated herein by reference).  |

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| Exhibit Number | Exhibit Title   |
|----------------|---|
| 10.51          | Amended and Restated Revolving Credit Agreement dated as of September 27, 2002, among Mack-Cali Realty, L.P. and JPMorgan Chase Bank, Fleet National Bank and Other Lenders Which May Become Parties Thereto with JPMorgan Chase Bank, as administrative agent, swing lender and fronting bank, Fleet National Bank and Commerzbank AG, New York and Grand Cayman branches as syndication agents, Bank of America, N.A. and Wells Fargo Bank, National Association, as documentation agents, and J.P. Morgan Securities Inc. and Fleet Securities, Inc, as arrangers (filed as Exhibit 10.1 to the Company's Form 8-K dated September 27, 2002 and incorporated herein by reference). |
| 10.52          | Second Amended and Restated Revolving Credit Agreement among Mack-Cali Realty, L.P., JPMorgan Chase Bank, N.A., Bank of America, N.A., and other lending institutions that are or may become a party to the Second Amended and Restated Revolving Credit Agreement dated as of November 23, 2004 (filed as Exhibit 10.1 to the Company's Form 8-K dated November 23, 2004 and incorporated herein by reference).  |
| 10.53          | Extension and Modification Agreement dated as of September 16, 2005 by and among Mack-Cali Realty, L.P., JPMorgan Chase Bank, N.A., as administrative agent, and the several Lenders Party thereto (filed as Exhibit 10.1 to the Company's Form 8-K dated September 16, 2005 and incorporated herein by reference).   |
| 10.54          | Second Modification Agreement dated as of July 14, 2006 by and among Mack-Cali Realty, L.P., JPMorgan Chase Bank, N.A., as administrative agent, and the several Lenders party thereto (filed as Exhibit 10.1 to the Company's Form 8-K dated July 14, 2006 and incorporated herein by reference).  |
| 10.55          | Amended and Restated Master Loan Agreement dated as of November 12, 2004 among Mack-Cali Realty, L.P., and Affiliates of Mack-Cali Realty Corporation and Mack-Cali Realty, L.P., as Borrowers, Mack-Cali Realty Corporation and Mack-Cali Realty L.P., as Guarantors and The Prudential Insurance Company of America, as Lender (filed as Exhibit 10.1 to the Company's Form 8-K dated November 12, 2004 and incorporated herein by reference).  |
| 10.56          | Contribution and Exchange Agreement among The MK Contributors, The MK Entities, The Patriot Contributors, The Patriot Entities, Patriot American Management and Leasing Corp., Cali Realty, L.P. and Cali Realty Corporation, dated September 18, 1997 (filed as Exhibit 10.98 to the Company's Form 8-K dated September 19, 1997 and incorporated herein by reference).  |

- 10.57 First Amendment to Contribution and Exchange Agreement, dated as of December 11, 1997, by and among the Company and the Mack Group (filed as Exhibit 10.99 to the Company's Form 8-K dated December 11, 1997 and incorporated herein by reference).
- 10.58 Employee Stock Option Plan of Mack-Cali Realty Corporation (filed as Exhibit 10.1 to the Company's Post-Effective Amendment No. 1 to Form S-8, Registration No. 333-44443, and incorporated herein by reference).

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| Exhibit Number | Exhibit Title  |
|----------------|--|
| 10.59          | Director Stock Option Plan of Mack-Cali Realty Corporation (filed as Exhibit 10.2 to the Company's Post-Effective Amendment No. 1 to Form S-8, Registration No. 333-44443, and incorporated herein by reference).  |
| 10.60          | 2000 Employee Stock Option Plan (filed as Exhibit 10.1 to the Company's Registration Statement on Form S-8, Registration No. 333-52478, and incorporated herein by reference), as amended by the First Amendment to the 2000 Employee Stock Option Plan (filed as Exhibit 10.17 to the Company's Form 10-Q dated June 30, 2002 and incorporated herein by reference).  |
| 10.61          | 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).   |
| 10.62          | Mack-Cali Realty Corporation 2004 Incentive Stock Plan (filed as Exhibit 10.1 to the Company's Registration Statement on Form S-8, Registration No. 333-116437, and incorporated herein by reference).   |
| 10.63          | 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).  |
| 10.64          | Form of Indemnification Agreement by and between Mack-Cali Realty Corporation and each of William L. Mack, John J. Cali, Mitchell E. Hersh, John R. Cali, David S. Mack, Martin S. Berger, Alan S. Bernikow, Kenneth M. Duberstein, Martin D. Gruss, Nathan Gantcher, Vincent Tese, Roy J. Zuckerberg, Alan G. Philiposian, Irvin D. Reid, Robert F. Weinberg, Barry Lefkowitz, Roger W. Thomas, Michael A. Grossman, Anthony Krug, Dean Cingolani, Anthony DeCaro Jr., Mark Durno, William Fitzpatrick, John Kropke, Nicholas Mitarotonda, Jr., Michael Nevins, Virginia Sobol, Albert Spring, Daniel Wagner, Deborah Franklin, John Marazzo, Christopher DeLorenzo, Jeffrey Warner, Diane Chayes and James Corrigan (filed as Exhibit 10.28 to the Company's Form 10-Q dated September 30, 2002 and incorporated herein by reference). |
| 10.65          | Indemnification Agreement dated October 22, 2002 by and between Mack-Cali Realty Corporation and John Crandall (filed as Exhibit 10.29 to the Company's Form 10-Q dated September 30, 2002 and incorporated herein by reference).  |
| 10.66          | Second Amendment to Contribution and Exchange Agreement, dated as of June 27, 2000, between RMC Development Company, LLC f/k/a Robert Martin Company, LLC, Robert Martin Eastview North Company, L.P., the Company and the Operating Partnership (filed as Exhibit 10.44 to the Company's Form 10-K dated December 31, 2002 and incorporated herein by reference).   |
| 10.67          | Limited Partnership Agreement of Meadowlands Mills/Mack-Cali Limited Partnership by and between Meadowlands Mills Limited Partnership, Mack-Cali Meadowlands Entertainment L.L.C. and Mack-Cali Meadowlands Special L.L.C. dated November 25, 2003 (filed as Exhibit 10.1 to the Company's Form 8-K dated December 3, 2003 and incorporated herein by reference).  |

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| Exhibit Number | Exhibit Title  |
|----------------|--|
| 10.68          | Redevelopment Agreement by and between the New Jersey Sports and Exposition Authority and Meadowlands Mills/Mack-Cali Limited Partnership dated December 3, 2003 (filed as Exhibit 10.2 to the Company's Form 8-K dated December 3, 2003 and incorporated herein by reference).  |
| 10.69          | First Amendment to Redevelopment Agreement by and between the New Jersey Sports and Exposition Authority and Meadowlands Mills/Mack-Cali Limited Partnership dated October 5, 2004 (filed as Exhibit 10.54 to the Company's Form 10-Q dated September 30, 2004 and incorporated herein by reference).  |
| 10.70          | Letter Agreement by and between Mack-Cali Realty Corporation and The Mills Corporation dated October 5, 2004 (filed as Exhibit 10.55 to the Company's Form 10-Q dated September 30, 2004 and incorporated herein by reference).  |
| 10.71          | First Amendment to Limited Partnership Agreement of Meadowlands Mills/Mack-Cali Limited Partnership by and between Meadowlands Mills Limited Partnership, Mack-Cali Meadowlands Entertainment L.L.C. and Mack-Cali Meadowlands Special L.L.C. dated as of June 30, 2005 (filed as Exhibit 10.66 to the Company's Form 10-Q dated June 30, 2005 and incorporated herein by reference).  |
| 10.72          | Contribution and Exchange Agreement by and between Mack-Cali Realty, L.P. and Tenth Springhill Lake Associates L.L.L.P., Eleventh Springhill Lake Associates L.L.L.P., Twelfth Springhill Lake Associates L.L.L.P., Fourteenth Springhill Lake Associates L.L.L.P., each a Maryland limited liability limited partnership, Greenbelt Associates, a Maryland general partnership, and Sixteenth Springhill Lake Associates L.L.L.P., a Maryland limited liability limited partnership, and certain other natural persons, dated as of November 21, 2005 (filed as Exhibit 10.69 to the Company's Form 10-K dated December 31, 2005 and incorporated herein by reference). |
| 10.73          | Membership Interest Purchase and Contribution Agreement by and among Mr. Stanley C. Gale, SCG Holding Corp., Mack-Cali Realty Acquisition Corp. and Mack-Cali Realty, L.P. dated as of March 7, 2006 (filed as Exhibit 10.1 to the Company's Form 8-K dated March 7, 2006 and incorporated herein by reference).   |

- 10.74 Amendment No. 1 to Membership Interest Purchase and Contribution Agreement dated as of March 31, 2006 (filed as Exhibit 10.1 to the Company's Form 8-K dated March 28, 2006 and incorporated herein by reference).
- 10.75 Amendment No. 2 to Membership Interest Purchase and Contribution Agreement dated as of May 9, 2006 (filed as Exhibit 10.1 to the Company's Form 8-K dated May 9, 2006 and incorporated herein by reference).

| Exhibit Number | Exhibit Title   |
|----------------|---|
| 10.76          | Contribution and Sale Agreement by and among Gale SLG NJ LLC, a Delaware limited liability company, Gale SLG NJ MEZZ LLC, a Delaware limited liability company, and Gale SLG RIDGEFIELD MEZZ LLC, a Delaware limited liability company and Mack-Cali Ventures L.L.C. dated as of March 7, 2006 (filed as Exhibit 10.2 to the Company's Form 8-K dated March 7, 2006 and incorporated herein by reference).  |
| 10.77          | First Amendment to Contribution and Sale Agreement by and among GALE SLG NJ LLC, a Delaware limited liability company, GALE SLG NJ MEZZ LLC, a Delaware limited liability company, and GALE SLG RIDGEFIELD MEZZ LLC, a Delaware limited liability company, and Mack-Cali Ventures L.L.C., a Delaware limited liability company, dated as of May 9, 2006 (filed as Exhibit 10.4 to the Company's Form 8-K dated May 9, 2006 and incorporated herein by reference). |
| 10.78          | Non-Portfolio Property Interest Contribution Agreement by and among Mr. Stanley C. Gale, Mr. Mark Yeager, GCF II Investor LLC, The Gale Investments Company, LLC, Gale & Wentworth Vreeland, LLC, Gale Urban Solutions LLC, MSGW-ONE Campus Investors, LLC, Mack-Cali Realty Acquisition Corp. and Mack-Cali Realty, L.P. dated as of May 9, 2006 (filed as Exhibit 10.2 to the Company's Form 8-K dated May 9, 2006 and incorporated herein by reference).       |
| 10.79          | Loan Agreement by and among the entities set forth on Exhibit A, collectively, as Borrowers, and Gramercy Warehouse Funding I LLC, as Lender, dated May 9, 2006 (filed as Exhibit 10.5 to the Company's Form 8-K dated May 9, 2006 and incorporated herein by reference).   |
| 10.80          | Promissory Note of One Grande SPE LLC, 1280 Wall SPE LLC, 10 Sylvan SPE LLC, 5 Independence SPE LLC, 1 Independence SPE LLC, and 3 Becker SPE LLC, as Borrowers, in favor of Gramercy Warehouse Funding I, LLC, as Lender, in the principal amount of \$90,286,551 dated May 9, 2006 (filed as Exhibit 10.6 to the Company's Form 8-K dated May 9, 2006 and incorporated herein by reference).  |
| 10.81          | Mortgage, Security Agreement and Fixture Filing by and between 4 Becker SPE LLC, as Borrower, and Wachovia Bank, National Association, as Lender, dated May 9, 2006 (filed as Exhibit 10.7 to the Company's Form 8-K dated May 9, 2006 and incorporated herein by reference).   |
| 10.82          | Promissory Note of 4 Becker SPE LLC, as Borrower, in favor of Wachovia Bank, National Association, as Lender, in the principal amount of \$43,000,000 dated May 9, 2006 (filed as Exhibit 10.8 to the Company's Form 8-K dated May 9, 2006 and incorporated herein by reference).   |
| 10.83          | Mortgage, Security Agreement and Fixture Filing by and between 210 Clay SPE LLC, as Borrower, and Wachovia Bank, National Association, as Lender, dated May 9, 2006 (filed as Exhibit 10.9 to the Company's Form 8-K dated May 9, 2006 and incorporated herein by reference).   |
| 10.84          | Promissory Note of 210 Clay SPE LLC, as Borrower, in favor of Wachovia Bank, National Association, as Lender, in the principal amount of \$16,000,000 dated May 9, 2006 (filed as Exhibit 10.10 to the Company's Form 8-K dated May 9, 2006 and incorporated herein by reference).  |

| Exhibit Number | Exhibit Title  |
|----------------|--|
| 10.85          | Mortgage, Security Agreement and Fixture Filing by and between 5 Becker SPE LLC, as Borrower, and Wachovia Bank, National Association, as Lender, dated May 9, 2006 (filed as Exhibit 10.11 to the Company's Form 8-K dated May 9, 2006 and incorporated herein by reference).     |
| 10.86          | Promissory Note of 5 Becker SPE LLC, as Borrower, in favor of Wachovia Bank, National Association, as Lender, in the principal amount of \$15,500,000 dated May 9, 2006 (filed as Exhibit 10.12 to the Company's Form 8-K dated May 9, 2006 and incorporated herein by reference). |
| 10.87          | Mortgage, Security Agreement and Fixture Filing by and between 51 CHUBB SPE LLC, as Borrower, and Wachovia Bank, National Association, as Lender, dated May 9, 2006 (filed as Exhibit 10.13 to the Company's Form 8-K dated May 9, 2006 and incorporated herein by reference).     |
| 10.88          | Promissory Note of 51 CHUBB SPE LLC, as Borrower, in favor of Wachovia Bank, National Association, as Lender, in the principal amount of \$4,500,000 dated May 9, 2006 (filed as Exhibit 10.14 to the Company's Form 8-K dated May 9, 2006 and incorporated herein by reference).  |
| 10.89          | Form of Amended and Restated Limited Liability Company Agreement of Mack-Green-Gale LLC dated _____, 2006 (filed as Exhibit 10.3 to the Company's Form 8-K dated March 7, 2006 and incorporated herein by reference).  |
| 10.90          | Form of Limited Liability Company Operating Agreement (filed as Exhibit 10.3 to the Company's Form 8-K dated May 9, 2006 and incorporated herein by reference).  |
| 10.91*         | Agreement of Sale and Purchase dated August 9, 2006 by and between Mack-Cali Realty, L.P. and Westcore Properties AC, LLC.   |
| 10.92*         | First Amendment to Agreement of Sale and Purchase dated September 6, 2006 by and between Mack-Cali Realty, L.P. and Westcore Properties AC, LLC.   |
| 10.93*         | Second Amendment to Agreement of Sale and Purchase dated September 15, 2006 by and between Mack-Cali Realty, L.P. and Westcore Properties AC, LLC.   |

- 10.94\* Agreement of Sale and Purchase dated September 25, 2006 by and between Phelan Realty Associates L.P., 795 Folsom Realty Associates L.P. and Westcore Properties AC, LLC.
- 31.1\* Certification of the Company's President and Chief Executive Officer, Mitchell E. Hersh, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 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 President and 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

**AGREEMENT OF SALE AND PURCHASE**

THIS AGREEMENT OF SALE AND PURCHASE ("**Agreement**") made this 9<sup>th</sup> day of August, 2006 by and between MACK-CALI REALTY, L.P., a limited partnership organized under the laws of the State of Delaware having an address c/o Mack-Cali Realty Corporation, 11 Commerce Drive, Cranford, New Jersey 07016 ("**Seller**") and WESTCORE PROPERTIES AC, LLC, a limited liability company organized under the laws of the State of Delaware having an address at 4445 Eastgate Mall, Suite 210, San Diego, California 92121 ("**Purchaser**").

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:

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

"**Apex Agreements**" means that certain Agreement for the management of rooftop transmitting sites dated July 6, 1998, between Mack-Cali Realty Corporation on behalf of Seller and American Tower Corporation, successor-in-interest to SpectraSite Communications, Inc., successor-in-interest to Apex Site Management, Inc., as amended, and that certain Agreement for the management of telecommunications access sites dated December 14, 1998, between Mack-Cali Realty Corporation on behalf of Seller and American Tower Corporation, successor-in-interest to SpectraSite Communications, Inc., successor-in-interest to Apex Site Management, Inc, as amended.

"**Assignment**" has the meaning ascribed to such term in Section 10.3(e) and shall be in the form attached hereto as **Exhibit A**.

"**Assignment of Ground Lease**" has the meaning ascribed to such term in Section 10.3(d).

"**Assignment of Leases**" has the meaning ascribed to such term in Section 10.3(c) and shall be in the form attached hereto as **Exhibit B**.

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

"**Bill of Sale**" has the meaning ascribed to such term in Section 10.3(b) and shall be in the form attached hereto as **Exhibit C**.

"**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(g) and shall be in the form attached as **Exhibit J**.

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

"**Closing**" means the consummation of the purchase and sale of the Property 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).

"**Closing Surviving Obligations**" means the rights, liabilities and obligations set forth in Sections 3.2, 5.3, 5.4, 8.2, 8.3, 9.1(b), 10.4, 10.6, 11.1, 11.2, 12.1, Article XIV, 16.1, 18.2 and 18.8, and any other provisions 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 June 8, 2006 between Westcore Properties and Mack-Cali Realty Corporation, the general partner of Seller.

"**Deed**" has the meaning ascribed to such term in Section 10.3(a).

"**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 latest date on which this Agreement has been executed and delivered by Seller or Purchaser.

"**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 issued by any Authorities and in effect as of the date of this Agreement with respect to or which otherwise pertains to or affects the Real Property or the Improvements, or any portion thereof, the use, ownership, occupancy or operation of the Real Property or the Improvements, or any portion thereof, or Purchaser, 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

Act of 1986 (42 U.S.C. § 11001 et seq.), the Radon Gas and Indoor Air Quality Research Act of 1986 (42 U.S.C. § 7401 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.) (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 of New York, having an address at 633 Third Avenue, 16th Floor, New York, New York 10017.

“**Existing Survey**” means Seller’s existing surveys of the Real Property as listed on Exhibit H.

“**Evaluation Period**” means the period ending at 5:00 p.m. Eastern time on September 6, 2006.

“**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, mold 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, polychlorinated biphenyls, 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, and/or (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, structures, fixtures, parking areas and other improvements located on the Real Property.

“**Intangible Property**” means all of Seller’s right, title and interest, to the extent assignable or transferable and to the extent not otherwise specifically excluded pursuant to this Agreement, in and to all other intangible rights, titles, interests, privileges and appurtenances owned by Seller and exclusively related to or used exclusively in connection with the ownership, use or operation of the Real Property or the Improvements, including, without limitation, all rights, claims and causes of action Seller may have against governmental authorities, present and

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former owners of adjacent or neighboring land, former owners of the Property, present and former tenants of the Property, contractors and material suppliers, and architects, engineers and contractors in connection with the design or construction of the Improvements, except to the extent that any such right, claim and cause of action pertains to monies owed to Seller for the period prior to closing and except for any right, claim and cause of action that Seller may choose to assert, in its sole discretion, as a counterclaim against a claim or cause of action asserted by or in connection with services provided by any of the foregoing individuals or entities.

“**Initial Earnest Money Deposit**” has the meaning ascribed to such term in Section 4.1(a).

“**Lease Schedule**” means Seller’s most current lease schedule, which is attached as **Exhibit F**.

“**Leases**” means all of the leases and other agreements with Tenants with respect to the use and occupancy of the Real Property, together with all renewals and modifications thereof, if any, all guaranties thereof, if any, and any new leases and lease guaranties entered into after the Effective Date.

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

“**Licenses and Permits**” means, collectively, all of Seller’s right, title and interest, to the extent assignable, in and to licenses, permits, certificates of occupancy, approvals, dedications, subdivision maps and entitlements now 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.

“**Major Tenant**” means any Tenant leasing at least 25,000 square feet of space at the Property, in the aggregate.

“**Mt. Pyramid Project**” has the meaning ascribed to such term in Section 7.1(e).

“**New Tenant Costs**” has the meaning ascribed to such term in Section 10.4(e).

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

“**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).

“**Personal Property**” means all of Seller’s right, title and interest in and to all equipment, appliances, tools, supplies, machinery, artwork, furnishings and other tangible personal property attached to, appurtenant to, located in and used exclusively in connection with the ownership or operation of the Improvements, and Seller’s management office 5975 S. Quebec Street, Centennial, Colorado, and situated at the Property at the time of Closing, but specifically excluding all personal property leased by or licensed to Seller or owned by tenants or others and software and other personal property that is proprietary or confidential in nature.

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“**Property**” has the meaning ascribed to such term in Section 2.1.

“**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’s Affiliates**” means any past, present or future: (i) shareholder, partner, member, manager or owner of Purchaser; (ii) entity in which Purchaser or any past, present or future shareholder, partner, member, manager or owner of Purchaser has or had an interest; (iii) entity that, directly or indirectly, controls, is controlled by or is under common control with Purchaser; and (iv) the heirs, executors, administrators, personal or legal representatives, successors and assigns of any or all of the foregoing.

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

“**Real Property**” means those certain parcels of real property located at 67 Inverness Drive East and 9359 E. Nichols Avenue, Englewood, Arapahoe County,



Colorado, 384 and 400 Inverness Parkway and 9777 Pyramid Court, Englewood, Douglas County, Colorado (“**Mt. Pyramid**”), 8415 Explorer/2375 Telstar Drive and 1975 Research Parkway, Colorado Springs, El Paso County, Colorado, 5350 South Roslyn Street, Greenwood Village, Arapahoe County, Colorado, 8181 East Tufts Avenue, Denver, Denver County, Colorado, and 400 South Colorado Boulevard (including Seller’s leasehold estate with respect to a portion of the property), Denver, Arapahoe County, Colorado (“**400 South Colorado**”), 105 South Technology Court, 303 South Technology Court A (also called Interlocken 1-A) and 303 South Technology Court B (also called Interlocken 1-B), Broomfield, Broomfield County, Colorado, 1172 Century Drive (also called Centennial Valley Business Park) and 285 Century Place, Louisville, Boulder County, Colorado, 5975 South Quebec Street, Centennial, Arapahoe County, Colorado 141 Union Boulevard (also called Plaza at One Union Square), Lakewood, Jefferson County, Colorado, and part of Lot 3 Southpark Subdivision Filing No. 5 (at Hilltop Business Park), Littleton, Arapahoe County, Colorado consisting of approximately 7.10 acres, all as more particularly described in the legal descriptions attached hereto and made a part hereof as **Exhibit D**, together with all of Seller’s right, title and interest, if any, in and to the appurtenances pertaining thereto, including but not limited to Seller’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.

“**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 thirtieth (30th) day after expiration of the Evaluation Period, but subject to a thirty-day extension option pursuant to Section 10.1 below.

“**Security Deposits**” means all security deposits held by Seller, as landlord, and not previously applied to the obligations of a Tenant under its Lease.

“**Seller’s Affiliates**” means any past, present or future: (i) shareholder, partner, member, manager or owner of Seller; (ii) entity in which Seller or any past, present or future shareholder, partner, member, manager or owner of Seller has or had an interest; (iii) entity that, directly or

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indirectly, controls, is controlled by or is under common control with Seller and (iv) the heirs, executors, administrators, personal or legal representatives, successors and assigns of any or all of the foregoing.

“**Seller’s Knowledge**” means the present actual (as opposed to constructive or imputed) knowledge solely of Robert Drabkin (“**Drabkin**”), Regional Director, Mack-Cali Realty Corporation (“**MCRC**”), the general partner of Seller, without any independent investigation or inquiry whatsoever; provided that with respect to the representations and warranties set forth in Sections 8.1(a) through 8.1(f), inclusive, 8.1(k) and 8.1(r) of this Agreement, “Seller’s Knowledge” means the present actual (as opposed to constructive or imputed) knowledge of Drabkin, Mitchell E. Hersh, President and Chief Executive Officer of MCRC, Roger W. Thomas, Executive Vice President and General Counsel of MCRC and Daniel J. Wagner, Vice President and Senior Associate General Counsel of MCRC, without any independent investigation or inquiry whatsoever, but without any personal liability whatsoever.

“**Service Contracts**” means all of Seller’s right, title and interest, to the extent assignable, in all service agreements, maintenance contracts, equipment leasing agreements, warranties, guarantees, bonds, open purchase orders and other contracts for the provision of labor, services, materials or supplies relating solely to the Real Property, Improvements or Personal Property and under which Seller is currently paying for services rendered in connection with the Property, as listed and described on **Exhibit E** attached hereto, together with all renewals, supplements, amendments and modifications thereof, and any new such agreements entered into after the Effective Date, to the extent permitted by Section 7.1; provided however, “Service Contracts” shall not include contracts with Seller’s affiliates, including, without limitation, leasing, construction, management and development contracts with Seller’s affiliates.

“**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, the cost of which to repair would exceed five percent (5%) of the Purchase Price in the aggregate.

“**Survey Objection**” has the meaning ascribed to such term in Section 6.1.

“**Tenants**” means the tenants or users of the Real Property and Improvements who are parties to the Leases.

“**Tenant Notice Letters**” has the meaning ascribed to such term in Section 10.2(e), and are to be delivered by Purchaser to Tenants pursuant to Section 10.6.

“**Termination Surviving Obligations**” means the rights, liabilities and obligations set forth in Sections 5.2, 5.3, 5.4, 12.1, Articles XIII and XIV, 16.1, 18.2 and 18.8, and any other provisions which pursuant to their terms survive any termination of this Agreement.

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

“**Title Company**” means First American Title Insurance Company of New York.

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

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

“**Updated Survey**” has the meaning ascribed to such term in Section 6.1.

**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 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** **Agreement.** Seller hereby agrees to sell, convey and assign to Purchaser, and Purchaser hereby agrees to purchase and accept from Seller, on the Closing Date and subject to the terms and conditions of this Agreement, all of the following (individually and collectively, the “**Property**”):

- (a) the Real Property;
- (b) the Improvements;

- (c) the Personal Property;
- (d) the Intangible Property;
- (e) all of Seller's right, title and interest as lessor in and to the Leases and, subject to the terms of the respective applicable Leases, the Security Deposits; and
- (f) to the extent assignable, the Service Contracts and the Licenses and Permits. All right, title and interest in and to the names, trademarks and servicemarks of Seller and MCRC, including but not limited to the right to use the name "Mack-Cali", are excluded from the Property.

**Section 2.2** **Indivisible Economic Package.** Purchaser has no right to purchase, and Seller has no obligation to sell, less than all of the Property, 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 the Property, subject to and in accordance with the terms and conditions hereof.

### ARTICLE III CONSIDERATION

**Section 3.1** **Purchase Price.** The purchase price for the Property (the "**Purchase Price**") shall be One Hundred Ninety-Five Million Two Hundred Ninety-Five Thousand Dollars

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(\$195,295,000) in lawful currency of the United States of America, payable as provided in Section 3.3. The Purchase Price shall be allocated among the Real Property and Improvements in accordance with **Exhibit K**. No portion of the Purchase Price shall be allocated to the Personal Property.

**Section 3.2** **Assumption of Obligations.** As additional consideration for the purchase and sale of the Property, at Closing Purchaser will (i) assume the covenants and obligations of Seller pursuant to the Leases, Service Contracts and Licenses and Permits, subject to certain limitations as more fully set forth in this Agreement, including without limitation, the exhibits hereto and (ii) offer to hire Seller's or its general partner's existing employees in Colorado at the same base salary and bonus as are in existence prior to Closing as more fully set forth in Section 7.3 below.

**Section 3.3** **Method of Payment of Purchase Price.** No later than 2:00 p.m. Eastern Standard Time on the Closing Date, Purchaser shall pay 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 ("**Purchaser's Costs**"), by Federal Reserve wire transfer of immediately available funds to the account of Escrow Agent. Escrow Agent, following authorization by the parties at Closing, shall, prior to 3:00 p.m. Eastern Standard Time (i) pay to Seller by Federal Reserve wire transfer of immediately available funds to an account designated by Seller, the Purchase Price, less any costs or other amounts to be paid by Seller at Closing pursuant to the terms of the Closing Statement executed by Seller and Purchaser, (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 the executed Closing Statement, and (iii) pay Purchaser's Costs to the appropriate payees at Closing pursuant to the terms of the executed Closing Statement.

### ARTICLE IV EARNEST MONEY DEPOSIT AND ESCROW INSTRUCTIONS

**Section 4.1** **The Earnest Money Deposit and Independent Contract Consideration.**

(a) On or before one (1) Business Day after the Effective Date, Purchaser shall deposit with the Escrow Agent, by Federal Reserve wire transfer of immediately available funds, the sum of One Million Dollars (\$1,000,000.00) as the earnest money deposit on account of the Purchase Price (the "**Initial Earnest Money Deposit**"). TIME IS OF THE ESSENCE with respect to the deposit of the Initial Earnest Money Deposit. The Initial Earnest Money Deposit shall be held by the Escrow Agent in a sole order escrow account in the Purchaser's name as a deposit against the Purchase Price in accordance with the terms and provisions of this Agreement. In furtherance of the foregoing, in the event Purchaser so instructs Escrow Agent on or prior to the expiration of the Evaluation Period, Escrow Agent agrees that it shall not be permitted to, and shall not, follow any conflicting instructions given by Seller or any third party as to the disposition of the Initial Earnest Money Deposit but shall instead follow only the instructions of Purchaser in connection therewith. Seller agrees in such instance not to deliver

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any conflicting instructions to Escrow Agent for any reason. If the Agreement is not terminated on or prior to the expiration of the Evaluation Period, the Initial Earnest Money Deposit shall be transferred by the Escrow Agent to a joint escrow account for the benefit of Purchaser and Seller.

(b) If Purchaser does not terminate this Agreement pursuant to Section 5.3(c) below, then on or before one (1) Business Day after the expiration of the Evaluation Period, Purchaser shall, in addition to the Earnest Money Deposit, deposit with Escrow Agent, by Federal Reserve wire transfer of immediately available funds, Four Million Dollars (\$4,000,000.00) as an additional earnest money deposit on account of the Purchase Price (the "**Additional Earnest Money Deposit**"). TIME IS OF THE ESSENCE WITH RESPECT TO THE PAYMENT OF THE ADDITIONAL EARNEST MONEY DEPOSIT. The Initial Earnest Money Deposit and Additional Earnest Money Deposit are hereinafter referred to individually and collectively as 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 XVII. In the event this Agreement is not terminated by Purchaser pursuant to the terms hereof by the end of the Evaluation Period in accordance with the provisions of Section 5.3(c) herein, the Earnest Money Deposit and the interest earned thereon shall become non-refundable to Purchaser except in those instances expressly set forth in this Agreement. In the event this Agreement is terminated by Purchaser prior to the expiration of the Evaluation Period, the Earnest Money Deposit, together with all interest earned thereon, shall be refunded to Purchaser.

**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

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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** **Inspection Period.** From and after the date of this Agreement, Purchaser and its authorized agents and representatives (for purposes of this Article V, the "**Licensee Parties**") shall have the right, subject to the right of the Tenants, to enter upon the Real Property at all reasonable times during normal business hours to perform an inspection of the Property. Purchaser will provide to Seller 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 Tenants or any of the Authorities without the prior written consent of Seller. Notwithstanding anything to the contrary contained herein, no physical testing or sampling shall be conducted during any such entry by Purchaser or any Licensee Party upon the Real Property without Seller's specific prior written consent, such consent not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Purchaser shall have the right to communicate with the Authorities in order to confirm the zoning requirements applicable to the Property and to verify whether there are any violations of record with respect to the Property; provided, however, that such communications shall not cause any inspection of the Property by any of the Authorities. TIME IS OF THE ESSENCE with respect to the provisions of this Section 5.1.

**Section 5.2** **Document Review.**

(a) During the Evaluation Period, Purchaser and the Licensee Parties shall have the right to review and inspect, at Purchaser's sole cost and expense, copies of all of the following to the extent that, to Seller's Knowledge, such items are in Seller's possession or control (collectively, the "**Documents**"): all existing environmental and engineering reports and studies prepared for Seller with respect to the Property, real estate tax bills, together with assessments (special or otherwise), ad valorem and personal property tax bills covering the period of Seller's ownership of the Property; current operating statements and historical operating information related to the Property for the past three years confirming collected income, operating expenses, capital expenditures, commissions and fees, together with related correspondence, notices, existing audits, real estate and personal property tax filings and real estate tax appeal files (which may be made available by Seller for review at the offices of Seller's tax appeal consultant in Colorado), contracts, and associated books and records; tenant ledgers, year-to-date operating statements, operating and other expense reconciliations and written communications with tenants regarding same; evidence of Seller's property insurance; documentation pertaining to the registration of storage tanks and inventory records with respect to such tanks; the Leases, lease files, Service Contracts, Licenses and Permits; all construction and other contracts pertaining to the Mt. Pyramid Project, together with invoices rendered pursuant to the contracts and proof of payment thereof; assessment district information; any governmental or quasi-governmental correspondence or other documentation and notices related

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to use, zoning, building code or any other regulatory matter; construction plans and specifications; and site plans and all associated drawings, modifications, and additions for the Property; and copies of permits and soils reports, hazardous materials permits, fire sprinkler ratings, and electrical ratings. Such inspections shall occur at a location or locations selected by Seller, which may be at Seller's office in Denver, Colorado, at the Real Property or Purchaser's office in San Diego, California to the extent Seller delivers any such Documents to Purchaser physically or electronically, or a combination of the foregoing locations. Purchaser shall not have the right to review or inspect materials not directly related to the leasing, maintenance and/or management of the Property, including, without limitation, all of Seller's internal memoranda, financial projections, budgets, appraisals, proposals for work not actually undertaken, accounting and tax records and similar proprietary, elective or 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 determining the desirability of purchasing the Property. 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, accountants, lenders, investors or the Licensee Parties (collectively, for purposes of this Section 5.2(b), 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 determining the desirability of Purchaser's acquisition of the Property. Purchaser further acknowledges that the Documents and other information relating to the leasing arrangements between Seller and Tenants are proprietary and confidential in nature. Purchaser agrees not to divulge the contents of such Documents and other information except in strict 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 has 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 any such claims are expressly rejected by Seller and waived by Purchaser and the Permitted Outside Parties, for whom, by its execution of this Agreement, Purchaser is acting as an agent 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 Seller's ownership of the Property. **EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT OR THE DOCUMENTS REQUIRED TO BE DELIVERED BY SELLER UNDER SECTION 10 HEREOF (THE "CLOSING DOCUMENTS"), PURCHASER HEREBY ACKNOWLEDGES THAT SELLER 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.**

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**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 unreasonably disturb the Tenants or interfere with the use of the Property pursuant to the Leases; 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 Tenants or any other person or entity; injure or otherwise cause bodily harm to Seller or any Tenant, 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 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 will (i) maintain comprehensive general liability (occurrence) insurance on terms and in amounts satisfactory to Seller and Workers' Compensation insurance in statutory limits, and, if Purchaser or any

Licensee Party performs any physical inspection or sampling at the Real Property, in accordance with Section 5.1, such Licensee Party performing such physical inspection or sampling shall maintain errors and omissions insurance and contractor's pollution liability insurance on terms and in amounts acceptable to Seller, and insuring Seller, Purchaser and such other parties as Seller shall request, covering any accident or event arising in connection with the presence of Purchaser or the other Licensee Parties 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; (iv) at Seller's request, furnish to Seller any studies, reports or test results received by Purchaser regarding the Property, promptly after such receipt, in connection with such inspection; and (v) restore the Real Property and Improvements to the condition in which the same were found before any such entry upon the Real Property and inspection or examination was undertaken.

(b) Purchaser hereby indemnifies, defends and holds Seller and its partners, agents, directors, officers, employees, successors and assigns 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) for personal injury, wrongful acts, torts claims and property damage, arising out of Purchaser's and the other Licensee Parties' entry onto the Property and/or any inspections, investigations, examinations, sampling or tests conducted by Purchaser or any of the Licensee Parties, whether prior to or after the date hereof, with respect to the Property or arising out of any violation of the provisions of this Article V; provided that the foregoing indemnity shall not relate to any liability, cost, loss, damage or expense to the extent attributable to (i) conditions in existence on or about the Property on the date of this Agreement, except to the extent exacerbated by Purchaser (provided that Purchaser's mere discovery of a pre-existing condition on the Property shall not be deemed to be an exacerbation of a pre-existing condition), (ii) any acts or omissions of Seller or any of Seller's agents, contractors, or employees, or (iii) claims based on disclosures required pursuant to Governmental Regulations.

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(c) In the event that Purchaser determines, after its inspection of the Documents and Real Property and Improvements, that it does not want to proceed with the transaction as set forth in this Agreement, Purchaser shall have the right to terminate this Agreement by providing written notice to Seller prior to the expiration of the Evaluation Period, WITH TIME BEING OF THE ESSENCE WITH RESPECT THERETO. In the event Purchaser terminates this Agreement in accordance with this Section 5.3(c), Purchaser shall have the right to receive a refund of the Earnest Money Deposit, together with all interest which has accrued thereon, and except with respect to the Termination Surviving Obligations, this Agreement shall be null and void and the parties shall have no further obligation to each other. In the event this Agreement is terminated, Purchaser shall return to Seller all Documents and 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 (collectively, "Purchaser's Information") promptly following the time this Agreement is terminated for any reason.

**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 PURCHASER, AND PURCHASER HAS THE RIGHT TO CONDUCT ITS OWN INDEPENDENT EXAMINATION OF THE PROPERTY. OTHER THAN THE MATTERS EXPRESSLY REPRESENTED IN SECTION 8.1 HEREOF AND THE CLOSING DOCUMENTS, BY WHICH ALL OF THE FOLLOWING PROVISIONS OF THIS SECTION 5.4 ARE LIMITED, 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 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 RELIED UPON BY PURCHASER WITH RESPECT TO THE STATUS OF TITLE TO OR THE MAINTENANCE, REPAIR, CONDITION, DESIGN, DEVELOPMENT POTENTIAL 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 REAL PROPERTY, IMPROVEMENTS OR PERSONAL PROPERTY, (f) THE FINANCIAL CONDITION OR PROSPECTS OF THE PROPERTY OR ANY TENANT AND (g) THE COMPLIANCE OR LACK THEREOF**

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**OF THE REAL PROPERTY OR THE IMPROVEMENTS WITH GOVERNMENTAL REGULATIONS, INCLUDING WITHOUT LIMITATION ENVIRONMENTAL LAWS, NOW EXISTING OR HEREAFTER ENACTED OR PROMULGATED, IT BEING THE EXPRESS INTENTION OF SELLER AND PURCHASER THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PROPERTY 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 SOLELY ON ITS OWN EXPERTISE AND THAT OF PURCHASER'S CONSULTANTS IN PURCHASING THE PROPERTY. PURCHASER HAS BEEN GIVEN A SUFFICIENT OPPORTUNITY HEREIN TO CONDUCT AND HAS CONDUCTED OR WILL CONDUCT SUCH INSPECTIONS, INVESTIGATIONS AND OTHER INDEPENDENT EXAMINATIONS OF THE PROPERTY 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 (EXCLUDING THE LIMITED MATTERS EXPRESSLY REPRESENTED BY SELLER IN SECTION 8.1 HEREOF OR THE CLOSING DOCUMENTS) NOR OF ANY PARTNER, OFFICER, DIRECTOR, EMPLOYEE, AGENT OR ATTORNEY OF SELLER OR ITS GENERAL PARTNER. PURCHASER ACKNOWLEDGES THAT ALL INFORMATION PROVIDED TO 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, 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, "AS IS, WHERE IS," WITH ALL FAULTS. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS IN CONNECTION WITH 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 FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE OR OTHER PERSON, UNLESS THE SAME ARE SPECIFICALLY SET FORTH OR REFERRED TO 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. 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 THE PROPERTY 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 OR CONTRIBUTION 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 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 HEREAFTER CREATED, RELATED TO ENVIRONMENTAL CONDITIONS OR ENVIRONMENTAL MATTERS IN, ON, UNDER, ABOUT OR MIGRATING FROM OR ONTO THE 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 WILL NOT MERGE WITH THE PROVISIONS OF ANY CLOSING DOCUMENTS AND ARE HEREBY DEEMED INCORPORATED INTO THE DEED AS FULLY AS IF SET FORTH AT LENGTH THEREIN.

## ARTICLE VI TITLE AND SURVEY MATTERS

**Section 6.1** Survey. Purchaser acknowledges receipt of the Existing Survey. Any modification, update or recertification of the Existing Survey shall be at Purchaser's election and sole cost and expense. The Existing Survey together with any update Purchaser has elected to obtain, if any, is herein referred to as the "Updated Survey." Any matters that are objected to by Purchaser in a written notice to Seller prior to the expiration of the Evaluation Period shall constitute a "Survey Objection" under this Agreement.

### **Section 6.2** Title Commitment.

(a) Purchaser acknowledges receipt of those certain title insurance commitments issued by the Title Company under Commitment Nos. NCS243966C01, NCS243966C02, NCS243966C03, NCS243966C04, NCS243966C05, NCS243966C06, NCS243966C07, NCS243966C08, NCS243966C09, NCS243966C10, NCS243966C11, NCS243966C12, NCS243966C13, NCS243966C14, NCS243966C15, NCS243966C16 and NCS243966C17 (the "Title Commitment"), together with copies of the title exceptions listed thereon. Purchaser shall have until the expiration of the Evaluation Period to provide written notice to Seller of Purchaser's objection to any exception or other matter set forth in the Title

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Commitment that Purchaser deems unacceptable (a "Title Objection"). Purchaser shall be deemed to have accepted all exceptions and other matters in the Title Commitment not objected to in writing by Purchaser prior to the expiration of the Evaluation Period. By the date (the "New Objection Date") which is five (5) Business Days after Purchaser's counsel receives notice of any new exception to the title to the Real Property raised by the Title Company after the effective date of the Title Commitment and prior to the Closing (or as promptly as possible prior to the Closing if such notice is received with less than five (5) Business Days prior to the Closing [but in no event less than one (1) Business Day] and the Closing Date shall be extended to permit time for Seller to respond to such objection), Purchaser shall provide Seller with written notice of its objection to such new exception if Purchaser deems same unacceptable ("New Title Objections"). In the event Seller does not receive the New Title Objections by the New Objection Date, Purchaser will be deemed to have accepted the exceptions to title set forth on any updates to the Title Commitment as Permitted Exceptions. Pursuant to the Title Commitment, the Title Company shall be committed to issue to Purchaser at Closing, an ALTA Form, amended 10-17-70 (with no added exception for creditors' rights) extended coverage owner's policy of title insurance, dated as of each Property as of the date and time of recordation of the Deed for such Property in the amount of the Purchase Price insuring Purchaser's fee simple title to the Real Property subject to the standard preprinted exceptions except those that the Title Company agrees to omit or modify during the Evaluation Period and with such endorsements as the Title Company has agreed to issue on or before the expiration of the Evaluation Period, subject only to the Permitted Exceptions (the "Title Policy"). "Permitted Exceptions" means the following: (1) the lien of any current real estate taxes and assessments and subsequent periods, provided that the same are prorated in accordance with this Agreement; and (2) such other matters set forth in the Title Commitment or Survey which are approved or deemed approved by Purchaser during the Evaluation Period or thereafter in accordance with this Agreement.

(b) All taxes, water rates or charges, sewer rents and assessments, plus interest and penalties thereon, which on the Closing Date are liens against the Real Property will be credited against the Purchase Price (subject to the provision for apportionment of taxes, water rates and sewer rents herein contained) and shall not be deemed a Title Objection provided the Title Company either omits the lien as an exception from the Title Commitment or insures all such items as paid to the Closing.

(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 or the Title Company receives an indemnity from Seller satisfactory to the Title Company, and the Title Company either omits the lien as an exception from the title insurance commitment or insures against collection thereof from out of the Real Property, and a credit is given to Purchaser for the recording charges for a satisfaction or discharge of such lien.

(d) No franchise, transfer, inheritance, income, corporate or other tax open, levied or imposed against Seller 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

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against collection thereof from or out of the Real Property and/or the Improvements, and provided further that Seller deposits with the Title Company a sum reasonably sufficient to secure a release of the Property from the lien thereof or the Title Company receives an indemnity from Seller satisfactory to the Title Company, and, in any event, any such tax is omitted as an exception to the Title Policy. 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, Seller will deliver to the Title Company an affidavit stating that such judgments, bankruptcies or other returns do not apply to Seller, and such search results shall not be deemed Title Objections.

### **Section 6.3** Title Defect.

(a) In the event Seller receives any Survey Objection, Title Objection or New Title Objection (collectively and individually, a "Title Defect") within the time periods required under Sections 6.1 and 6.2 above, Seller may elect (but shall not be obligated) by written notice to Purchaser to attempt to remove, or cause to be removed at its expense, any such Title Defect, and shall provide Purchaser with written notice, within seven (7) days of its receipt of any such objection, of its intention to attempt to cure any such Title Defect and/or extend the Closing Date for such purpose. If Seller elects to attempt to cure any Title Defect, the Scheduled Closing Date shall be extended, for a period not to exceed sixty (60) days, for the purpose of such removal if Seller provides written notice to Purchaser of such extension. If Seller elects to extend the Scheduled Closing Date as aforesaid, but successfully effects such cure more than ten (10) Business Days before the expiration of the extension period set forth in Seller's extension notice, then Seller may shorten the extension period by sending Purchaser written notice at least ten (10) Business Days prior to the new Scheduled Closing Date. In the event that (i) Seller elects not to attempt to cure any such Title Defect, or (ii) Seller is unable to cure any such Title Defect for any period elected by Seller but not

to exceed sixty (60) days from the Scheduled 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, together with all interest which has accrued thereon, or to waive such Title Defect and proceed to the Closing. Purchaser shall make such election within ten (10) days after receipt of Seller's notice. If Purchaser elects to proceed to the Closing, any Title Defects waived by Purchaser shall be deemed Permitted Exceptions. 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 any provision of this Article VI to the contrary, Seller will be obligated to cure exceptions to title to the Property, in the manner described in Section 6.2(c) above, relating to liens and security interests securing any financings to Seller, and any mechanic's liens resulting from work at the Property directly contracted for by Seller, provided that Seller shall remove other monetary liens created or permitted by Seller, any new matters appearing after the date of the Agreement which were voluntarily created by Seller and not consented to, approved or deemed approved by Purchaser hereunder, delinquent property tax liens, any income tax lien or any judgment lien as a result of Seller's actions.

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## ARTICLE VII INTERIM OPERATING COVENANTS, ESTOPPELS AND POST-CLOSING EMPLOYMENT

**Section 7.1** **Interim Operating Covenants.** Seller covenants to Purchaser that Seller will:

(a) **Operations.** From the Effective Date until Closing, continue to operate, manage and maintain the Improvements in the ordinary course of Seller's business and substantially in accordance with Seller's present practice, subject to ordinary wear and tear and further subject to Article XI of this Agreement. From the Effective Date through the expiration of the Evaluation Period, Seller will consult with Purchaser regarding any proposed new Leases or amendments or terminations to existing Leases and provide copies thereof to Purchaser for review, including, without limitation, disclose to Purchaser by written notice any and all material terms regarding any proposed new Leases or amendments to or terminations of existing Leases, including, without limitation, any New Tenant Costs associated with any proposed new Leases or amendment to any existing Lease, and will consult with Purchaser regarding the initiation or settlement of any real estate tax appeals during such period; provided, however, that Seller shall not be required to obtain Purchaser's consent before entering into any new Leases or amendments to or terminations of existing Leases and/or initiating or settling any tax appeals. After the expiration of the Evaluation Period, Seller shall not amend any existing Lease, accept any termination of any existing Lease or enter into any new Lease, or initiate or settle any tax appeal, without Purchaser's prior written consent in Purchaser's sole and absolute discretion; provided, however, in the event that Purchaser withholds or conditions its consent to any amendment or termination of an existing Lease or to any new Lease, then the provisions of Section 9.1(b) shall be null and void and of no further force and effect and Purchaser shall assume the risk of any and all losses of operation income at the Property between the expiration of the Evaluation Period and Closing.

(b) **Service Contracts.** During the Evaluation Period, consult with Purchaser before entering into any Service Contract unless such Service Contract is terminable on thirty (30) days notice without payment of a termination penalty, fee or premium; provided, however, that Seller shall be under no obligation to obtain Purchaser's consent prior to entering into any Service Contract. From the expiration of the Evaluation Period until Closing, not enter into any Service Contracts, unless such Service Contracts are terminable on thirty (30) days notice without paying any termination penalty, fee or premium or unless Purchaser consents thereto in writing in Purchaser's sole and absolute discretion. At Closing, Seller shall terminate any property management agreements and any other agreements with affiliates of Seller in connection with the Property.

(c) **Notices.** To the extent (i) received or sent by Seller after the Effective Date and (ii) affecting the Property, promptly deliver to Purchaser copies of written: default notices, notices of violations, tax bills and assessment notices, notices of a condemnation and material notices pertaining to any Lease, easement or other agreement.

(d) **Restrictions on Seller.** From the expiration of the Evaluation Period until Closing, not (i) seek or agree to any change or modification with respect to zoning or development rights with respect to the Property without Purchaser's prior written consent, (ii) place any voluntary lien or encumbrance on the Property without Purchaser's prior written consent, which will not be unreasonably withheld, conditioned or delayed, or (iii) commence, at Seller's sole cost and expense, material (i.e., in excess of one-tenth of one percent (0.1%) of the Purchase Price), elective or optional alterations at the Property without Purchaser's prior written consent, which will not be unreasonably withheld, conditioned or delayed. At any time prior to Closing, Seller shall have the right to commence, without Purchaser's consent, any alterations that the Seller is contractually obligated to perform.

(e) **Mt. Pyramid Parking Lot Expansion.** From the Effective Date until the Closing Date, Seller shall continue to diligently pursue completion of the on-going parking lot expansion project at Mt. Pyramid (the "**Mt. Pyramid Project**"). At or prior to Closing, Seller shall pay all costs and expenses incurred through, but not including, the Closing Date in connection with the Mt. Pyramid Project. At Closing, Purchaser shall assume Seller's obligations under the construction and other contracts entered into by Seller in connection with the Mt. Pyramid Project, and Purchaser shall receive a credit against the Purchase Price in the amount necessary to complete the Mt. Pyramid Project, all as more fully set forth in Sections 10.2 and 10.4(a) below.

**Section 7.2** **Estoppels.** It will be a condition to Closing that Seller obtain from each Major Tenant and a sufficient number of other Tenants at the Property in order to cover not less than 80% of the total rented square footage of the buildings in the aggregate located at the Property, an executed estoppel certificate in the form attached hereto as Exhibit "G" dated not more than forty-five (45) days prior to Closing (unless the Scheduled Closing Date has been extended by Purchaser pursuant to this Agreement), or in the form or limited to the substance, prescribed by each Major Tenant's or, as applicable, other Tenant's Lease. Notwithstanding the foregoing, Seller agrees to request that each Major Tenant and other Tenants in the buildings execute an estoppel certificate in the form attached hereto as Exhibit "G", and use good faith, commercially reasonable efforts to obtain same. Seller shall not be in default of its obligations hereunder if any Major Tenant or other Tenant fails to deliver an estoppel certificate, or delivers an estoppel certificate which is not in accordance with this Agreement; provided, however, that as more fully set forth in Section 9.1(f) below, such failure may constitute the failure to satisfy a condition precedent to Purchaser's obligation to purchase the Property. For purposes of this subsection, an estoppel certificate will be not be treated as having been received if it contains (i) any material adverse inconsistencies with Seller's representations or warranties set forth in this Agreement as modified pursuant to Section 8.3 below, or (ii) any material adverse deviation from the form or substance of estoppel required to be delivered by the Tenant hereunder, and, if any estoppel certificate discloses any such material adverse matter not cured or satisfied by Seller on or before the date which is three (3) Business Days prior to the Scheduled Closing Date, then Purchaser shall have the right to terminate this Agreement on or before the Scheduled Closing Date. Purchaser shall be entitled to three (3) Business Days to review each such estoppel certificate and provide reasonable objections thereto prior to Seller sending such estoppel certificate to a Tenant. For purposes of this Section 7.3, an estoppel shall not be deemed to contain a material adverse deviation from the required estoppel form, if (i) the Tenant limits

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assertions in the estoppel "to Tenant's Knowledge" or (ii) refuses to confirm whether its Lease contains any extension, expansion, or termination options or rights, storage or parking rights or rental or other concessions.

In the event Seller is unable to obtain an executed estoppel certificate from any Tenant (other than a Major Tenant), to the extent required under the foregoing

paragraph, Seller may, but is not obligated to, elect to provide an estoppel certificate in the form prescribed by the Lease for each such Tenant, which Purchaser agrees to accept as a valid and binding estoppel certificate; provided that Seller shall not be permitted to provide estoppel certificates for more than 50% of the remaining square footage of the Property (*i.e.*, not including Major Tenants). In the event that the Tenant thereafter delivers an estoppel certificate post-Closing, then Seller shall be automatically released from liability under its estoppel certificate with respect to all consistent matters set forth in the Tenant's estoppel certificate.

Provided that Purchaser delivers to Seller Purchaser's requested form of Subordination, Non-Disturbance and Attornment Agreement ("**SNDA**") prior to the expiration of the Evaluation Period, Seller will also request that the Major Tenants and those Tenants whose Leases require a SNDA signed by a mortgage lender in order for their Leases to be subordinate to the Lender's Mortgage, execute a reasonable form of SNDA requested by Purchaser concurrently with tendering the estoppel certificates to the Tenants, and Seller will make good faith, commercially reasonable efforts to obtain them.

**Section 7.3 Post-Closing Employment.** For a period of thirty (30) days prior to the Scheduled Closing Date, Purchaser's affiliate, Westcore Management, LLC, a Delaware limited liability company ("**Westcore Management**"), shall extend offers to employ all then existing employees of Seller and MCRC in the State of Colorado (the "**Company Employees**"), for a period of one year after Closing on the same terms and conditions (except as set forth below in this Section 7.3), including but not limited to base salary and bonus, under which the Company Employees are currently employed. With respect to such Company Employees that accept such offers for employment, the Westcore Management shall (a) for a period of one (1) year following the Closing, cause any Company Employee that was covered under a medical or dental plan, disability benefit plan, 401(k) plan or life insurance plan of Seller or MCRC immediately prior to the Closing to receive coverage that is comparable in the aggregate to such coverage provided to similarly situated employees employed by Westcore Management, and (b) recognize the service completed by the Company Employees for purposes of determining eligibility service and vesting service under any employee benefit plan, program or arrangement maintained by Westcore Management for its employees on or after the Closing Date to the same extent such service was credited under any employee benefit plan, program or arrangement provided by the Seller or MCRC immediately prior to the Closing Date. The Company Employees shall be third party beneficiaries of this Section 7.3. Promptly after the Closing, Seller shall pay any and all compensation, reimbursements and benefits due the Company Employees that accrued prior to the Closing Date. The provisions of this Section 7.3 shall survive the Closing for a period of one year.

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## ARTICLE VIII REPRESENTATIONS AND WARRANTIES

**Section 8.1 Seller's Representations and Warranties.** The following constitute the sole representations and warranties of Seller, which representations and warranties shall be true in all material respects as of the Effective Date and Closing Date except for such changes as are permitted under this Agreement. Subject to the limitations set forth in Section 8.3 of this Agreement, Seller represents and warrants to Purchaser the following:

- (a) **Status.** Seller is a limited partnership, duly organized and validly existing under the laws of the State of Delaware.
- (b) **Authority.** Except for the approval of the Board of Directors of MCRC, which Seller shall seek to obtain within fifteen (15) days after the Effective Date (the "**Board of Directors Approval**"), the execution and delivery of this Agreement and the performance of Seller's obligations hereunder have been duly authorized by all necessary action on the part of Seller, and this Agreement constitutes the legal, valid and binding obligation of Seller.
- (c) **Non-Contravention.** The execution and delivery of this Agreement by Seller and the consummation by Seller of the transactions contemplated hereby will not violate any judgment, order, injunction, decree, regulation or ruling of any court or Authority or conflict with, result in a breach of, or constitute a default under the organizational documents of Seller, any note or other evidence of indebtedness, any mortgage, deed of trust or indenture, or any lease or other material agreement or instrument to which Seller is a party or by which it is bound.
- (d) **Consents.** Except for (i) the Board of Directors Approval and (ii) the consent of the ground lessor with respect to the leasehold estate of Seller at 400 South Colorado (the "**Ground Lessor Consent**"), 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 Seller or the performance by Seller of the transactions contemplated hereby.
- (e) **Suits and Proceedings.** Except as listed in **Exhibit I**, there are no legal actions, suits or similar proceedings pending, served or settled in the three (3) years prior to the date of this Agreement, or, to Seller's Knowledge, threatened in writing against Seller or the Property which (i) would materially and adversely affect the Seller's ability to consummate the transactions contemplated hereby, or (ii) might have a material adverse effect on Purchaser's use, ownership or operation of the Property.
- (f) **Non-Foreign Entity.** Seller is not a "foreign person" or "foreign corporation" as those terms are defined in the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.
- (g) **Tenants.** As of the date of this Agreement, to Seller's Knowledge the only tenants of the Property are the tenants set forth in the Lease Schedule attached as **Exhibit F**. To Seller's Knowledge, the Documents made available to Purchaser pursuant to Section 5.2 hereof include true, correct and complete copies of all of the Leases listed on **Exhibit F**. To Seller's Knowledge, except as set forth of **Exhibit O** annexed hereto and made a part hereof, no

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tenant is in monetary or material nonmonetary default under any Lease, and Seller has not sent any notice of default by any Tenant under the Leases that remains uncured.

(h) **Service Contracts.** To Seller's Knowledge none of the service providers listed on **Exhibit E** is in material default under any Service Contract. To Seller's Knowledge, the Documents made available to Purchaser pursuant to Section 5.2 hereof include true, correct and complete copies of all Service Contracts listed on **Exhibit E** under which Seller is currently paying for services rendered in connection with the Property. To Seller's Knowledge, there are no Service Contracts other than those listed on **Exhibit E**.

(i) **Environmental Matters.** To Seller's Knowledge, except as set forth in the reports described in **Exhibit M** (the "**Environmental Reports**"), Seller has not received written notice of any violations of Environmental Laws at or upon the Properties.

(j) **Compliance.** To Seller's Knowledge, in the two (2) years prior to the Effective Date, Seller has received no written notice from any Authorities to the effect that the Property is not in compliance with any Governmental Regulations (a "**Violation Notice**"), and the Seller has not received any Violation Notices prior to such date that have not been cured.

(k) **Company Employees.** Attached hereto as **Exhibit N** is a true, correct and complete list of the Company Employees together with the salary and bonus payable to each such Company Employee as of the Effective Date.

(l) **Leasing Commissions.** To Seller's Knowledge, as of the Effective Date, there are no potential leasing commissions for which Purchaser may be liable post-Closing other than as may be set forth in the commission agreements listed on **Exhibit O** annexed hereto and made a part hereof or in the Leases. To Seller's Knowledge, the Documents made available to Purchaser pursuant to Section 5.2 hereof include true, correct and complete copies of all of the commission agreements listed on

**Exhibit Q.**

- (m) **Management Fees.** At Closing, there shall be no unpaid management fees with the respect to the Property.
- (n) **Real Estate Tax Appeals.** Attached hereto as **Exhibit P** is a true, correct and complete list of all pending real estate tax appeals with respect to the Property.
- (o) **OFAC.** Neither Seller, nor any officer, director, shareholder, partner, investor or member of Seller is named by any Executive Order of the United States Treasury Department as a terrorist, a "Specially Designated National and Blocked Person," or any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control (collectively, an "**Identified Terrorist**".) Seller is not engaging in this transaction on the behalf of, either directly or indirectly, any Identified Terrorist.
- (p) **Historical Operating Statements.** To Seller's Knowledge, the historical operating statements to be provided to Purchaser for review pursuant to Section 5.2 above, shall

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accurately set forth, in all material respects, the operating income and expenses of the Property for the past three years.

**Section 8.2 Purchaser's Representations and Warranties.** Purchaser represents and warrants to Seller the following, which representations and warranties shall be true as of the Effective Date and at Closing:

- (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 the performance of Purchaser's obligations hereunder have been duly authorized by all necessary action on the part of Purchaser and this Agreement constitutes the legal, valid and binding obligation of Purchaser.
- (c) **Non-Contravention.** The execution and delivery of this Agreement by Purchaser and the consummation by Purchaser of the transactions contemplated hereby will not violate any judgment, order, injunction, decree, regulation or ruling of any court or Authority or conflict with, result in a breach of or constitute a default under the organizational documents of Purchaser, any note or other evidence of indebtedness, any mortgage, deed of trust or indenture, or any lease or other 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.
- (e) **OFAC.** Neither Purchaser, nor any officer, director, shareholder, partner, investor or member of Purchaser is named by any Executive Order of the United States Treasury Department as a terrorist, a "Specially Designated National and Blocked Person," or any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control (collectively, an "**Identified Terrorist**".) Purchaser is not engaging in this transaction on the behalf of, either directly or indirectly, any Identified Terrorist.

**Section 8.3 Survival of Representations, Warranties and Covenants.** The representations and warranties of Seller set forth in Section 8.1, in the Seller Certificate delivered prior to the expiration of the Evaluation Period and in any documents delivered at Closing and the certifications contained in any Seller estoppels delivered under the third paragraph of Section 7.2 will survive the Closing for a period of ten (10) months, after which time they will merge into the Deed, and Purchaser will have no right to assert a claim based thereon after the ten-month period. During the ten-month period, Purchaser will not have any right to bring any action against Seller as a result of any untruth or inaccuracy of such representations, warranties or certifications, or any such breach, unless and until the aggregate amount of all liability and losses arising out of any such untruth or inaccuracy, or any such breach, exceeds one-tenth of one percent (00.1%) of the Purchase Price; provided that if the aggregate amount of all liability and

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losses exceeds such one-tenth on one percent (00.1%) of the Purchase Price, Purchase shall be entitled to recover all such amounts. In addition, in no event will Seller's liability for all such untruths, inaccuracies or breaches exceed, in the aggregate, the sum of Two Million Dollars (\$2,000,000); provided, however, that this cap on liability shall not apply to Seller's liability resulting from any Seller estoppels delivered pursuant to Section 7.2 above. Notwithstanding any other provision of this Agreement, unless Purchaser can prove that Seller made an intentionally false representation, warranty or certification as of the Effective Date or as of the expiration of the Evaluation Period, the representations, warranties and certifications of Seller are hereby modified to be made true to the extent that, as of the date hereof with respect to the representations and warranties made herein, and as of the Closing Date with respect to representations, warranties and certifications made by Seller as of the Closing Date, (i) information contained in the Documents made available to Purchaser or its Licensee Parties pursuant to Section 5.2(a) makes the subject representation, warranty or certification not true, or (ii) either Purchaser or the Licensee Parties has knowledge that the subject representation, warranty or certification is untrue, or (iii) Seller has delivered or made available to Purchaser or the Licensee Parties other written information disclosing that the subject representation, warranty or certification is not true. The Closing Surviving Obligations and the Termination 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 Seller under this Agreement, unless otherwise specifically provided herein, will not survive the Closing but will be merged into the Deed and other Closing documents delivered at the Closing. Subject to the limitations or liability set forth above in this Section 8.3, one (1) Business Day prior to the expiration of the Evaluation Period, Seller shall deliver to Purchaser a Seller Certificate updating as of such date, the representations, warranties and certifications set forth in Section 8.1, subject to such modifications as shall be permitted by virtue of (i) the operating covenants contained in Section 7.1 above, (ii) facts raised during Purchaser's due diligence process or (iii) changes at the Property during the Evaluation Period.

**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 Closing Date of all of the following conditions, any or all of which may be waived by Purchaser in its sole discretion:

- (a) Seller shall have delivered to Purchaser 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) Between the end of the Evaluation Period and the Scheduled Closing Date, there shall have been no loss in the anticipated operating income at the Property resulting from a loss of tenancies at a reasonably prudent investor but not have reasonably anticipated the exercise of prudent due diligence during the Evaluation Period, including but not limited to by investigating financial conditions of the Tenant in a commercially reasonable manner, and which results in a loss in the value of the Property in excess of \$1,000,000.00 (the "\$1,000,000



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Threshold”). For purposes of calculating the amount of any loss of anticipated operating income and its effect on value, the parties shall compare the net present value (on the Scheduled Closing Date) of the lost income stream using a discount rate of 8% per annum to the net present value of a replacement income stream commencing three months after the Scheduled Closing Date at market rents. For this purpose market rents shall be the rents charged at comparable buildings in the same submarket and which are set forth on Exhibit L annexed hereto and made a part hereof. Any and all decreases in net present value shall be aggregated with any and all increases in determining whether the \$1,000,000 Threshold has been exceeded. In the event that the \$1,000,000 Threshold has been exceeded, Purchaser shall notify Seller in writing, which notice shall set forth Purchaser’s determination of the excess amount and the calculations supporting its determination. In such event, Seller shall have the right to elect to reduce the Purchase Price by all or a portion of such excess. Seller shall notify Purchaser in writing of its election within five (5) Business Days after its receipt of Purchaser’s notice. If Seller elects to reduce the Purchase Price by the entire excess or less than all of the excess, then the Purchase Price shall be reduced accordingly and this Agreement shall otherwise continue unmodified and in full force and effect. If Seller has elected to credit less than all of the excess, Purchaser shall then have five (5) Business Days to notify Seller whether it accepts or rejects Seller’s election. If Purchaser accepts Seller’s election, then the Purchase Price shall be reduced accordingly and this Agreement shall otherwise continue unmodified and in full force and effect. If Purchaser rejects Seller’s election or Seller fails to make an election, this Agreement shall be deemed terminated and null and void except for the Termination Surviving Obligations, and the Earnest Money Deposit and all interest earned thereon shall be promptly returned to Purchaser. If Purchaser fails to respond to Seller’s election within the five (5) Business Day period, it shall be deemed to have accepted the Seller’s election. In the event that the Closing occurs at a reduced Purchase Price, (i) if Purchaser subsequently receives or recovers all or some portion of the “lost” income on which the Purchase Price reduction was based, Purchaser shall promptly pay over to Seller the amount received or recovered by Purchaser and (ii) Seller shall have the right to pursue collection of “lost” income post-Closing. The Schedule Closing Date shall be extended to the date necessary to provide for the notices set forth in this Section 9.1(b).

(c) The representations and warranties of Seller contained in Section 8.1 shall continue to be true and correct in all material respects on the Closing Date except to reflect changes in accordance with Section 7.1 above and for changes in the representations and warranties in Subsections 8.1(e), (g), (h), (i), (j) and (k) based on facts occurring (including but not limited to notices received or sent) after the Effective Date.

(d) To the extent that (i) Purchaser has raised as a Title Objection pursuant to Section 6.2(a) above, the need for estoppel certificates from any parties to any covenants, conditions and restrictions, reciprocal easement agreement, development agreements or ground leases affecting the Property (collectively, “Title Estoppels”), and (ii) Seller has agreed pursuant to Section 6.3 to attempt to cure such Title Defect, then Purchaser’s receipt of such Title Estoppels, in form and substance reasonably satisfactory to Purchaser.

(e) Title Company shall be irrevocably and unconditionally committed to issue the Title Policy.

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(f) 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.

**Section 9.2** Conditions Precedent to Obligation to Seller. The obligation of Seller to consummate the transaction hereunder shall be subject to the fulfillment on or before the date of Closing (or as otherwise provided) 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 for, in this Agreement.

(b) Purchaser shall have delivered to Seller 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) Seller shall have received the Board of Directors Approval.

(d) Seller shall have received the Ground Lessor Consent.

(e) The representations and warranties of Purchaser contained in Section 8.2 shall continue to be true and correct in all material respects.

(f) 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.

## ARTICLE X CLOSING

**Section 10.1** Closing. The consummation of the transaction contemplated by this Agreement by delivery of documents and payments of money from escrow shall take place at 3:00 p.m. Eastern Time on the Scheduled Closing Date at the offices of the Escrow Agent; provided, however, that the closing documents that are intended to be recorded in the land records in Colorado shall be delivered by the parties to an office in Colorado designated by Escrow Agent. Purchaser shall have an option to extend the Scheduled Closing Date for a period of up to thirty-days by delivering written notice to Seller at least five Business Days prior to the original Scheduled Closing Date, together with the simultaneous deposit by Purchaser with the Escrow Agent, by Federal Reserve wire transfer of immediately available funds, of the amount of Five Hundred Thousand Dollars (\$500,000) as an additional earnest money deposit on account of the Purchase Price (the “Extension Deposit”). TIME SHALL BE OF THE ESSENCE WITH RESPECT TO PAYMENT OF THE EXTENSION DEPOSIT. Thereafter, all references in this Agreement to the Earnest Money Deposit shall be deemed to also include the Extension Deposit. 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 Deed by Purchaser shall be deemed to be full performance and discharge

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of each and every agreement and obligation on the part of Seller to be performed hereunder unless otherwise specifically provided herein.

**Section 10.2** Purchaser’s Closing Obligations. On the Closing Date, Purchaser, at its sole cost and expense, will deliver the following items to Seller at Closing as provided herein:

(a) The Purchase Price, after all adjustments are made as herein provided, by Federal Reserve wire transfer of immediately available funds, in accordance with the timing and other requirements of Section 3.3;

(b) A counterpart original of the Assignment of Leases, duly executed by Purchaser;

- (c) A counterpart original of the Assignment of Ground Lease, duly executed by Purchaser;
- (d) A counterpart original of the Assignment, duly executed by Purchaser;
- (e) Evidence reasonably satisfactory to Seller that the person executing the Assignment of Leases, the Assignment, and the Tenant Notice Letters on behalf of Purchaser has full right, power and authority to do so;
- (f) Form of written notice executed by Purchaser and to be addressed and delivered to the Tenants by Purchaser in accordance with Section 10.6 herein, (i) acknowledging the sale of the Property to Purchaser, (ii) acknowledging that Purchaser has received and that Purchaser is responsible for the Security Deposit (specifying the exact amount of the Security Deposit) and (iii) indicating that rent should thereafter be paid to Purchaser and giving instructions therefor (the "**Tenant Notice Letters**");
- (g) A counterpart original of the Closing Statement, duly executed by Purchaser;
- (h) A certificate, dated as of the date of Closing, stating (i) that the representations and warranties of Purchaser contained in Section 8.2 are true and correct in all material respects as of the Closing Date; and
- (i) Such other documents as may be reasonably necessary or appropriate to effect the consummation of the transaction which is the subject of this Agreement, including but not limited to Colorado Withholding Form 1083.

**Section 10.3 Seller's Closing Obligations.** At the Closing, Seller will deliver to Purchaser the following documents:

- (a) Special warranty deeds with covenants against the grantor's acts (the "**Deed**"), duly executed and acknowledged by Seller, conveying to Purchaser the Real Property and the Improvements subject only to the Permitted Exceptions. With respect to the Real Property and Improvements listed on **Exhibit K** as being identified for 1031 exchanges, each

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such Property shall be transferred pursuant to a single Deed listing for recording purposes the Purchase Price allocation for such Real Property as set forth on **Exhibit K**; with respect to the balance of the Real Property and Improvements, they will be transferred pursuant to a single Deed for all Real Property located within the same county and the allocated Purchase Price for purposes of recording the Deed relating thereto shall be the aggregate of the portions of the Purchase Price allocated to such Real Property on **Exhibit K**;

- (b) A blanket assignment and bill of sale in the form attached hereto as **Exhibit C** (the "**Bill of Sale**"), duly executed by Seller, assigning and conveying to Purchaser, without representation or warranty, title to the Personal Property;
- (c) A counterpart original of an assignment and assumption of Seller's interest, as lessor, in the Leases and Security Deposits in the form attached hereto as **Exhibit B** (the "**Assignment of Leases**"), duly executed by Seller, conveying and assigning to Purchaser all of Seller's right, title and interest, as lessor, in the Leases and Security Deposits;
- (d) A counterpart original of an assignment and assumption of Seller's leasehold estate at 400 South Colorado in form reasonably satisfactory to counsel for both parties and which shall be agreed upon during the Evaluation Period (the "**Assignment of Ground Lease**"), duly executed by Seller, conveying and assigning to Purchaser all of Seller's right, title and interest, in the Ground Lease;
- (e) A counterpart original of an assignment and assumption of Seller's interest in the Service Contracts and the Licenses and Permits substantially in the form attached hereto as **Exhibit A** (the "**Assignment**"), duly executed by Seller, conveying and assigning to Purchaser all of Seller's assignable right, title, and interest, if any, in the Service Contracts, the Licenses and Permits, the Apex Agreements (only to the extent the Apex Agreements pertain to the Property) and the construction and other contracts in connection with the Mt. Pyramid Project;
- (f) The Tenant Notice Letters, duly executed by Seller;
- (g) Evidence reasonably satisfactory to Purchaser and Title Company that the person executing the documents delivered by Seller pursuant to this Section 10.3 on behalf of Seller has full right, power, and authority to do so;
- (h) A certificate in the form attached hereto as **Exhibit J** ("**Certificate as to Foreign Status**") certifying that Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended;
- (i) All original Leases, Licenses and Permits and Service Contracts to the extent in Seller's possession or control;
- (j) A certificate (the "**Seller Certificate**"), dated as of the date of Closing, stating that the representations and warranties of Seller contained in Section 8.1 are true and correct in all material respects as of the Closing Date (with appropriate modifications to reflect any changes therein) or identifying any representation or warranty which is not, or no longer is, true and correct and explaining the state of facts giving rise to the change. In no event shall

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Seller be liable to Purchaser for, or be deemed to be in default hereunder and it shall not constitute failure of a condition precedent, if any representation or warranty is no longer true and correct in all material respects unless Purchaser can prove that Seller made an intentionally false representation, warranty or certification as of the Effective Date or as of the expiration of the Evaluation Period; provided, however, that if: (i) such event constitutes the non-fulfillment of the condition set forth in Section 9.1(b), Purchaser shall have the right to terminate this Agreement or receive a reduction in the Purchase Price in accordance with the provisions of Section 9.1(b), and (ii) such representation or warranty that is no longer true and correct in all material respects is contained in Subsections 8.1(a) through (d), (f), and (l) through (p), and such change is not in accordance with Section 7.1, it shall constitute the failure of a condition precedent, entitling Purchaser to terminate this Agreement by written notice to Seller. In such event, Purchaser shall receive the prompt return of the Earnest Money Deposit and all interest earned thereon, and except for the Termination Surviving Obligations, neither party shall have any further liability under this Agreement. The representations, warranties and certifications of Seller contained in the Seller Certificate shall be subject to the provision of Section 8.3 above;

- (k) The estoppel certificates received by Seller pursuant to Section 7.2 above; and
- (l) Such other documents as may be reasonably necessary or appropriate to effect the consummation of the transaction which is the subject of this Agreement, including but not limited to Colorado Withholding Form 1083 and an affidavit of title in form and substance reasonably satisfactory to Seller and the Title Company.

**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) Rents, in accordance with Section 10.4(b) below.
  - (ii) Seller shall credit Purchaser at Closing with all cash Security Deposits and any prepaid rents, together with any interest to be paid to the Tenant thereon.
  - (iii) Utility charges payable by Seller, 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 estimated adjustment shall be made for the days between the meter reading date and the Closing Date based on the most recent meter reading.
  - (iv) Amounts payable under the Apex Agreements and Service Contracts.
  - (v) Real estate taxes due and payable for the calendar year. If the Closing Date shall occur before the tax rate is fixed, the apportionment of real

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estate taxes shall be upon the basis of the tax rate for the preceding year applied to the latest assessed valuation. If, subsequent to the Closing Date, real estate taxes (by reason of change in either assessment or rate or for any other reason) for the Real Property should be determined to be higher or lower than those that are apportioned, a new computation shall be made, and Seller agrees to pay Purchaser any increase shown by such recomputation and vice versa. Purchaser shall, at Closing, assume all expenses incurred or to be incurred in connection with any real estate tax appeals that are pending at the time of Closing.

(vi) The value of fuel stored at the Real Property, at Seller's most recent cost, including taxes, on the basis of a reading made within ten (10) days prior to the Closing by Seller's supplier.

(vii) To the extent that any of Westcore Management's employee benefits impose a waiting period on new employees before such benefit will be available, and Seller or MCRC has the ability to continue comparable benefits post-Closing in favor of the Company Employees, during all or a portion of such waiting period, payment to Seller or MCRC of the costs of continuing such benefits for such period.

(viii) Any unpaid costs necessary to complete the Mt. Pyramid Project will be credited to Purchaser. If the parties cannot reasonably agree on such costs, the amount in dispute will be held in escrow by the Escrow Agent until completion of the project, at which time, any unpaid costs not occasioned by (A) change orders agreed to by Purchaser post-Closing or (B) increases to the cost of construction resulting from the actions of Purchaser, will be paid from the escrow, and any excess monies will be paid to Seller.

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 all of the Proration Items relating to the period after the Proration Time. The estimated Closing prorations shall be set forth on a preliminary closing statement to be prepared by Seller and submitted to Purchaser prior to the Closing Date (the "**Closing Statement**"). The Closing Statement, once agreed upon, shall be signed by Purchaser and Seller. The proration 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, 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

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make its own arrangements for any deposits with the utility providers. The provisions of this Section 10.4(a) will survive the Closing for twelve (12) months.

(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 includes fixed monthly rentals, additional rentals, percentage rentals, escalation rentals (which include each Tenant's proration share of building operation and maintenance costs and expenses as provided for under the Lease, to the extent the same exceeds any expense stop specified in such Lease), retroactive rentals, all administrative charges, utility charges, tenant or real property association dues, storage rentals, special event proceeds, temporary rents, telephone receipts, locker rentals, vending machine receipts and other sums and charges payable by Tenants under the Leases or from other occupants or users of the Property. For purposes of this Agreement, 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 (i) pursue legal action to enforce collection of any such amounts owed to Seller by any Tenant, (ii) terminate the Lease with respect to any such Tenant, or (iii) terminate any Tenant's right to possession under such Lease. After the Closing, if Purchaser declines to pursue a collection action against a Tenant for Delinquent Rental, then Seller shall have the right to do so; provided, however, that Seller shall not (A) terminate any Lease or terminate or disturb Tenant's right to possession thereunder, or (B) commence any lawsuit until the earlier of one year after the Closing Date or one month prior to the expiration of the statute of limitations with respect to such claim. All sums collected by Purchaser from and after Closing from each Tenant (excluding tenant specific billings for tenant work orders and other specific services as described in and governed by Section 10.4(d) below) will be applied first to the month in which the Closing occurs, then to current amounts owned by such Tenant to Purchaser and then to delinquencies owed by such Tenant to Seller. Any sums due Seller will be promptly remitted to Seller.

(c) At the Closing, Seller shall deliver to Purchaser a list of additional rent, however characterized, under each Lease, including without limitation, real estate taxes, electrical charges, utility costs and operating expenses (collectively, "**Operating Expenses**") billed to Tenants for the calendar year in which the Closing occurs (both on a monthly basis and in the aggregate), the basis on which the monthly amounts are being billed and the amounts incurred by Seller on account of the components of Operating Expenses for such calendar year. Upon the reconciliation by Purchaser of the Operating Expenses billed to Tenants, and the amounts actually incurred for such calendar year, Seller and Purchaser shall be liable for overpayments of Operating Expenses, and shall be entitled to payments from Tenants, as the case may be, on a pro-rata basis based upon each party's period of ownership during such calendar year. This Section 10.3(c) shall survive post-Closing until six (6) months after reconciliation of the Operating Expenses.

(d) With respect to specific tenant billings for work orders, special items performed or provided at the request of a Tenant 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 such Tenant to be paid to Seller on account thereof; provided, however, with respect to specific tenant billings for work orders, special items performed or provided at the request of a Tenant or other specific services, which are collected by Purchaser after the Closing Date and relate to the foregoing specific services rendered by Purchaser after the Proration Time and Seller prior to the Proration Time, then notwithstanding anything to the contrary contained herein, unless Tenant's intention for the application of the payment is indicated by Tenant (in which event, the Tenant's indication shall control), Purchaser shall cause the first amounts collected from such Tenant to be paid to Purchaser for such services rendered after the Proration Time and then to Seller on account for services rendered by Seller prior to the Proration Time. Seller shall have the right to pursue collection of the foregoing items post-Closing in the same manner and subject to the same limitations as applied to the collection of Delinquent Rental as more fully set forth in Section 10.4(b) above.

(e) Notwithstanding any provision of this Section 10.4 to the contrary, Purchaser will be solely responsible for its pro rata share of any leasing commissions, tenant improvement costs or other expenditures (for purposes of this Section 10.4(e), "**New Tenant Costs**") incurred or to be incurred in connection with any new lease or Lease amendment, renewal or extension executed (or exercised in the event of an option to extend, renew or expand an existing Lease) on or after the Effective Date and which transaction was disclosed in writing to Purchaser in accordance with Section 7.1(a), and Purchaser will pay to Seller at Closing as an addition to the Purchase Price an amount equal to any of Purchaser's pro rata share of New Tenant Costs paid by Seller. For purposes of calculating Purchaser's pro rata share of New Tenant Costs, Purchaser shall be charged the same percentage of such costs as the percentage of the Lease's rent term that is scheduled to occur post-Closing. Accordingly, by way of example, if one hundred percent (100%) of the rent term is scheduled to occur post-Closing, Purchaser's pro rata share of New Tenant Costs for such Lease would be one hundred percent (100%), whereas, if five percent (5%) of the rent term has occurred prior to the Closing Date, Seller shall be responsible for five percent (5%) of the New Tenant Costs and Purchaser shall be responsible for ninety-five percent (95%). Notwithstanding any provision of this Section 10.4 to the contrary, except as set forth on **Exhibit R** annexed hereto and made a part hereof, Seller will be solely responsible for any leasing commissions, tenant improvement costs or other expenditures incurred or to be incurred in connection with any Lease executed before the Effective Date except to the extent that a credit against the Purchase Price is granted to Purchaser at Closing (in which event, Purchaser shall be responsible to pay for such item). Purchaser shall solely be responsible for the payment or, to the extent previously paid by Seller, the reimbursement to Seller, of the Lease expenses set forth on **Exhibit R**. Seller shall deliver to Purchaser evidence of the due payment of all of the Lease expenses set forth on **Exhibit R** for which Seller is seeking reimbursement. Notwithstanding anything to the contrary contained herein, Seller will be solely responsible for the costs of any contracts with affiliates of Seller and the compensation and benefits of the Company Employees that accrue before the Closing Date.

**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) Seller's attorney's fees; (ii) one-half (1/2) of escrow fees, if any; (iii) the cost of the premium for the Title Policy (but only as to base policy without endorsements or extended coverage), the cost of endorsements to cure any of Purchaser's Title Objections with respect to the Title Policy to the extent that Seller agreed to cure them pursuant to this Agreement and customary title searches; and (iv) the cost of recording discharges of any liens and encumbrances.

(b) Purchaser shall pay (i) the costs of recording the Deed to the Property and all other documents other than discharges of liens and encumbrances; (ii) all costs of any extended or additional coverage under the Title Policy or endorsements or deletions (other than the cost of endorsements to cure Purchaser's Title Objections to the extent that Seller agreed to cure them pursuant to this Agreement), including, without limitation, the deletion of the survey exception, to the Title Policy that are desired by Purchaser; (iii) all premiums and other costs for any mortgagee policy of title insurance, if any, including but not limited to any endorsements or deletions; (iv) Purchaser's attorney's fees; (v) one-half (1/2) of escrow fees, if any and (vi) the costs of the Updated Survey.

(c) Any other costs and expenses of Closing not provided for in this Section 10.5 shall be allocated between Purchaser and Seller in accordance with the custom in the area in which the Property is located.

**Section 10.6** **Post-Closing Delivery of Tenant Notice Letters** Immediately following Closing, Purchaser will deliver to each Tenant a Tenant Notice Letter, as described in Section 10.2(e).

**Section 10.7** **Like-Kind Exchange** In the event that Seller and/or Purchaser shall elect to effectuate the Closing as part of a "like-kind" exchange under Section 1031 of the Code, each party agrees to cooperate with and assist the other in all reasonable respects (at no cost other than incidental attorneys' fees) 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. If either party, or any member/shareholder of either party (the "**Exchanging Party**"), so elects, the other party (the "**Cooperating Party**") shall execute such documents and take such action as may be reasonably necessary in order to effectuate this transaction as a like-kind exchange; provided, however, that: (i) the Cooperating Party's cooperation hereunder shall be without cost, expense or liability to the Cooperating Party of any kind or character other than attorneys' fees, costs or expenses incurred in connection with the review of customary documentation in order to effectuate such like-kind exchange, and the Cooperating Party shall have no obligation to take title to any other real property; (ii) the Exchanging Party shall assume all risks in connection with the designation, selection and setting of terms of the purchase or sale of any exchange property; (iii) except as set forth above, the Exchanging Party shall bear all costs and expenses in connection with any such exchange transaction in excess of the costs and expenses which would have otherwise been incurred in acquiring or selling the Property by means of a straight purchase, so that the net effect to the Cooperating Party shall be otherwise

identical to that which would have resulted had this Agreement closed on a purchase and sale; (iv) there shall be no delay in the Scheduled Closing Date resulting from such exchange by the Exchanging Party; (v) any documents to effectuate such exchange transaction shall have no practical effect on terms and conditions contained in this Agreement; and (vi) the Exchanging Party shall indemnify, defend and hold the Cooperating Party harmless from any and all claims, demands, penalties, loss, causes of action, suits, risks, liability, costs or expenses of any kind or nature (including, without limitation, reasonable attorneys' fees) which the Cooperating Party may incur or sustain, directly or indirectly, related to or in connection with, or arising out of, the consummation of this transaction as a like-kind exchange as contemplated hereunder.

## ARTICLE XI CONDEMNATION AND CASUALTY

**Section 11.1** **Casualty** If, prior to the Closing Date, (i) all or a Significant Portion of the Real Property and Improvements is destroyed or damaged by fire or other casualty, or (ii) if (a) a Major Tenant is permitted to terminate its Lease with respect to a certain Property, or (b) the cost to repair any certain Property exceeds fifteen percent (15%) of the allocated Purchase Price for such Property set forth on **Exhibit K**, Seller will notify Purchaser of such casualty. With respect to subsection (i) above, Purchaser shall have the option to terminate this Agreement upon notice to Seller given not later than fifteen (15) days after receipt of Seller's notice. With respect to subsection (ii) above, Purchaser shall thereafter be entitled to terminate this Agreement as to such Property and shall only be required to purchase the remaining Property on the terms, conditions and provisions of this Agreement as if this Agreement had never included the damaged Property, with the Purchase Price to be reduced by the allocated Purchase Price for such Property. If this Agreement is terminated with respect to such damaged Property, neither Seller nor Purchaser shall have any further obligations under this Agreement with respect to such Property as to which the termination applies other than the Termination Surviving Obligations with respect to such Property. If this Agreement is terminated, the Earnest Money Deposit and all interest accrued thereon 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 does not have the right to do so pursuant to the foregoing provisions of this Section 11.1, Seller will not be obligated to repair such damage or destruction but (a) Seller will assign and 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 up to the amount of the allocated Purchase Price 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 the insurance deductible amount. In the event Seller elects to perform any repairs as a result of a casualty, 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. Notwithstanding any provision contained herein to the contrary, for purposes solely of this Section 11.1, Purchaser shall be entitled, by written notice to Seller given not less than one (1) Business Day prior to the expiration of the Evaluation Period, to increase or decrease specific Purchase Price allocations for any Property set forth on **Exhibit K** provided (A) such increase or decrease shall not exceed ten percent (10%) of the initial allocation for such Property, (B) Purchaser shall not be entitled to amend the allocations for those properties

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designated on **Exhibit K** as potential 1031 exchanges, and (C) any change to a Property allocation must be offset by one or more similar changes such that the total allocations equals but does not exceed the Purchase Price.

**Section 11.2 Condemnation of Property.** In the event of (a) any condemnation or sale in lieu of condemnation of all of the Property; or (b) any condemnation or sale in lieu of condemnation of greater than twenty-five percent (25%) of the fair market value of the Property prior to the Closing, 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. In the event that either (i) any condemnation or sale in lieu of condemnation of the Property is for less than twenty-five percent (25%) of the fair market value of the Property, or (ii) Purchaser does not terminate this Agreement pursuant to the preceding sentence, Seller will assign 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 with the assignment of such proceeds and 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 and any interest thereon will be returned to Purchaser and neither Seller nor Purchaser will have any further obligation under this Agreement, except for the Termination Surviving Obligations. Notwithstanding anything to the contrary herein, if any eminent domain or condemnation proceeding is instituted (or notice of same is given) solely for the taking of any subsurface rights for utility easements or for any right-of-way easement, and the surface may, after such taking, be used in substantially the same manner as though such rights have not been taken, Purchaser will not be entitled to terminate this Agreement, but any award resulting therefrom will be assigned to Purchaser at Closing and will be the exclusive property of Purchaser upon Closing. Notwithstanding anything to the contrary set forth herein, in the event of any condemnation or sale in lieu of condemnation of any certain Property (i) exceeds fifteen percent (15%) of the allocated Purchase Price of such Property (as set forth on **Exhibit K**) condemned or sold in lieu of condemnation, (ii) permits a Major Tenant to terminate its Lease with respect to such Property, or (iii) results in a loss of access to such Property, Seller shall notify Purchaser of the same. In such event, Purchaser shall thereafter be entitled to terminate this Agreement as to such Property and shall only be required to purchase the remaining Property on the terms, conditions and provisions of this Agreement as if this Agreement had never included the condemned Property, with the Purchase Price to be reduced by the allocated Purchase Price of such Property as set forth on **Exhibit K**. Notwithstanding any provision contained herein to the contrary, for purposes solely of this Section 11.1, Purchaser shall be entitled, by written notice to Seller given not less than one (1) Business Day prior to the expiration of the Evaluation Period, to increase or decrease specific Purchase Price allocations for any Property set forth on **Exhibit K** provided (A) such increase or decrease shall not exceed ten percent (10%) of the initial allocation for such Property, (B) Purchaser shall not be entitled to amend the allocations for those properties designated on **Exhibit K** as potential 1031 exchanges, and (C) any change to a Property allocation must be offset by one or more similar changes such that the total allocations equals but does not exceed the Purchase Price.

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## 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, conditions, and negotiations concerning the same will be held in the strictest confidence by each of them and will not be disclosed by either of them except to their respective legal counsel, accountants, consultants, officers, partners, and directors and any other of Purchaser's Permitted Outside Parties, and except and only to the extent that such disclosure may be necessary for their respective performances hereunder, and Purchaser shall indemnify and hold Seller harmless from and against any breach by such individuals or entities of the confidentiality provisions applicable to Purchaser under this Agreement. 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 without the prior written consent of Seller. 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 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 advice of counsel. Nothing in this Article XII will negate, supersede or otherwise affect the obligations of the parties under the Confidentiality Agreement. In addition, after the Closing, any press release with respect to the transaction will be made only in the form approved by Purchaser and Seller and their respective counsel, which approval shall not be unreasonably withheld, conditioned or delayed. The provisions of this Article XII will survive the Closing or any termination of this Agreement.

## ARTICLE XIII REMEDIES

**Section 13.1 Default by Seller.** In the event the Closing and the transactions contemplated hereby do not occur as herein provided by reason of any default of Seller, 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: (a) to terminate this Agreement, in which event Purchaser will receive from the Escrow Agent the Earnest Money Deposit, together with all interest accrued thereon, whereupon Seller and Purchaser will have no further rights or obligations under this Agreement, except with respect to the Termination Surviving Obligations; or (b) enforce specific performance of Seller's obligation to execute the documents required to convey the Property 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. Purchaser expressly waives its rights to seek damages in the event 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 Denver District Court on or before forty-five (45) days following the Scheduled Closing Date. Notwithstanding the foregoing, Seller and Purchaser agree that in the event that Purchaser is unable to obtain specific performance, then in such event, Purchaser shall in the alternative have the right to commence an action against Seller for damages for Seller's breach and default under this Agreement; provided, however, (that in addition to Purchaser being entitled to receive the prompt return of its Earnest Money Deposit with interest), Seller's liability for damages shall not exceed the amount of the Earnest Money Deposit posted with Escrow Agent at such time. Notwithstanding the foregoing, nothing contained in this Section 13.1 will limit Purchaser's

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remedies at law, in equity or as herein provided in pursuing remedies of a breach by Seller of any of the Termination Surviving Obligations.

**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 establish with precision the damages which Seller may

suffer. Purchaser and Seller hereby agree that (a) an amount equal to the Earnest Money Deposit, together with all interest accrued thereon, 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 the Property, 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, 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.

#### 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 with proof of delivery, or by facsimile transmission (provided that such facsimile is confirmed by the sender by overnight 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:

If to Purchaser: Westcore Properties AC, LLC  
4445 Eastgate Mall, Suite 210  
San Diego, California 92121  
Attn.: Mr. Don Ankeny  
(858) 625 – 4100 (tele.)  
(858) 678 – 0060 (fax)

with a copy to :  
  
Pircher, Nichols & Meeks  
1925 Century Park East, Suite 1700

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Los Angeles, California 90067  
Attention: Real Estate Notices (MES/EBS/4422.46)  
(310) 201-8900 (tele.)  
(310) 201-8977 (fax)

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

with separate notices to the attention of:

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

and

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

With a copy to: Brownstein, Hyatt, & Farber  
410 17th Street, 22nd Floor  
Denver, CO 80202-4437  
Attn: Edward Barad, Esq.  
(303) 223-1108 (tele.)  
(303) 223-1111 (fax)

If Escrow Agent: First American Title Insurance Company of New York  
633 Third Avenue, 16th Floor  
New York, New York 10017  
Attn: Mr. Anthony Ruggieri  
(212) 922-9700 (tele.)  
(212) 331-1504 (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. (EST) on a Business Day (if sent later or on a non-Business Day, 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.

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#### ARTICLE XV ASSIGNMENT AND BINDING EFFECT

Section 15.1 Assignment: Binding Effect. Purchaser will not have the right to assign this Agreement, except to an affiliate or affiliates of Westcore Properties

AC, LLC. In the event of such an assignment, the Purchaser named herein shall continue to be liable for the performance of Purchaser's obligations hereunder.

## ARTICLE XVI BROKERAGE

**Section 16.1 Brokers.** Purchaser and Seller represent that they have not dealt with any brokers, finders or salesmen, in connection with this transaction, or, if either Purchaser or Seller has dealt with any such broker, finder or salesman, such party agrees to pay any fee or commission in connection therewith and agrees to indemnify, defend and hold the party 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. The provisions of this Article XVI will survive any Closing or termination of this Agreement.

## ARTICLE XVII ESCROW AGENT

### Section 17.1 Escrow.

(a) Subject to the provisions of Section 4.1 above, 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. All interest earned on the Earnest Money Deposit shall be paid to the party entitled to the Earnest Money Deposit. In the event this Agreement is terminated prior to the expiration of the Evaluation Period, the Earnest Money Deposit and all interest accrued thereon will be returned by the Escrow Agent to Purchaser. In the event the Closing occurs, the Earnest Money Deposit and all interest accrued thereon will be released to Seller, and Purchaser shall receive a credit against the Purchase Price in the amount of the Earnest Money Deposit, including the interest. 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 and has given the other party five (5) Business Days to dispute, or consent to, the release of the Earnest Money Deposit. Purchaser represents that its tax identification number, for purposes of reporting the interest earnings, is [16-1632621]. Seller represents that its tax identification number, for purposes of reporting the interest earnings, is 22-3315804.

(b) Escrow Agent shall not be liable to any party for any act or omission, except for bad faith, 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

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dispute between the parties with respect to the Earnest Money Deposit and the interest earned thereon (the "Escrowed Funds"), Escrow Agent shall not be bound to release and deliver the Escrowed Funds to either party but may either (i) continue to hold the Escrowed Funds until otherwise directed in a writing signed by all parties hereto or (ii) deposit the Escrowed Funds with the clerk of the Denver District Court. 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 XVIII MISCELLANEOUS

**Section 18.1 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 18.2 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 18.2 shall survive the entry of any judgment, and shall not merge, or be deemed to have merged, into any judgment.

**Section 18.3 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

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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 may be taken on the next succeeding Business Day.

**Section 18.4 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. If a party to this Agreement delivers via telecopier or pdf e-mail a copy of this Agreement executed by such party, it shall have the same legal effect as the delivery of an original executed counterpart of the Agreement.

**Section 18.5 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.





Name: Mitchell E. Hersh  
Title: President and Chief Executive Officer

**As to Article XVII only:**

**ESCROW AGENT:**

FIRST AMERICAN TITLE INSURANCE  
COMPANY OF NEW YORK

By: /s/ Andrew D. Jaeger  
Name: Andrew D. Jaeger  
Title: Vice President

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## FIRST AMENDMENT TO AGREEMENT OF SALE AND PURCHASE

THIS FIRST AMENDMENT TO AGREEMENT OF SALE AND PURCHASE ("Amendment") made this 6th day of September, 2006 by and between MACK-CALI REALTY, L.P., a limited partnership organized under the laws of the State of Delaware having an address c/o Mack-Cali Realty Corporation, 11 Commerce Drive, Cranford, New Jersey 07016 ("Seller") and WESTCORE PROPERTIES AC, LLC, a limited liability company organized under the laws of the State of Delaware having an address at 4445 Eastgate Mall, Suite 210, San Diego, California 92121 ("Purchaser").

## WITNESSETH:

WHEREAS, Seller and Purchaser have entered into a certain Agreement of Sale and Purchase, dated August 3, 2006 (the "Original Agreement"), with respect to the sale and purchase of real property situated in Colorado as more fully set forth in the Original Agreement.

WHEREAS, the Seller and Purchaser have agreed to amend the Original Agreement as more fully set forth hereinbelow;

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:

1. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Agreement.
2. At closing, Seller shall provide to Purchaser a seller support credit against the Purchase Price in the amount of One Million Dollars (\$1,000,000.00).

3. At 400 South Colorado, a portion of Seller's right, title and interest in and to the real property is held pursuant to a ground lease (the "Ground Leased Premises"). The term of the ground lease is scheduled to expire on March 31, 2018. At the same property, a portion of the demised premises leased by Wells Fargo Bank, N.A. ("Wells Fargo") is situated on the Ground Leased Premises. The lease with Wells Fargo (the "Wells Fargo Lease") expires on July 31, 2010, subject to two five-year extension options. At Closing, Seller shall place the sum of \$250,000.00 in escrow with Escrow Agent, to be held in an interest-bearing account until the earlier to occur of (i) Seller arranging, at no cost to Purchaser, for an amendment to the Wells Fargo Lease so as to make all extension option term or terms covering any portion of the Wells Fargo demised premises that is situated on the Ground Leased Premises co-terminus with (and not extending beyond) the term of the ground lease; or (ii) ninety (90) days after Closing. In the event that the event described in clause (i) above occurs on or before ninety days after Closing, then the entire escrowed sum and the interest thereon shall be promptly paid to Seller. If the event described in clause (i) above does not occur on or before ninety days after Closing, then the entire escrowed sum and the interest thereon shall be promptly paid to Purchaser. To avoid any doubt, by way of example, but not limitation, Seller may satisfy clause (i) above by, at no cost to Purchaser, (a) either (I) extending the first Wells Fargo extension option to March 31, 2018, and eliminating the second Wells Fargo Extension Option, or (II) shortening the second Wells Fargo

extension option to March 31, 2018, or (b) eliminating the portion of Wells Fargo's demised premises that is situated on the Ground Leased Premises from the Wells Fargo Lease in compliance with all legal requirements. At Closing, the parties shall enter into an escrow agreement embodying the foregoing terms and conditions in form and substance reasonably satisfactory to both parties and their respective counsel.

4. Seller hereby certifies to Purchaser that the representations, warranties and certifications set forth in Section 8.1 of the Original Agreement are true in all material respects, except as follows:

- (i) Exhibit I is hereby revised to delete the eviction proceeding against Noble Mortgage Inc. at 400 South Colorado;
- (ii) The Arrearage Schedule set forth at Exhibit O of the Original Agreement is hereby replaced by the updated Arrearage Schedule annexed hereto and made a part hereof; and
- (iii) At Mt. Pyramid, a third party has a right of first refusal to acquire the property. Seller shall promptly provide such party with the required notice at a purchase price of \$15,350,000, and in the event such party exercises its right of first refusal, the Mt. Pyramid property shall be eliminated from this transaction, and the Purchase Price will be reduced by \$15,350,000 (notwithstanding the allocated purchase price for such property set forth on Exhibit K of the Original Agreement), with the understanding that, for purposes of Article XI of the Original Agreement, the allocated purchase price of \$28,944,798 set forth on Exhibit K for four properties located in Arapahoe County shall be revised to be \$28,517,239.

**THE PARTIES AGREE THAT THIS PARAGRAPH SHALL BE DEEMED TO SATISFY THE SELLER'S OBLIGATION SET FORTH IN THE LAST SENTENCE OF SECTION 8.3 OF THE ORIGINAL AGREEMENT.**

5. Purchaser hereby acknowledges that it has completed its due diligence investigations to its satisfaction and waives its right to terminate the Original Agreement pursuant to Section 5.3(c) thereof.

6. In Section 6.3(a) of the Original Agreement, the ten-day period within which Purchaser shall elect to either terminate the Agreement (and receive a refund of the Earnest Money Deposit together with the interest accrued thereon), or waive such Title Defect and proceed to Closing, is hereby reduced to five (5) days.

7. Whenever required by the context of this Amendment, the singular will include the plural and the masculine will include the feminine and vice versa. This Amendment 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 Amendment 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 Amendment.

8. This Amendment may be executed in multiple counterparts, each of which, when assembled to include a signature for each party contemplated to sign this Amendment, will constitute a complete and fully executed Amendment. All such fully executed counterparts will collectively constitute a single agreement. If a party to this Amendment delivers via telecopier or pdf e-mail a copy of this Amendment executed by such party, it shall have the same legal effect as the delivery of an original executed counterpart of the Amendment.

9. Except as amended hereby, the Original Agreement continues unmodified and in full force and effect.

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

**PURCHASER:**

WESTCORE PROPERTIES AC, LLC

By:           /s/ Donald Ankeny            
Name:           Donald Ankeny            
Title:           President          

**SELLER:**

MACK-CALI REALTY, L.P.

By: Mack-Cali Realty Corporation,  
its general partner

By:           /s/ Mitchell E. Hersh            
Name:           Mitchell E. Hersh            
Title:           President and CEO          

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**SECOND AMENDMENT TO AGREEMENT OF SALE AND PURCHASE**

THIS SECOND AMENDMENT TO AGREEMENT OF SALE AND PURCHASE ("**Amendment**") made this 15th day of September, 2006 by and between MACK-CALI REALTY, L.P., a limited partnership organized under the laws of the State of Delaware having an address c/o Mack-Cali Realty Corporation, 11 Commerce Drive, Cranford, New Jersey 07016 ("**Seller**") and WESTCORE PROPERTIES AC, LLC, a limited liability company organized under the laws of the State of Delaware having an address at 4445 Eastgate Mall, Suite 210, San Diego, California 92121 ("**Purchaser**").

WITNESSETH:

WHEREAS, Seller and Purchaser have entered into a certain Agreement of Sale and Purchase, dated August 3, 2006 (the "**Original Agreement**"), and that certain First Amendment to Agreement of Sale and Purchase entered into as of September 6, 2006 (the "**First Amendment**"), and together with the Original Agreement, the "**Purchase Agreement**") with respect to the sale and purchase of real property situated in Colorado as more fully set forth in the Original Agreement.

WHEREAS, the Seller and Purchaser have agreed to amend the Purchase Agreement as more fully set forth hereinbelow;

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:

1. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Original Agreement.
2. The obligation of Purchaser to consummate the transaction hereunder shall be subject to the fulfillment on or before the Closing Date of all of the following conditions, any or all of which may be waived by Purchaser in its sole discretion:
  - a. Title Company shall be irrevocably and unconditionally committed to issue the Title Policy (or title policies) in the form of proforma policies issued by Title Company from September 14, 2006, to September 18, 2006.
  - b. With respect to the ground lease for the Property located at 400 South Colorado, Purchaser shall have received an estoppel certificate as contemplated in the 1983 Addendum to such ground lease signed by the ground lessor thereunder, dated not more than forty-five (45) days prior to Closing (unless the Scheduled Closing Date has been extended by Purchaser pursuant to the Original Agreement) and indicating, to the knowledge of the ground lessor, that there are no uncured defaults under such ground lease by the ground lessee thereunder (the "**Ground Lease Estoppel**"). In the event that on or before Closing Purchaser shall have not received the Ground Lease Estoppel, Purchaser shall have the option to terminate the Purchase Agreement with respect to 400 South Colorado upon notice to Seller. In the event that Purchaser terminates the Purchase Agreement with respect to 400 South Colorado, the Purchase Price will

be reduced by \$12,306,973 (i.e., the product of (i) \$98.13 per square foot, and (ii) 125,415 square foot of space), notwithstanding the allocated purchase price for such property set forth on **Exhibit K** of the Original Agreement.

3. Subject to the limitations of Section 8.3 of the Original Agreement, Seller represents and warrants to Purchaser the following:
  - a. With respect to the property located at 303 South Technology Court B (also called Interlocken 1-B), Broomfield, Broomfield County, Colorado, to Seller's Knowledge, Interlocken, Ltd., a Colorado limited partnership ("**Interlocken**"), did not exercise its repurchase option under that certain Special Warranty Deed dated June 20, 1996, executed by Interlocken in favor of Pacifica Development Properties II Limited Liability Company, a Colorado limited liability company, as of June 20, 1996, and recorded on June 25, 1996, in the Official Records of Boulder County, Colorado, as Reception No. 01620061.
  - b. With respect to the property known as Hill Top Land Site (2) located in Littleton, Colorado, under that certain Second Amended and Restated Declaration of Covenants, Conditions and Restriction of South Park dated as of June 26, 1995, recorded on July 13, 1992, in Book 6538, Page 604, of the Official Records of Arapahoe County, Colorado, to Seller's Knowledge, the "Declarant" thereunder has not exercised the repurchase right described in Article 5 thereof.
4. With respect to those title exceptions for which Purchaser requested a "Title Estoppel" in that certain letter dated as of September 6, 2006 from Barbara J. Jurgens at Pircher, Nichols & Meeks to Mack-Cali Realty Corporation (the "**Estoppel Exceptions**"), Seller shall use commercially reasonable efforts to assist Purchaser in obtaining an estoppel certificate and/or certificates of compliance containing no statement of any unpaid assessment or material default; provided, however, that the failure to obtain any Title Estoppel shall not constitute the failure to satisfy a condition precedent to Closing. In the event that Seller and Purchaser are unable to obtain any Title Estoppel, Seller shall provide a representation and warranty to Purchaser at Closing, that (i) there are no unpaid assessments or other payments due and owing pursuant to the relevant recorded document, (ii) Seller has received no written notice of any material default or breach under the applicable Estoppel Exception, and (iii) to Seller's knowledge, there is no material default or breach under the applicable Estoppel Exception. The foregoing representation and warranty shall be subject to the limitations of Section 8.3 of the Original Agreement
5. Subject to Section 2 above, Purchaser hereby acknowledges that it has completed its title and survey review and waived its right to terminate the Purchase Agreement pursuant to Section 6.3 of the Original Agreement
6. Whenever required by the context of this Amendment, the singular will include the plural and the masculine will include the feminine and vice versa. This Amendment 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 Amendment 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 Amendment.

7. This Amendment may be executed in multiple counterparts, each of which, when assembled to include a signature for each party contemplated to sign this Amendment, will constitute a complete and fully executed Amendment. All such fully executed counterparts will collectively constitute a single agreement. If a party to this Amendment delivers via telecopier or pdf e-mail a copy of this Amendment executed by such party, it shall have the same legal effect as the delivery of an original executed counterpart of the Amendment.

8. Except as amended hereby, the Purchase Agreement continues unmodified and in full force and effect.

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



**AGREEMENT OF SALE AND PURCHASE**

THIS AGREEMENT OF SALE AND PURCHASE ("**Agreement**") made this 25th day of September, 2006 by and between PHELAN REALTY ASSOCIATES L.P., a limited partnership organized under the laws of the State of California ("**Phelan Realty**"), 795 FOLSOM REALTY ASSOCIATES L.P., a limited partnership organized under the laws of the State of California ("**Folsom Realty**," each having an address c/o Mack-Cali Realty Corporation, 11 Commerce Drive, Cranford, New Jersey 07016 (Phelan Realty and Folsom Realty are sometimes hereinafter collectively referred to as "**Seller**") and WESTCORE PROPERTIES AC, LLC, a limited liability company organized under the laws of the State of Delaware having an address at 4445 Eastgate Mall, Suite 210, San Diego, California 92121 ("**Purchaser**").

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:

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

"**Additional Sale Consideration**" has the meaning ascribed to such term in Section 10.8.

"**Additional Sale Consideration Agreement**" has the meaning ascribed to such term in Section 10.8 and shall be in the form attached hereto as **Exhibit S**.

"**Assignment**" has the meaning ascribed to such term in Section 10.3(e) and shall be in the form attached hereto as **Exhibit A**.

"**Assignment of Leases**" has the meaning ascribed to such term in Section 10.3(c) and shall be in the form attached hereto as **Exhibit B**.

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

"**Bill of Sale**" has the meaning ascribed to such term in Section 10.3(b) and shall be in the form attached hereto as **Exhibit C**.

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

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"**Certificate as to Foreign Status**" has the meaning ascribed to such term in Section 10.3(g) and shall be in the form attached as **Exhibit J**.

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

"**Closing**" means the consummation of the purchase and sale of the Property 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).

"**Closing Surviving Obligations**" means the rights, liabilities and obligations set forth in Sections 3.2, 5.3, 5.4, 8.2, 8.3, 9.1(b), 10.4, 10.6, 11.1, 11.2, 12.1, Article XIV, 16.1, 18.2 and 18.8, and any other provisions which pursuant to their terms survive the Closing hereunder.

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

"**Company California Employees**" has the meaning ascribed to such term in Section 7.3.

"**Confidentiality Agreement**" means that certain Confidentiality Agreement dated August 28, 2006 between Purchaser and Mack-Cali Realty Corporation, the manager of the Real Property.

"**Deed**" has the meaning ascribed to such term in Section 10.3(a).

"**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 latest date on which this Agreement has been executed and delivered by Seller or Purchaser.

"**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 issued by any Authorities and in effect as of the date of this Agreement with respect to which otherwise pertains to or affects the Real Property or the Improvements, or any portion thereof, the use, ownership, occupancy or operation of the Real Property or the Improvements, or any portion thereof, or Purchaser, 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 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

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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 Gas and Indoor Air Quality Research Act of 1986 (42 U.S.C. § 7401 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.) (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 LandAmerica Commercial Services, having an address at One Market, Spear Tower, Suite 1850, San Francisco, California, Attn: Carol Carozza.

“**Existing Survey**” means Seller’s existing surveys of the Real Property as listed on Exhibit H.

“**Extension Deposit**” has the meaning ascribed to such term in Section 10.1

“**Evaluation Period**” means the period ending at 5:00 p.m. Eastern time on October 23, 2006.

“**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, mold 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, polychlorinated biphenyls, 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, and/or (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, structures, fixtures, parking areas and other improvements located on the Real Property.

“**Intangible Property**” means all of Seller’s right, title and interest, to the extent assignable or transferable and to the extent not otherwise specifically excluded pursuant to this Agreement, in and to all other intangible rights, titles, interests, privileges and appurtenances owned by Seller and exclusively related to or used exclusively in connection with the ownership, use or operation of the Real Property or the Improvements, including, without limitation, digital property management data, digital operating statement and expense data, all rights, claims and causes of action Seller may have against governmental authorities, present and former owners of adjacent or neighboring land, former owners of the Property, present and former tenants of the

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Property, contractors and material suppliers, and architects, engineers and contractors in connection with the design or construction of the Improvements, except to the extent that any such right, claim and cause of action pertains to monies owed to Seller for the period prior to closing and except for any right, claim and cause of action that Seller may choose to assert, in its sole discretion, as a counterclaim against a claim or cause of action asserted by or in connection with services provided by any of the foregoing individuals or entities.

“**Initial Earnest Money Deposit**” has the meaning ascribed to such term in Section 4.1(a).

“**Kiosk Lease**” means all of the leases and other agreements with Kiosk Tenants with respect to the use and occupancy of the Real Property at Phelan.

“**Kiosk Tenants**” means those Tenants in Phelan who occupy less than 1,500 square feet of space in the building.

“**Lease Schedule**” means Seller’s most current lease schedule, which is attached as **Exhibit F**.

“**Leases**” means all of the leases and other agreements with Tenants with respect to the use and occupancy of the Real Property, together with all renewals and modifications thereof, if any, all guaranties thereof, if any, and any new leases and lease guaranties entered into after the Effective Date.

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

“**Licenses and Permits**” means, collectively, all of Seller’s right, title and interest, to the extent assignable, in and to licenses, permits, certificates of occupancy, approvals, dedications, subdivision maps and entitlements now 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.

“**Major Tenant**” means any Tenant leasing at least 25,000 square feet of space at the Property, in the aggregate.

“**New Tenant Costs**” has the meaning ascribed to such term in Section 10.4(c).

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

“**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).

“**Personal Property**” means all of Seller’s right, title and interest in and to all equipment, appliances, tools, supplies, machinery, artwork, furnishings and other tangible personal property attached to, appurtenant to, located, as of the Effective Date, in and used in connection with the ownership or operation of the Improvements, and Seller’s management offices at the Real Property and situated at the Property at the time of Closing, but specifically excluding all

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personal property leased by or licensed to Seller or owned by tenants or others and software and other personal property that is proprietary or confidential in nature.

“**Property**” has the meaning ascribed to such term in Section 2.1.

“**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’s Affiliates**” means any past, present or future: (i) shareholder, partner, member, manager or owner of Purchaser; (ii) entity in which Purchaser or any past, present or future shareholder, partner, member, manager or owner of Purchaser has or had an interest; (iii) entity that, directly or indirectly, controls, is controlled by or is under common control with Purchaser; and (iv) the heirs, executors, administrators, personal or legal representatives, successors and assigns of any or all of the foregoing.

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

“**Real Property**” means those certain parcels of real property located at 760 Market Street, San Francisco, California (“**Phelan**”) and 795 Folsom Street, San Francisco, California (“**Folsom**”), all as more particularly described in the legal descriptions attached hereto and made a part hereof as **Exhibit D**, together with all of Seller’s right, title and interest, if any, in and to the appurtenances pertaining thereto, including but not limited to Seller’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.

“**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 thirtieth (30th) day after expiration of the Evaluation Period, but subject to a thirty-day extension option pursuant to Section 10.1 below.

“**Security Deposits**” means all security deposits held by Seller, as landlord, and not previously applied to the obligations of a Tenant under its Lease, to the extent Purchaser receives a credit therefor pursuant to Section 10.4 of this Agreement.

“**Seller’s Affiliates**” means any past, present or future: (i) shareholder, partner, member, manager or owner of Seller; (ii) entity in which Seller or any past, present or future shareholder, partner, member, manager or owner of Seller has or had an interest; (iii) entity that, directly or indirectly, controls, is controlled by or is under common control with Seller and (iv) the heirs, executors, administrators, personal or legal representatives, successors and assigns of any or all of the foregoing.

“**Seller’s Knowledge**” means the present actual (as opposed to constructive or imputed) knowledge solely of Robert Drabkin (“**Drabkin**”), Regional Director, and Diane Murphy, (“**Murphy**”), Director of Property Management, Mack-Cali Realty Corporation (“**MCRC**”), the managing agent for Seller, without any independent investigation or inquiry whatsoever; provided that with respect to the representations and warranties set forth in Sections 8.1(a)

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through 8.1(f), inclusive, and 8.1(k) of this Agreement, “Seller’s Knowledge” means the present actual (as opposed to constructive or imputed) knowledge of Drabkin, Murphy, Mitchell E. Hersh, President and Chief Executive Officer of MCRC, Roger W. Thomas, Executive Vice President and General Counsel of MCRC and Daniel J. Wagner, Vice President and Senior Associate General Counsel of MCRC, without any independent investigation or inquiry whatsoever, but without any personal liability whatsoever.

“**Service Contracts**” means all of Seller’s right, title and interest, to the extent assignable, in all service agreements, maintenance contracts, equipment leasing agreements, warranties, guarantees, bonds, open purchase orders and other contracts for the provision of labor, services, materials or supplies relating solely to the Real Property, Improvements or Personal Property and under which Seller is currently paying for services rendered in connection with the Property, as listed and described on **Exhibit E** attached hereto, together with all renewals, supplements, amendments and modifications thereof, and any new such agreements entered into after the Effective Date, to the extent permitted by Section 7.1; provided however, “Service Contracts” shall not include contracts with Seller’s affiliates, including, without limitation, leasing, construction, management and development contracts with Seller’s affiliates.

“**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, the cost of which to repair would exceed five percent (5%) of the Purchase Price in the aggregate.

“**Survey Objection**” has the meaning ascribed to such term in Section 6.1.

“**Tenants**” means the tenants or users of the Real Property and Improvements who are parties to the Leases.

“**Tenant Notice Letters**” has the meaning ascribed to such term in Section 10.2(e), and are to be delivered by Purchaser to Tenants pursuant to Section 10.6.

“**Termination Surviving Obligations**” means the rights, liabilities and obligations set forth in Sections 5.2, 5.3, 5.4, 12.1, Articles XIII and XIV, 16.1, 18.2 and 18.8, and any other provisions which pursuant to their terms survive any termination of this Agreement.

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

“**Title Company**” means Lawyers Title Insurance Corporation.

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

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

“**Updated Survey**” has the meaning ascribed to such term in Section 6.1.

**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 this Agreement, and all references to Exhibits or Schedules refer to Exhibits or Schedules

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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** **Agreement.** Seller hereby agrees to sell, convey and assign to Purchaser, and Purchaser hereby agrees to purchase and accept from Seller, on the Closing Date and subject to the terms and conditions of this Agreement, all of the following (individually and collectively, the "**Property**"):

- (a) the Real Property;
- (b) the Improvements;
- (c) the Personal Property;
- (d) the Intangible Property;
- (e) all of Seller's right, title and interest as lessor in and to the Leases and, subject to the terms of the respective applicable Leases, the Security Deposits; and
- (f) to the extent assignable, the Service Contracts and the Licenses and Permits. All right, title and interest in and to the names, trademarks and servicemarks of Seller and MCRC, including but not limited to the right to use the name "Mack-Cali", are excluded from the Property.

**Section 2.2** **Indivisible Economic Package.** Purchaser has no right to purchase, and Seller has no obligation to sell, less than all of the Property, 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 the Property, subject to and in accordance with the terms and conditions hereof.

## ARTICLE III CONSIDERATION

**Section 3.1** **Purchase Price.** The purchase price for the Property (the "**Purchase Price**") shall be One Hundred Twenty-Six Million Dollars (\$126,000,000) in lawful currency of the United States of America, payable as provided in Section 3.3. The Purchase Price shall be allocated among the Real Property and Improvements in accordance with the column identified as "Purchase Price Allocation" on **Exhibit K**. No portion of the Purchase Price shall be allocated to the Personal Property unless otherwise agreed by Seller and Purchaser.

**Section 3.2** **Assumption of Obligations; Additional Purchase Price Consideration.** As additional consideration for the purchase and sale of the Property, at Closing Purchaser will (i) assume the covenants and obligations of Seller pursuant to the Leases, Service Contracts and Licenses and Permits, subject to certain limitations as more fully set forth in this Agreement,

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including without limitation, the exhibits hereto and (ii) offer to hire the Company California Employees at the same base salary and bonus compensation (other than stock) as are in existence prior to Closing as more fully set forth in Section 7.3 below. In addition, should Purchaser, its assigns or affiliates, initiate the conversion of Phelan into a residential condominium at any time within the three (3) year period following the Closing, then Purchaser or such assignee or affiliate, as the case may be, shall pay to Seller as additional purchase price consideration with respect to Phelan an amount equal to the lesser of ten percent (10%) of the net profits realized as a result of such conversion and Five Million Dollars (\$5,000,000), as more fully set forth in Section 10.8 below.

**Section 3.3** **Method of Payment of Purchase Price.** No later than 2:00 p.m. Eastern Time on the Closing Date, Purchaser shall pay 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 ("**Purchaser's Costs**"), by Federal Reserve wire transfer of immediately available funds to the account of Escrow Agent. Escrow Agent, following authorization by the parties at Closing, shall, prior to 3:00 p.m. Eastern Time (i) pay to Seller by Federal Reserve wire transfer of immediately available funds to an account designated by Seller, the Purchase Price, less any costs or other amounts to be paid by Seller at Closing pursuant to the terms of the Closing Statement executed by Seller and Purchaser, (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 the executed Closing Statement, and (iii) pay Purchaser's Costs to the appropriate payees at Closing pursuant to the terms of the executed Closing Statement.

## ARTICLE IV EARNEST MONEY DEPOSIT AND ESCROW INSTRUCTIONS

**Section 4.1** **The Earnest Money Deposit and Independent Contract Consideration.**

(a) On or before one (1) Business Day after the Effective Date, Purchaser shall deposit with the Escrow Agent, by Federal Reserve wire transfer of immediately available funds, the sum of Five Hundred Thousand Dollars (\$500,000.00) as the earnest money deposit on account of the Purchase Price (the "**Initial Earnest Money Deposit**"). TIME IS OF THE ESSENCE with respect to the deposit of the Initial Earnest Money Deposit. The Initial Earnest Money Deposit shall be held by the Escrow Agent in a sole order escrow account in the Purchaser's name as a deposit against the Purchase Price in accordance with the terms and provisions of this Agreement. In furtherance of the foregoing, in the event Purchaser so instructs Escrow Agent on or prior to the expiration of the Evaluation Period, Escrow Agent agrees that it shall not be permitted to, and shall not, follow any conflicting instructions given by Seller or any third party as to the disposition of the Initial Earnest Money Deposit but shall instead follow only the instructions of Purchaser in connection therewith. Seller agrees in such instance not to deliver any conflicting instructions to Escrow Agent for any reason. If the Agreement is not terminated on or prior to the expiration of the Evaluation Period, the Initial Earnest Money Deposit shall be transferred by the Escrow Agent to a joint escrow account for the benefit of Purchaser and Seller.

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(b) If Purchaser does not terminate this Agreement pursuant to Section 5.3(c) below, then on or before one (1) Business Day after the expiration of the Evaluation Period, Purchaser shall, in addition to the Earnest Money Deposit, deposit with Escrow Agent, by Federal Reserve wire transfer of immediately available funds, Two Million Dollars (\$2,000,000.00) as an additional earnest money deposit on account of the Purchase Price (the "**Additional Earnest Money Deposit**"). TIME IS OF

THE ESSENCE WITH RESPECT TO THE PAYMENT OF THE ADDITIONAL EARNEST MONEY DEPOSIT. The Initial Earnest Money Deposit and Additional Earnest Money Deposit are hereinafter referred to individually and collectively as 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 Section 4.1 and Article XVII. In the event this Agreement is not terminated by Purchaser pursuant to the terms hereof by the end of the Evaluation Period in accordance with the provisions of Section 5.3(c) herein, the Earnest Money Deposit and the interest earned thereon shall become non-refundable to Purchaser except in those instances expressly set forth in this Agreement. In the event this Agreement is terminated by Purchaser prior to the expiration of the Evaluation Period, the Earnest Money Deposit, together with all interest earned thereon, shall be refunded to Purchaser.

**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.

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## ARTICLE V INSPECTION OF PROPERTY

**Section 5.1 Inspection Period.** From and after the date of this Agreement, Purchaser and its authorized agents and representatives (for purposes of this Article V, the "**Licensee Parties**") shall have the right, subject to the right of the Tenants, to enter upon the Real Property at all reasonable times during normal business hours to perform an inspection of the Property. Purchaser will provide to Seller 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 Tenants or any of the Authorities without the prior written consent of Seller, not to be unreasonably withheld. Notwithstanding anything to the contrary contained herein, no physical testing or sampling shall be conducted during any such entry by Purchaser or any Licensee Party upon the Real Property without Seller's specific prior written consent, such consent not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Purchaser shall have the right to communicate with the Authorities in order to confirm the zoning requirements applicable to the Property and to verify whether there are any violations of record with respect to the Property; provided, however, that, without Seller's consent, Purchaser shall not authorize or request any inspection or make any inquiries that would require an inspection of the Property by any of the Authorities. TIME IS OF THE ESSENCE with respect to the provisions of this Section 5.1.

**Section 5.2 Document Review.**

(a) During the Evaluation Period, Purchaser and the Licensee Parties shall have the right to review and inspect, at Purchaser's sole cost and expense, copies of all of the following to the extent that, to Seller's Knowledge, such items are in Seller's possession or control (collectively, the "**Documents**"): all existing environmental and engineering reports and studies prepared for Seller with respect to the Property, real estate tax bills, together with assessments (special or otherwise), ad valorem and personal property tax bills covering the period of Seller's ownership of the Property; current operating statements and historical operating information related to the Property for the past three years confirming collected income, operating expenses, capital expenditures, commissions and fees, together with related correspondence, notices, existing audits, real estate and personal property tax filings and real estate tax appeal files (which may be made available by Seller for review at the offices of Seller's tax appeal consultant in California), contracts, and associated books and records; tenant ledgers, year-to-date operating statements, operating and other expense reconciliations and written communications with tenants regarding same; evidence of Seller's property insurance; documentation pertaining to the registration of storage tanks and inventory records with respect to such tanks; an inventory list of the Personal Property; the Leases, lease files, Service Contracts, Licenses and Permits; assessment district information; any governmental or quasi-governmental correspondence or other documentation and notices related to use, zoning, building code or any other regulatory matter; construction plans and specifications; and site plans and all associated drawings, modifications, and additions for the Property; and copies of permits and soils reports, hazardous materials permits, fire sprinkler ratings, and electrical ratings; contracts and plans relating to the work described on **Exhibit R** and any other documents reasonably requested by Purchaser to the extent in Seller's possession or control. Such inspections shall occur at a location or locations selected by Seller, which may be at Seller's offices in San Francisco, California, in MCRC's office in Denver, Colorado, at the Real Property or Purchaser's

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office in San Diego, California to the extent Seller delivers any such Documents to Purchaser physically or electronically, or a combination of the foregoing locations. Purchaser shall not have the right to review or inspect materials not directly related to the leasing, maintenance and/or management of the Property, including, without limitation, all of Seller's internal memoranda, financial projections, budgets, appraisals, proposals for work not actually undertaken, accounting and tax records and similar proprietary, elective or 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 determining the desirability of purchasing the Property. 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, existing and prospective partners, accountants, existing and prospective lenders, investors or the Licensee Parties (collectively, for purposes of this Section 5.2(b), 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 determining the desirability of Purchaser's acquisition of the Property. Purchaser further acknowledges that the Documents and other information relating to the leasing arrangements between Seller and Tenants are proprietary and confidential in nature. Purchaser agrees not to divulge the contents of such Documents and other information except in strict 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 has 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 any such claims are expressly rejected by Seller and waived by Purchaser and the Permitted Outside Parties, for whom, by its execution of this Agreement, Purchaser is acting as an agent 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 Seller's ownership of the Property. **EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT OR THE DOCUMENTS REQUIRED TO BE DELIVERED BY SELLER UNDER SECTION 10 HEREOF (THE "CLOSING DOCUMENTS"), PURCHASER HEREBY ACKNOWLEDGES THAT SELLER 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 unreasonably disturb the Tenants or interfere with the use of the Property pursuant to the Leases; interfere with the operation and

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maintenance of the Real Property or Improvements; damage any part of the Property or any personal property owned or held by Tenants or any other person or entity; injure or otherwise cause bodily harm to Seller or any Tenant, 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 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 will (i) maintain comprehensive general liability (occurrence) insurance on terms and in amounts satisfactory to Seller and Workers' Compensation insurance in statutory limits, and, if Purchaser or any Licensee Party performs any physical inspection or sampling at the Real Property, in accordance with Section 5.1, such Licensee Party performing such physical inspection or sampling shall maintain errors and omissions insurance and contractor's pollution liability insurance on terms and in amounts acceptable to Seller, and insuring Seller, Purchaser and such other parties as Seller shall request, covering any accident or event arising in connection with the presence of Purchaser or the other Licensee Parties 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; (iv) at Seller's request, furnish to Seller any studies, reports or test results received by Purchaser regarding the Property, promptly after such receipt, in connection with such inspection; and (v) restore the Real Property and Improvements to the condition in which the same were found before any such entry upon the Real Property and inspection or examination was undertaken.

(b) Purchaser hereby indemnifies, defends and holds Seller and its partners, agents, directors, officers, employees, successors and assigns 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) for personal injury, wrongful acts, torts claims and property damage, arising out of Purchaser's and the other Licensee Parties' entry onto the Property and/or any inspections, investigations, examinations, sampling or tests conducted by Purchaser or any of the Licensee Parties, whether prior to or after the date hereof, with respect to the Property or arising out of any violation of the provisions of this Article V; provided that the foregoing indemnity shall not relate to any liability, cost, loss, damage or expense to the extent attributable to (i) conditions in existence on or about the Property on the date of this Agreement, except to the extent exacerbated by Purchaser (provided that Purchaser's mere discovery or legally required disclosure of a pre-existing condition on the Property shall not be deemed to be an exacerbation of a pre-existing condition), (ii) any acts or omissions of Seller or any of Seller's agents, contractors, or employees, or (iii) claims based on disclosures required pursuant to Governmental Regulations.

(c) In the event that Purchaser determines, after its inspection of the Documents and Real Property and Improvements, that it does not want to proceed with the transaction as set forth in this Agreement, Purchaser shall have the right to terminate this Agreement by providing written notice to Seller prior to the expiration of the Evaluation Period, WITH TIME BEING OF THE ESSENCE WITH RESPECT THERETO. In the event Purchaser

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terminates this Agreement in accordance with this Section 5.3(c), Purchaser shall have the right to receive a refund of the Earnest Money Deposit, together with all interest which has accrued thereon, and except with respect to the Termination Surviving Obligations, this Agreement shall be null and void and the parties shall have no further obligation to each other. In the event this Agreement is terminated, Purchaser shall return to Seller all Documents and 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 (collectively, "**Purchaser's Information**") promptly following the time this Agreement is terminated for any reason.

**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 PURCHASER, AND PURCHASER HAS THE RIGHT TO CONDUCT ITS OWN INDEPENDENT EXAMINATION OF THE PROPERTY. OTHER THAN THE MATTERS EXPRESSLY REPRESENTED IN SECTION 8.1 HEREOF AND THE CLOSING DOCUMENTS OR ANY ESTOPPEL DELIVERED BY SELLER TO PURCHASER, BY WHICH ALL OF THE FOLLOWING PROVISIONS OF THIS SECTION 5.4 ARE LIMITED, 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 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 RELIED UPON BY PURCHASER WITH RESPECT TO THE STATUS OF TITLE TO OR THE MAINTENANCE, REPAIR, CONDITION, DESIGN, DEVELOPMENT POTENTIAL 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 REAL PROPERTY, IMPROVEMENTS OR PERSONAL PROPERTY, (f) THE FINANCIAL CONDITION OR PROSPECTS OF THE PROPERTY OR ANY TENANT AND (g) THE COMPLIANCE OR LACK THEREOF OF THE REAL PROPERTY OR THE IMPROVEMENTS WITH GOVERNMENTAL REGULATIONS, INCLUDING WITHOUT LIMITATION ENVIRONMENTAL LAWS, NOW EXISTING OR**

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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 SOLELY ON ITS OWN EXPERTISE AND THAT OF PURCHASER'S CONSULTANTS IN PURCHASING THE PROPERTY. PURCHASER HAS BEEN GIVEN A SUFFICIENT OPPORTUNITY HEREIN TO CONDUCT AND HAS CONDUCTED OR WILL CONDUCT SUCH INSPECTIONS, INVESTIGATIONS AND OTHER INDEPENDENT EXAMINATIONS OF THE PROPERTY 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 (EXCLUDING THE LIMITED MATTERS EXPRESSLY REPRESENTED BY SELLER IN SECTION 8.1 HEREOF OR THE CLOSING DOCUMENTS) NOR OF ANY PARTNER, OFFICER, DIRECTOR, EMPLOYEE, AGENT OR ATTORNEY OF SELLER OR ITS GENERAL PARTNER. PURCHASER ACKNOWLEDGES THAT ALL INFORMATION PROVIDED TO 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, 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, "AS IS, WHERE IS," WITH ALL FAULTS. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS IN CONNECTION WITH 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 FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE OR OTHER PERSON, UNLESS THE SAME ARE SPECIFICALLY SET FORTH OR REFERRED TO 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. 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 AGREEMENTS SET FORTH HEREIN ARE AN INTEGRAL PART OF THIS AGREEMENT, AND THAT SELLER WOULD NOT HAVE AGREED TO SELL THE PROPERTY TO PURCHASER FOR THE PURCHASE PRICE WITHOUT THE DISCLAIMERS AND OTHER AGREEMENTS SET FORTH IN THIS AGREEMENT.

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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 OR CONTRIBUTION 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 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 HEREAFTER CREATED, RELATED TO ENVIRONMENTAL CONDITIONS OR ENVIRONMENTAL MATTERS IN, ON, UNDER, ABOUT OR MIGRATING FROM OR ONTO THE 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 WILL NOT MERGE WITH THE PROVISIONS OF ANY CLOSING DOCUMENTS AND ARE HEREBY DEEMED INCORPORATED INTO THE DEED AS FULLY AS IF SET FORTH AT LENGTH THEREIN.

"IN CONNECTION WITH THE RELEASES HEREIN SET FORTH, PURCHASER EXPRESSLY WAIVES ALL RIGHTS UNDER CALIFORNIA CIVIL CODE SECTION 1542, AS AMENDED OR MODIFIED, WHICH PROVIDES THAT:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

Section 5.5 Natural Hazard Disclosure Requirement Compliance. Purchaser and Seller acknowledge that Seller may be required to disclose whether the Property lies within the following natural hazard areas or zones: (i) a special flood hazard area designated by the Federal Emergency Management Agency (California Government Code Section 8589.3); (ii) an area of potential flooding (California Government Code Section 8589.4); (iii) a very high fire hazard severity zone (California Government Code Section 51178 et seq.); (iv) a wildland area that may contain substantial forest fire risks and hazards (Public Resources Code Section 4136); (v) an earthquake fault zone (Public Resources Code Section 2621.9); or (vi) a seismic hazard zone (Public Resources Code Section 2694) (sometimes all of the preceding are herein collectively called the "Natural Hazard Matters"). Seller has engaged or will cause the Title Company to engage the services of a natural hazard disclosure expert (the "Natural Hazard Expert"), to examine the maps and other information specifically made available to the public by government agencies for the purposes of enabling Seller to fulfill its disclosure obligations, if and to the extent such obligations exist, and to report the result of its examination to Purchaser and Seller in writing. The written report prepared by the Natural Hazard Expert (the "Natural Hazard

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Report") regarding the results of its examination will fully and completely discharge Seller from its disclosure obligations referred to in this Agreement or in the Natural Hazard Report, if and to the extent any such obligations exist. Purchaser acknowledges that Seller has delivered to Purchaser the Commercial Property Owner's Guide to Earthquake Safety, published by the State of California Seismic Safety Commission, which informs property owners generally of the risks attendant to earthquakes and the effect earthquakes could have on the their property. Purchaser agrees to provide Seller with a written acknowledgment of its receipt of the Natural Hazard Report. Purchaser's failure to terminate this Agreement pursuant to section 5.3(c) above shall be deemed to be Purchaser's acceptance of all Natural Hazard Matters.

Section 5.6 Pre 1975 Construction Disclosure. Seller hereby informs Purchaser that the Real Property may have been constructed during or prior to 1975, and the construction method may have been that of pre-cast tilt-up concrete. In accordance with California law, attached hereto as Exhibit "T" is a copy of

the Commercial Property Owner's Guide to Earthquake Safety published by the State of California Seismic Safety Commission (the "Guide"). In connection with the Commercial Property Earthquake Weakness Disclosure Report (the "Disclosure Report") which is made a part of the Guide, Seller hereby notifies Purchaser that with respect to Question Nos. 1 through 4 in such Disclosure Report, Seller does not know the answers to such questions and that, by the execution of this Agreement by Seller, Seller shall have been deemed to have executed and delivered the Disclosure Report and shall be deemed to have checked the "Don't Know" box following each such questions.

## ARTICLE VI TITLE AND SURVEY MATTERS

**Section 6.1 Survey.** Purchaser acknowledges receipt of the Existing Survey. Any modification, update or recertification of the Existing Survey shall be at Purchaser's election and sole cost and expense. The Existing Survey together with any update Purchaser has elected to obtain, if any, is herein referred to as the "**Updated Survey**." Any matters that are objected to by Purchaser in a written notice to Seller prior to the expiration of the Evaluation Period shall constitute a "**Survey Objection**" under this Agreement.

**Section 6.2 Title Commitment.**

(a) Purchaser acknowledges receipt of those certain title insurance commitments issued by the Title Company under Commitment Nos. NYN06-002152-L and NYN06-002151-L (the "**Title Commitment**"), together with copies of the title exceptions listed thereon. Purchaser shall have until the expiration of the Evaluation Period to provide written notice to Seller of Purchaser's objection to any exception or other matter set forth in the Title Commitment that Purchaser deems unacceptable (a "Title Objection"). Purchaser shall be deemed to have accepted all exceptions and other matters in the Title Commitment not objected to in writing by Purchaser prior to the expiration of the Evaluation Period. By the date (the "**New Objection Date**") which is five (5) Business Days after Purchaser's counsel receives notice of any new exception to the title to the Real Property raised by the Title Company after the effective date of the Title Commitment and prior to the Closing (or as promptly as possible prior to the

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Closing if such notice is received with less than five (5) Business Days prior to the Closing [but in no event less than one (1) Business Day] and the Closing Date shall be extended to permit time for Seller to respond to such objection), Purchaser shall provide Seller with written notice of its objection to such new exception if Purchaser deems same unacceptable ("**New Title Objections**"). In the event Seller does not receive the New Title Objections by the New Objection Date, Purchaser will be deemed to have accepted the exceptions to title set forth on any updates to the Title Commitment as Permitted Exceptions. Pursuant to the Title Commitment, the Title Company shall be committed to issue to Purchaser at Closing, an ALTA Form, amended 10-17-70 (with no added exception for creditors' rights) extended coverage owner's policy of title insurance, dated as of each Property as of the date and time of recordation of the Deed for such Property in the amount of the Purchase Price insuring Purchaser's fee simple title to the Real Property subject to the standard preprinted exceptions except those that the Title Company agrees to omit or modify during the Evaluation Period and with such endorsements as the Title Company has agreed to issue on or before the expiration of the Evaluation Period, subject only to the Permitted Exceptions (the "**Title Policy**"). "**Permitted Exceptions**" means the following: (1) the lien of any current real estate taxes and assessments and subsequent periods, provided that the same are prorated in accordance with this Agreement; and (2) such other matters set forth in the Title Commitment or Survey which are approved or deemed approved by Purchaser during the Evaluation Period or thereafter in accordance with this Agreement.

(b) All taxes, water rates or charges, sewer rents and assessments, plus interest and penalties thereon, which on the Closing Date shall have accrued and are liens against the Real Property will be credited against the Purchase Price (subject to the provision for apportionment of taxes, water rates and sewer rents herein contained).

(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 or the Title Company receives an indemnity from Seller satisfactory to the Title Company, and the Title Company omits the lien as an exception from the Title Policy, and a credit is given to Purchaser for the recording charges for a satisfaction or discharge of such lien.

(d) No franchise, transfer, inheritance, income, corporate or other tax open, levied or imposed against Seller 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 the Real Property and/or the Improvements, and provided further that Seller deposits with the Title Company a sum reasonably sufficient to secure a release of the Property from the lien thereof or the Title Company receives an indemnity from Seller satisfactory to the Title Company, and, in any event, any such tax is omitted as an exception to the Title Policy. 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, Seller will deliver to the Title Company an affidavit stating that such judgments, bankruptcies or other returns do not apply to Seller, and such search results shall not be deemed Title Objections.

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**Section 6.3 Title Defect.**

(a) In the event Seller receives any Survey Objection, Title Objection or New Title Objection (collectively and individually, a "**Title Defect**") within the time periods required under Sections 6.1 and 6.2 above, Seller may elect (but shall not be obligated) by written notice to Purchaser to attempt to remove, or cause to be removed at its expense, any such Title Defect, and shall provide Purchaser with written notice, within seven (7) days of its receipt of any such objection, of its intention to attempt to cure any such Title Defect and/or extend the Closing Date for such purpose. If Seller elects to attempt to cure any Title Defect, the Scheduled Closing Date shall be extended, for a period not to exceed sixty (60) days, for the purpose of such removal if Seller provides written notice to Purchaser of such extension at least ten (10) Business Days prior to the Scheduled Closing Date. If Seller elects to extend the Scheduled Closing Date as aforesaid, but successfully effects such cure more than ten (10) Business Days before the expiration of the extension period set forth in Seller's extension notice, then Seller may shorten the extension period by sending Purchaser written notice at least ten (10) Business Days prior to the new Scheduled Closing Date. In the event that (i) Seller elects not to attempt to cure any such Title Defect, or (ii) Seller is unable to cure any such Title Defect for any period elected by Seller but not to exceed sixty (60) days from the Scheduled 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, together with all interest which has accrued thereon, or to waive such Title Defect and proceed to the Closing. Purchaser shall make such election within ten (10) days after receipt of Seller's notice. If Purchaser elects to proceed to the Closing, any Title Defects waived by Purchaser shall be deemed Permitted Exceptions. 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 any provision of this Article VI to the contrary, Seller will be obligated to cure exceptions to title to the Property, in the manner described in Section 6.2(c) above, relating to liens and security interests securing any financings to Seller, and any mechanic's liens resulting from work at the Property directly contracted for by Seller, provided that Seller shall remove other monetary liens created or permitted by Seller, any new matters appearing after the date of the Agreement which were voluntarily created by Seller and not consented to, approved or deemed approved by Purchaser hereunder, delinquent property tax liens, any income

tax lien or any judgment lien as a result of Seller's actions.

**ARTICLE VII**  
**INTERIM OPERATING COVENANTS, ESTOPPELS AND POST-CLOSING EMPLOYMENT**

**Section 7.1** **Interim Operating Covenants.** Seller covenants to Purchaser that Seller will:

(a) **Operations.** From the Effective Date until Closing, continue to operate, manage and maintain the Improvements in the ordinary course of Seller's business and substantially in accordance with Seller's present practice, subject to ordinary wear and tear and further subject to Article XI of this Agreement. From the Effective Date through the expiration of the Evaluation Period, Seller will consult with Purchaser regarding any proposed new Leases or amendments or terminations to existing Leases and provide copies thereof to Purchaser for

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review, including, without limitation, disclose to Purchaser by written notice any and all material terms regarding any proposed new Leases or amendments to or terminations of existing Leases, including, without limitation, any New Tenant Costs associated with any proposed new Leases or amendment to any existing Lease, and will consult with Purchaser regarding the initiation or settlement of any real estate tax appeals during such period; provided, however, that Seller shall not be required to obtain Purchaser's consent before entering into any new Leases or amendments to or terminations of existing Leases and/or initiating or settling any tax appeals. After the expiration of the Evaluation Period, Seller shall not amend any existing Lease, accept any termination of any existing Lease or enter into any new Lease, or initiate or settle any tax appeal, without Purchaser's prior written consent in Purchaser's sole and absolute discretion; provided, however, in the event that Purchaser withholds or conditions its consent to any amendment or termination of an existing Lease or to any new Lease, then the provisions of Section 9.1(b) shall be null and void and of no further force and effect and Purchaser shall assume the risk of any and all losses of operation income at the Property between the expiration of the Evaluation Period and Closing. Notwithstanding any provision contained herein or in that certain Agreement of Sale and Purchase, dated August 3, 2006, as subsequently amended, between Purchaser and Mack-Cali Realty, L.P., an Affiliate of Seller (the "**Colorado Contract**"), upon the closing of the Colorado Contract, Purchaser shall make Robert Drabkin ("**Drabkin**") available as reasonably necessary to supervise the Company California Employees and oversee the management, leasing and operation of the Property as directed by Seller until the earlier to occur of Closing or termination of this Agreement (such period is hereinafter referred to as the "**Pending Closing Period**"). During the Pending Closing Period, Drabkin will oversee the Company California Employees and manage the Property in such a manner to insure the continued operation of the Property as required under this Article VII and during this period consult with Seller on a periodic basis as may be reasonably necessary or as reasonably requested by Seller. Drabkin shall provide the foregoing services without fee to Seller, provided that Seller shall promptly reimburse Purchaser for all expenses reasonably incurred by Drabkin in connection therewith. Seller will indemnify, defend and hold Purchaser and Drabkin harmless from and against any and all costs and expenses, including reasonable legal fees and court costs, relating to any claim, action or demand arising out of any action taken or not taken by Drabkin during the Pending Closing Period in overseeing and managing the Company California Employees as directed by Seller and without any gross negligence or willful misconduct on the part of Drabkin, and Seller shall name Purchaser's affiliate that will be Drabkin's employer and Drabkin as additional insureds on Seller's comprehensive general liability insurance policy during the Pending Closing Period.

(b) **Service Contracts.** During the Evaluation Period, consult with Purchaser before entering into any Service Contract unless such Service Contract is terminable on thirty (30) days notice without payment of a termination penalty, fee or premium; provided, however, that Seller shall be under no obligation to obtain Purchaser's consent prior to entering into any Service Contract. From the expiration of the Evaluation Period until Closing, not enter into any Service Contracts, unless such Service Contracts are terminable on thirty (30) days notice without paying any termination penalty, fee or premium or unless Purchaser consents thereto in writing in Purchaser's sole and absolute discretion. At Closing, Seller shall terminate any property management agreements and any other agreements with affiliates of Seller in connection with the Property.

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(c) **Notices.** To the extent (i) received or sent by Seller after the Effective Date and (ii) affecting the Property, promptly deliver to Purchaser copies of written: default notices, notices of violations, tax bills and assessment notices, notices of a condemnation and material notices pertaining to any Lease, easement or other agreement.

(d) **Restrictions on Seller.** From the expiration of the Evaluation Period until Closing, not (i) seek or agree to any change or modification with respect to zoning or development rights with respect to the Property without Purchaser's prior written consent, (ii) place any voluntary lien or encumbrance on the Property without Purchaser's prior written consent, which will not be unreasonably withheld, conditioned or delayed, or (iii) commence, at Seller's sole cost and expense, material (i.e., in excess of one-tenth of one percent (0.1%) of the Purchase Price), elective or optional alterations at the Property without Purchaser's prior written consent, which will not be unreasonably withheld, conditioned or delayed. At any time prior to Closing, Seller shall have the right to commence, without Purchaser's consent, any alterations that the Seller is contractually obligated to perform.

**Section 7.2** **Estoppels.** It will be a condition to Closing that Seller obtain from each Major Tenant and a sufficient number of other Tenants at the Property other than Kiosk Tenants in order to cover not less than 80% of the total rented square footage of the buildings in the aggregate located at the Property, not including total rented square footage leased to Kiosk Tenants under Kiosk Leases, an executed estoppel certificate in the form attached hereto as Exhibit "G" dated not more than forty-five (45) days prior to Closing (unless the Scheduled Closing Date has been extended by Purchaser pursuant to this Agreement), or in the form or limited to the substance prescribed by each Major Tenant's or, as applicable, other Tenant's Lease. Notwithstanding the foregoing, Seller agrees to request that each Major Tenant and other Tenants in the buildings other than Kiosk Tenants execute an estoppel certificate in the form attached hereto as **Exhibit G**, and to request that each Kiosk Tenant execute an estoppel certificate in the form attached hereto as **Exhibit G-1**, and use good faith, commercially reasonable efforts to obtain same. Seller shall not be in default of its obligations hereunder if any Major Tenant or other Tenant fails to deliver an estoppel certificate, or delivers an estoppel certificate which is not in accordance with this Agreement; provided, however, that as more fully set forth in Section 9.1(f) below, such failure may constitute the failure to satisfy a condition precedent to Purchaser's obligation to purchase the Property. For purposes of this subsection, an estoppel certificate will be not be treated as having been received if it contains (i) any material adverse inconsistencies with Seller's representations or warranties set forth in this Agreement as modified pursuant to Section 8.3 below, or (ii) any material adverse deviation from the form or substance of estoppel required to be delivered by the Tenant hereunder, and, if any estoppel certificate discloses any such material adverse matter not cured or satisfied by Seller on or before the date which is three (3) Business Days prior to the Scheduled Closing Date, then Purchaser shall have the right to terminate this Agreement on or before the Scheduled Closing Date. Purchaser shall be entitled to three (3) Business Days to review each such estoppel certificate and provide reasonable objections thereto prior to Seller sending such estoppel certificate to a Tenant. For purposes of this Section 7.3, an estoppel shall not be deemed to contain a material adverse deviation from the required estoppel form, if (i) the Tenant limits assertions in the estoppel "to Tenant's Knowledge" or (ii) refuses to confirm whether its Lease contains any extension, expansion, or termination options or rights, storage or parking rights or rental or other concessions.

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In the event Seller is unable to obtain an executed estoppel certificate from any Tenant (other than a Major Tenant), to the extent required under the foregoing paragraph, Seller may, but is not obligated to, elect to provide an estoppel certificate in the form prescribed by the Lease for each such Tenant, which Purchaser agrees to accept as a valid and binding estoppel certificate; provided that Seller shall not be permitted to provide estoppel certificates for more than 50% of the remaining square footage of the Property (i.e., not including Major Tenants). In the event that the Tenant thereafter delivers an estoppel certificate post-Closing, then Seller shall be automatically released from liability under its estoppel certificate with respect to all consistent matters set forth in the Tenant's estoppel certificate.

Provided that Purchaser delivers to Seller Purchaser's requested form of Subordination, Non-Disturbance and Attornment Agreement ("**SNDA**") prior to the expiration of the Evaluation Period, Seller will also request that the Major Tenants and those Tenants whose Leases require a SNDA signed by a mortgage lender in order for their Leases to be subordinate to the Lender's Mortgage, execute a reasonable form of SNDA requested by Purchaser concurrently with tendering the estoppel certificates to the Tenants, and Seller will make good faith, commercially reasonable efforts to obtain them.

**Section 7.3 Post-Closing Employment.** For a period of thirty (30) days prior to the Scheduled Closing Date, Purchaser's affiliate, Westcore Management, LLC, a Delaware limited liability company ("**Westcore Management**"), shall extend offers to employ the four (4) existing employees of MCRC in California who work on-site at the Properties and whose names are on **Exhibit N** (the "**Company California Employees**") for a period of one year after Closing on the same base salary and bonus (other than stock) as shown on **Exhibit N**, pursuant to a standard form Westcore Management employment agreement. With respect to such Company California Employees that accept such offers for employment, the Westcore Management shall (a) for a period of one (1) year following the Closing, cause any Company Employee that was covered under a medical or dental plan, disability benefit plan, 401(k) plan or life insurance plan of Seller or MCRC immediately prior to the Closing to receive coverage that is comparable in the aggregate to such coverage provided to similarly situated employees employed by Westcore Management, and (b) recognize the service completed by the Company California Employees for purposes of determining eligibility service and vesting service under any employee benefit plan, program or arrangement maintained by Westcore Management for its employees on or after the Closing Date to the same extent such service was credited under any employee benefit plan, program or arrangement provided by the Seller or MCRC immediately prior to the Closing Date. The Company California Employees shall be third party beneficiaries of this Section 7.3. Promptly after the Closing, Seller shall pay any and all compensation, reimbursements and benefits due the Company California Employees that accrued prior to the Closing Date. The provisions of this Section 7.3 shall survive the Closing for a period of one year. Upon employment by Westcore Management, any such employee shall be released from any confidentiality obligations or duties in favor of Seller or Seller's affiliates with respect to the Property.

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## ARTICLE VIII REPRESENTATIONS AND WARRANTIES

**Section 8.1 Seller's Representations and Warranties.** The following constitute the sole representations and warranties of Seller, which representations and warranties are made jointly and severally and shall be true in all material respects as of the Effective Date and Closing Date except for such changes as are permitted under this Agreement. Subject to the limitations set forth in Section 8.3 of this Agreement, Seller represents and warrants to Purchaser the following:

- (a) **Status.** Seller is a limited partnership, duly organized and validly existing under the laws of the State of Delaware.
- (b) **Authority.** The execution and delivery of this Agreement and the performance of Seller's obligations hereunder have been duly authorized by all necessary action on the part of Seller, and this Agreement constitutes the legal, valid and binding obligation of Seller.
- (c) **Non-Contravention.** The execution and delivery of this Agreement by Seller and the consummation by Seller of the transactions contemplated hereby will not violate any judgment, order, injunction, decree, regulation or ruling of any court or Authority or conflict with, result in a breach of, or constitute a default under the organizational documents of Seller, any note or other evidence of indebtedness, any mortgage, deed of trust or indenture, or any lease or other material agreement or instrument to which Seller 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 Seller or the performance by Seller of the transactions contemplated hereby.
- (e) **Suits and Proceedings.** Except as listed in **Exhibit I**, there are no legal actions, suits or similar proceedings pending, served or settled in the three (3) years prior to the date of this Agreement, or, to Seller's Knowledge, threatened in writing against Seller or the Property which (i) would materially and adversely affect the Seller's ability to consummate the transactions contemplated hereby, or (ii) might have a material adverse effect on Purchaser's use, ownership or operation of the Property.
- (f) **Non-Foreign Entity.** Seller is not a "foreign person" or "foreign corporation" as those terms are defined in the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.
- (g) **Tenants.** As of the date of this Agreement, to Seller's Knowledge the only tenants of the Property are the tenants set forth in the Lease Schedule attached as **Exhibit F**. To Seller's Knowledge, the Documents made available to Purchaser pursuant to Section 5.2 hereof include true, correct and complete copies of all of the Leases listed on **Exhibit F**. To Seller's Knowledge, except as set forth of **Exhibit O** annexed hereto and made a part hereof, no tenant is in monetary or material nonmonetary default under any Lease, and Seller has not sent any notice of default by any Tenant under the Leases that remains uncured.
- (h) **Service Contracts.** To Seller's Knowledge none of the service providers listed on **Exhibit E** is in material default under any Service Contract. To Seller's Knowledge,

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the Documents made available to Purchaser pursuant to Section 5.2 hereof include true, correct and complete copies of all Service Contracts listed on **Exhibit E** under which Seller is currently paying for services rendered in connection with the Property. To Seller's Knowledge, there are no Service Contracts other than those listed on **Exhibit E**.

- (i) **Environmental Matters.** To Seller's Knowledge, except as set forth in the reports described in **Exhibit M** (the "**Environmental Reports**"), Seller has not received written notice of any violations of Environmental Laws at or upon the Properties.
- (j) **Compliance.** To Seller's Knowledge, in the two (2) years prior to the Effective Date, Seller has received no written notice from any Authorities to the effect that the Property is not in compliance with any Governmental Regulations (a "**Violation Notice**"), and the Seller has not received any Violation Notices prior to such date that have not been cured.
- (k) **Company California Employees.** Attached hereto as **Exhibit N** is a true, correct and complete list of the Company California Employees

together with the salary and bonus payable to each such Company Employee as of the Effective Date.

(l) **Leasing Commissions.** To Seller's Knowledge, as of the Effective Date, there are no potential leasing commissions for which Purchaser may be liable post-Closing other than as may be set forth in the commission agreements listed on **Exhibit Q** annexed hereto and made a part hereof or in the Leases. To Seller's Knowledge, the Documents made available to Purchaser pursuant to Section 5.2 hereof include true, correct and complete copies of all of the commission agreements listed on **Exhibit Q**.

(m) **Management Fees.** At Closing, there shall be no unpaid management fees with the respect to the Property.

(n) **Real Estate Tax Appeals.** Attached hereto as **Exhibit P** is a true, correct and complete list of all pending real estate tax appeals with respect to the Property.

(o) **OFAC.** Neither Seller, nor any officer, director, shareholder, partner, investor or member of Seller is named by any Executive Order of the United States Treasury Department as a terrorist, a "Specially Designated National and Blocked Person," or any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control (collectively, an "**Identified Terrorist**"). Seller is not engaging in this transaction on the behalf of, either directly or indirectly, any Identified Terrorist.

(p) **Historical Operating Statements.** To Seller's Knowledge, the historical operating statements to be provided to Purchaser for review pursuant to Section 5.2 above, shall accurately set forth, in all material respects, the operating income and expenses of the Property for the past three years.

**Section 8.2 Purchaser's Representations and Warranties.** Purchaser represents and warrants to Seller the following, which representations and warranties shall be true as of the Effective Date and at Closing:

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(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 the performance of Purchaser's obligations hereunder have been duly authorized by all necessary action on the part of Purchaser and this Agreement constitutes the legal, valid and binding obligation of Purchaser.

(c) **Non-Contravention.** The execution and delivery of this Agreement by Purchaser and the consummation by Purchaser of the transactions contemplated hereby will not violate any judgment, order, injunction, decree, regulation or ruling of any court or Authority or conflict with, result in a breach of or constitute a default under the organizational documents of Purchaser, any note or other evidence of indebtedness, any mortgage, deed of trust or indenture, or any lease or other 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.

(e) **OFAC.** Neither Purchaser, nor any officer, director, shareholder, partner, investor or member of Purchaser is named by any Executive Order of the United States Treasury Department as a terrorist, a "Specially Designated National and Blocked Person," or any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control (collectively, an "**Identified Terrorist**"). Purchaser is not engaging in this transaction on the behalf of, either directly or indirectly, any Identified Terrorist.

**Section 8.3 Survival of Representations, Warranties and Covenants.** The representations and warranties of Seller set forth in Section 8.1, in the Seller Certificate delivered prior to the expiration of the Evaluation Period and in any documents delivered at Closing and the certifications contained in any Seller estoppels delivered under the third paragraph of Section 7.2 will survive the Closing for a period of ten (10) months, after which time they will merge into the Deed, and Purchaser will have no right to assert a claim based thereon after the ten-month period. During the ten-month period, Purchaser will not have any right to bring any action against Seller as a result of any untruth or inaccuracy of such representations, warranties or certifications, or any such breach, unless and until the aggregate amount of all liability and losses arising out of any such untruth or inaccuracy, or any such breach, exceeds one-tenth of one percent (00.1%) of the Purchase Price; provided that if the aggregate amount of all liability and losses exceeds such one-tenth on one percent (00.1%) of the Purchase Price, Purchase shall be entitled to recover all such amounts. In addition, in no event will Seller's liability for all such untruths, inaccuracies or breaches exceed, in the aggregate, the sum of One Million Dollars (\$1,000,000); provided, however, that this cap on liability shall not apply to Seller's liability resulting from any Seller estoppels delivered pursuant to Section 7.2 above. Notwithstanding any other provision of this Agreement, unless Purchaser can prove that Seller made an intentionally false representation, warranty or certification as of the Effective Date, as of the

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expiration of the Evaluation Period or as of the Closing Date, the representations, warranties and certifications of Seller are hereby modified to be made true to the extent that, as of the date hereof with respect to the representations and warranties made herein, and as of the Closing Date with respect to representations, warranties and certifications made by Seller as of the Closing Date, (i) information contained in the Documents made available to Purchaser or its Licensee Parties pursuant to Section 5.2(a) makes the subject representation, warranty or certification not true, or (ii) either Purchaser or the Licensee Parties has knowledge that the subject representation, warranty or certification is untrue, or (iii) Seller has delivered or made available to Purchaser or the Licensee Parties other written information disclosing that the subject representation, warranty or certification is not true. The Closing Surviving Obligations and the Termination 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 Seller under this Agreement, unless otherwise specifically provided herein, will not survive the Closing but will be merged into the Deed and other Closing documents delivered at the Closing. Subject to the limitations or liability set forth above in this Section 8.3, one (1) Business Day prior to the expiration of the Evaluation Period, Seller shall deliver to Purchaser a Seller Certificate updating as of such date, the representations, warranties and certifications set forth in Section 8.1, subject to such modifications as shall be permitted by virtue of (i) the operating covenants contained in Section 7.1 above, (ii) facts raised during Purchaser's due diligence process or (iii) changes at the Property during the Evaluation Period.

## 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 Closing Date of all of the following conditions, any or all of which may be waived by Purchaser in its sole discretion:

(a) Seller shall have delivered to Purchaser 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) Between the end of the Evaluation Period and the Scheduled Closing Date, there shall have been no loss in the anticipated operating income at the Property resulting from a loss of tenancies at a reasonably prudent investor but not have reasonably anticipated the exercise of prudent due diligence during the Evaluation Period, including but not limited to by investigating financial conditions of the Tenant in a commercially reasonable manner, and which results in a loss in the value of the Property in excess of \$1,000,000.00 (the "\$1,000,000 Threshold"). For purposes of calculating the amount of any loss of anticipated operating income and its effect on value, the parties shall compare the net present value (on the Scheduled Closing Date) of the lost income stream using a discount rate of 8% per annum to the net present value of a replacement income stream commencing three months after the Scheduled Closing Date at market rents. For this purpose market rents shall be the rents charged at comparable buildings in the same submarket and which are set forth on Exhibit L annexed hereto and made a part hereof. Any and all decreases in net present value shall be aggregated with any and all increases in determining whether the \$1,000,000 Threshold has been exceeded. In the event that the

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\$1,000,000 Threshold has been exceeded, Purchaser shall notify Seller in writing, which notice shall set forth Purchaser's determination of the excess amount and the calculations supporting its determination. In such event, Seller shall have the right to elect to reduce the Purchase Price by all or a portion of such excess. Seller shall notify Purchaser in writing of its election within five (5) Business Days after its receipt of Purchaser's notice. If Seller elects to reduce the Purchase Price by the entire excess or less than all of the excess, then the Purchase Price shall be reduced accordingly and this Agreement shall otherwise continue unmodified and in full force and effect. If Seller has elected to credit less than all of the excess, Purchaser shall then have five (5) Business Days to notify Seller whether it accepts or rejects Seller's election. If Purchaser accepts Seller's election, then the Purchase Price shall be reduced accordingly and this Agreement shall otherwise continue unmodified and in full force and effect. If Purchaser rejects Seller's election or Seller fails to make an election, this Agreement shall be deemed terminated and null and void except for the Termination Surviving Obligations, and the Earnest Money Deposit and all interest earned thereon shall be promptly returned to Purchaser. If Purchaser fails to respond to Seller's election within the five (5) Business Day period, it shall be deemed to have accepted the Seller's election. In the event that the Closing occurs at a reduced Purchase Price, (i) if Purchaser subsequently receives or recovers all or some portion of the "lost" income on which the Purchase Price reduction was based, Purchaser shall promptly pay over to Seller the amount received or recovered by Purchaser and (ii) Seller shall have the right to pursue collection of "lost" income post-Closing. The Schedule Closing Date shall be extended to the date necessary to provide for the notices set forth in this Section 9.1(b).

(c) The representations and warranties of Seller contained in Section 8.1 shall continue to be true and correct in all material respects on the Closing Date except to reflect changes in accordance with Section 7.1 above and for changes in the representations and warranties in Subsections 8.1(g), (h), (i), (j) and (k) based on facts occurring (including but not limited to notices received or sent) after the Effective Date.

(d) To the extent that (i) Purchaser has raised as a Title Objection pursuant to Section 6.2(a) above, the need for estoppel certificates from any parties to any covenants, conditions and restrictions, reciprocal easement agreement, development agreements or ground leases affecting the Property (collectively, "Title Estoppels"), and (ii) Seller has agreed pursuant to Section 6.3 to attempt to cure such Title Defect, then Purchaser's receipt of such Title Estoppels, in form and substance reasonably satisfactory to Purchaser.

(e) Title Company shall be irrevocably and unconditionally committed to issue the Title Policy.

(f) 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.

**Section 9.2** Conditions Precedent to Obligation to Seller. The obligation of Seller to consummate the transaction hereunder shall be subject to the fulfillment on or before the date of Closing (or as otherwise provided) of all of the following conditions, any or all of which may be waived by Seller in its sole discretion:

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(a) Seller shall have received the Purchase Price as adjusted pursuant to, and payable in the manner provided for, in this Agreement.

(b) Purchaser shall have delivered to Seller 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) [This Section intentionally omitted.]

(d) The representations and warranties of Purchaser contained in Section 8.2 shall continue to be true and correct in all material respects.

(e) 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.

## ARTICLE X CLOSING

**Section 10.1** Closing. The consummation of the transaction contemplated by this Agreement by delivery of documents and payments of money from escrow shall take place at 3:00 p.m. Eastern Time on the Scheduled Closing Date at the offices of the Escrow Agent; provided, however, that the closing documents that are intended to be recorded in the land records in California shall be delivered by the parties to an office in California designated by Escrow Agent. Purchaser shall have an option to extend the Scheduled Closing Date for a period of up to thirty-days by delivering written notice to Seller at least five Business Days prior to the original Scheduled Closing Date, together with the simultaneous deposit by Purchaser with the Escrow Agent, by Federal Reserve wire transfer of immediately available funds, of the amount of Five Hundred Thousand Dollars (\$500,000) as an additional earnest money deposit on account of the Purchase Price (the "Extension Deposit"). TIME SHALL BE OF THE ESSENCE WITH RESPECT TO PAYMENT OF THE EXTENSION DEPOSIT. Thereafter, all references in this Agreement to the Earnest Money Deposit shall be deemed to also include the Extension Deposit. 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 Deed 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 unless otherwise specifically provided herein.

**Section 10.2** Purchaser's Closing Obligations. On the Closing Date, Purchaser, at its sole cost and expense, will deliver the following items to Seller at Closing as provided herein:

(a) The Purchase Price, after all adjustments are made as herein provided, by Federal Reserve wire transfer of immediately available funds, in accordance with the timing and other requirements of Section 3.3;

- (b) A counterpart original of the Assignment of Leases, duly executed by Purchaser;

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- (c) A counterpart original of the Additional Sale Consideration Agreement, together with a memorandum thereof in recordable form, duly executed by Purchaser;
- (d) A counterpart original of the Assignment, duly executed by Purchaser;
- (e) Evidence reasonably satisfactory to Seller that the person executing the Assignment of Leases, the Assignment, and the Tenant Notice Letters on behalf of Purchaser has full right, power and authority to do so;
- (f) Form of written notice executed by Purchaser and to be addressed and delivered to the Tenants by Purchaser in accordance with Section 10.6 herein, (i) acknowledging the sale of the Property to Purchaser, (ii) acknowledging that Purchaser has received and that Purchaser is responsible for the Security Deposit (specifying the exact amount of the Security Deposit) and (iii) indicating that rent should thereafter be paid to Purchaser and giving instructions therefor (the "**Tenant Notice Letters**");
- (g) A counterpart original of the Closing Statement, duly executed by Purchaser;
- (h) A certificate, dated as of the date of Closing, stating (i) that the representations and warranties of Purchaser contained in Section 8.2 are true and correct in all material respects as of the Closing Date; and
- (i) 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.** At the Closing, each of Phelan Realty and Folsom Realty will deliver to Purchaser the following documents:

- (a) A Grant Deed in the form annexed hereto as **Exhibit U** (the "**Deed**"), duly executed and acknowledged by Seller, conveying to Purchaser the Real Property and the Improvements subject only to the Permitted Exceptions;
- (b) A blanket assignment and bill of sale in the form attached hereto as **Exhibit C** (the "**Bill of Sale**"), duly executed by Seller, assigning and conveying to Purchaser, without representation or warranty, title to the Personal Property;
- (c) A counterpart original of an assignment and assumption of Seller's interest, as lessor, in the Leases and Security Deposits in the form attached hereto as **Exhibit B** (the "**Assignment of Leases**"), duly executed by Seller, conveying and assigning to Purchaser all of Seller's right, title and interest, as lessor, in the Leases and Security Deposits;
- (d) A counterpart original of the Additional Sale Consideration Agreement, together with a memorandum thereof in recordable form, duly executed by Seller;
- (e) A counterpart original of an assignment and assumption of Seller's interest in the Service Contracts and the Licenses and Permits substantially in the form attached hereto as **Exhibit A** (the "**Assignment**"), duly executed by Seller, conveying and assigning to Purchaser all

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of Seller's assignable right, title, and interest, if any, in the Service Contracts and the Licenses and Permits;

- (f) The Tenant Notice Letters, duly executed by Seller;
- (g) Evidence reasonably satisfactory to Purchaser and Title Company that the person executing the documents delivered by Seller pursuant to this Section 10.3 on behalf of Seller has full right, power, and authority to do so;
- (h) A certificate in the form attached hereto as **Exhibit J** ("**Certificate as to Foreign Status**") certifying that Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended;
- (i) All original Leases, Licenses and Permits and Service Contracts to the extent in Seller's possession or control;
- (j) A certificate (the "**Seller Certificate**"), dated as of the date of Closing, stating that the representations and warranties of Seller contained in Section 8.1 are true and correct in all material respects as of the Closing Date (with appropriate modifications to reflect any changes therein) or identifying any representation or warranty which is not, or no longer is, true and correct and explaining the state of facts giving rise to the change. In no event shall Seller be liable to Purchaser for, or be deemed to be in default hereunder and it shall not constitute failure of a condition precedent, if any representation or warranty is no longer true and correct in all material respects unless Purchaser can prove that Seller made an intentionally false representation, warranty or certification as of the Effective Date, as of the expiration of the Evaluation Period or as of the Closing Date; provided, however, that if: (i) such event constitutes the non-fulfillment of the condition set forth in Section 9.1(b), Purchaser shall have the right to terminate this Agreement or receive a reduction in the Purchase Price in accordance with the provisions of Section 9.1(b), and (ii) such representation or warranty that is no longer true and correct in all material respects is contained in Subsections 8.1(a) through (d), (f), and (l) through (p), and such change is not in accordance with Section 7.1, it shall constitute the failure of a condition precedent, entitling Purchaser to terminate this Agreement by written notice to Seller. In such event, Purchaser shall receive the prompt return of the Earnest Money Deposit and all interest earned thereon, and except for the Termination Surviving Obligations, neither party shall have any further liability under this Agreement. The representations, warranties and certifications of Seller contained in the Seller Certificate shall be subject to the provision of Section 8.3 above;
- (k) The estoppel certificates received by Seller pursuant to Section 7.2 above;
- (l) A California Franchise Tax Board Form 590 (or 593, as applicable) certifying that Seller has a permanent place of business in California, is qualified to do business in California, or is a California resident, as applicable; and

(m) Such other documents as may be reasonably necessary or appropriate to effect the consummation of the transaction which is the subject of this Agreement, including but not limited to an affidavit of title in form and substance reasonably satisfactory to Seller and the Title Company.

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**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) Rents, in accordance with Section 10.4(b) below.

(ii) Seller shall credit Purchaser at Closing with all cash Security Deposits and any prepaid rents, together with any interest to be paid to the Tenant thereon.

(iii) Utility charges payable by Seller, 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 estimated adjustment shall be made for the days between the meter reading date and the Closing Date based on the most recent meter reading.

(iv) Amounts payable under the Service Contracts.

(v) All real estate and personal property taxes and assessments, prorated for the period for which such taxes and assessments are assessed, regardless of when payable, on the basis of the number of days in such period the Property will have been owned by Seller and Purchaser, respectively. If the current tax bill is not available at Closing, then the proration shall be made on the basis of the most recent ascertainable tax bill. Any taxes paid at or prior to Closing shall be prorated based upon the amounts actually paid. If taxes and assessments for the fiscal year in which Closing occurs have been determined but have not been paid before Closing, Seller shall be charged and Purchaser credited at Closing with an amount equal to that portion of such taxes and assessments which relates to the period before the date of Closing, and Purchaser shall pay the taxes and assessments prior to the same becoming delinquent. If, subsequent to the Closing Date, real estate taxes (by reason of change in either assessment or rate or for any other reason) for the Real Property should be determined to be higher or lower than those that are apportioned, a new computation shall be made, and Seller agrees to pay Purchaser any increase shown by such recomputation and vice versa. Purchaser shall, at Closing, assume all expenses incurred or to be incurred in connection with any real estate tax appeals that are pending at the time of Closing. Notwithstanding anything to the contrary contained in this Agreement, Seller reserves the right to meet with governmental officials and to continue to contest any reassessment or assessment of the Property or any portion thereof as set forth on **Exhibit P** and to attempt to obtain a refund for any taxes previously paid. Seller shall retain all rights with respect to any refund of taxes applicable to any period prior to the Closing Date and Purchaser shall retain all rights with respect to any refund of taxes applicable to any period on or after the Closing Date

(vi) [This section intentionally omitted.]

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(vii) Seller shall be responsible for all salary, bonus (including any stock bonus) and benefits owed to the Company California Employees on account of employment prior to the Closing. To the extent that any of Westcore Management's employee benefits impose a waiting period on new employees before such benefit will be available, and Seller or MCRC has the ability to continue comparable benefits post-Closing in favor of the Company California Employees, during all or a portion of such waiting period, payment to Seller or MCRC of the costs of continuing such benefits for such period.

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 all of the Proration Items relating to the period after the Proration Time. The estimated Closing prorations shall be set forth on a preliminary closing statement to be prepared by Seller and submitted to Purchaser prior to the Closing Date (the **Closing Statement**). The Closing Statement, once agreed upon, shall be signed by Purchaser and Seller. The proration 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, 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. The provisions of this Section 10.4(a) will survive the Closing for twelve (12) months.

(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 includes fixed monthly rentals, additional rentals, percentage rentals, escalation rentals (which include each Tenant's proration share of building operation and maintenance costs and expenses as provided for under the Lease, to the extent the same exceeds any expense stop specified in such Lease), retroactive rentals, all administrative charges, utility charges, tenant or real property association dues, storage rentals, special event proceeds, temporary rents, telephone receipts, locker rentals, vending machine receipts and other sums and charges payable by Tenants under the Leases or from other occupants or users of the Property. For purposes of this Agreement, 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 (i) pursue legal action to enforce collection of any such amounts owed to Seller by any Tenant, (ii) terminate the Lease with respect to any such Tenant, or (iii) terminate any

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Tenant's right to possession under such Lease. After the Closing, if Purchaser declines to pursue a collection action against a Tenant for Delinquent Rental, then Seller shall have the right to do so; provided, however, that Seller shall not (A) terminate any Lease or terminate or disturb Tenant's right to possession thereunder, or (B) commence any lawsuit until the earlier of one year after the Closing Date or one month prior to the expiration of the statute of limitations with respect to such claim. All sums collected by

Purchaser from and after Closing from each Tenant (excluding tenant specific billings for tenant work orders and other specific services as described in and governed by Section 10.4(d) below) will be applied first to the month in which the Closing occurs, then to current amounts owned by such Tenant to Purchaser and then to delinquencies owed by such Tenant to Seller. Any sums due Seller will be promptly remitted to Seller.

(c) At the Closing, Seller shall deliver to Purchaser a list of additional rent, however characterized, under each Lease, including without limitation, real estate taxes, electrical charges, utility costs and operating expenses (collectively, "**Operating Expenses**") billed to Tenants for the calendar year in which the Closing occurs (both on a monthly basis and in the aggregate), the basis on which the monthly amounts are being billed and the amounts incurred by Seller on account of the components of Operating Expenses for such calendar year. Upon the reconciliation by Purchaser of the Operating Expenses billed to Tenants, and the amounts actually incurred for such calendar year, Seller and Purchaser shall be liable for overpayments of Operating Expenses, and shall be entitled to payments from Tenants, as the case may be, on a pro-rata basis based upon each party's period of ownership during such calendar year. This Section 10.3(c) shall survive post-Closing until six (6) months after reconciliation of the Operating Expenses.

(d) With respect to specific tenant billings for work orders, special items performed or provided at the request of a Tenant 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 such Tenant to be paid to Seller on account thereof; provided, however, with respect to specific tenant billings for work orders, special items performed or provided at the request of a Tenant or other specific services, which are collected by Purchaser after the Closing Date and relate to the foregoing specific services rendered by Purchaser after the Proration Time and Seller prior to the Proration Time, then notwithstanding anything to the contrary contained herein, unless Tenant's intention for the application of the payment is expressly indicated by Tenant (in which event, the Tenant's indication shall control), Purchaser shall cause the first amounts collected from such Tenant to be paid to Purchaser for such services rendered after the Proration Time and then to Seller on account for services rendered by Seller prior to the Proration Time. Seller shall have the right to pursue collection of the foregoing items post-Closing in the same manner and subject to the same limitations as applied to the collection of Delinquent Rental as more fully set forth in Section 10.4(b) above.

(e) Notwithstanding any provision of this Section 10.4 to the contrary, Purchaser will be solely responsible for its pro rata share of any leasing commissions, tenant improvement costs or other expenditures (for purposes of this Section 10.4(e), "**New Tenant Costs**") incurred or to be incurred in connection with any new lease or Lease amendment, renewal or extension executed (or exercised in the event of an option to extend, renew or expand

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an existing Lease) on or after the Effective Date and which transaction was disclosed in writing to Purchaser in accordance with Section 7.1(a), and Purchaser will pay to Seller at Closing as an addition to the Purchase Price an amount equal to any of Purchaser's pro rata share of New Tenant Costs paid by Seller. For purposes of calculating Purchaser's pro rata share of New Tenant Costs, Purchaser shall be charged the same percentage of such costs as the percentage of the Lease's rent term that is scheduled to occur post-Closing. Accordingly, by way of example, if one hundred percent (100%) of the rent term is scheduled to occur post-Closing, Purchaser's pro rata share of New Tenant Costs for such Lease would be one hundred percent (100%), whereas, if five percent (5%) of the rent term has occurred prior to the Closing Date, Seller shall be responsible for five percent (5%) of the New Tenant Costs and Purchaser shall be responsible for ninety-five percent (95%). Notwithstanding any provision of this Section 10.4 to the contrary, except as set forth on **Exhibit R** annexed hereto and made a part hereof, Seller will be solely responsible for any leasing commissions, tenant improvement costs or other expenditures incurred or to be incurred in connection with any Lease executed before the Effective Date except to the extent that a credit against the Purchase Price is granted to Purchaser at Closing (in which event, Purchaser shall be responsible to pay for such item). Purchaser shall solely be responsible for the payment or, to the extent previously paid by Seller, the reimbursement to Seller, of the Lease expenses set forth on **Exhibit R**. Seller shall deliver to Purchaser evidence of the due payment of all of the Lease expenses set forth on **Exhibit R** for which Seller is seeking reimbursement. Notwithstanding anything to contrary contained herein, Seller will be solely responsible for the costs of any contracts with affiliates of Seller and the compensation and benefits of the Company California Employees that accrue before the Closing Date.

**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) Seller's attorney's fees; (ii) one-half (1/2) of escrow fees, if any; (iii) the cost of endorsements to cure any of Purchaser's Title Objections with respect to the Title Policy to the extent that Seller agreed to cure them pursuant to this Agreement; (iv) any real property transfer taxes; and (v) the cost of recording discharges of any liens and encumbrances.

(b) Purchaser shall pay (i) the costs of recording the Deed to the Property and all other documents other than discharges of liens and encumbrances; (ii) all premiums for the Title Policy or endorsements or deletions (other than the cost of endorsements to cure Purchaser's Title Objections to the extent that Seller agreed to cure them pursuant to this Agreement), including, without limitation, the deletion of the survey exception, to the Title Policy that are desired by Purchaser; (iii) all premiums and other costs for any mortgagee policy of title insurance, if any, including but not limited to any endorsements or deletions; (iv) Purchaser's attorney's fees; (v) one-half (1/2) of escrow fees, if any and (vi) the costs of the Updated Survey.

(c) Any other costs and expenses of Closing not provided for in this Section 10.5 shall be allocated between Purchaser and Seller in accordance with the custom in the area in which the Property is located.

**Section 10.6** **Post-Closing Delivery of Tenant Notice Letters.** Immediately following Closing, Purchaser will deliver to each Tenant a Tenant Notice Letter, as described in Section 10.2(e).

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**Section 10.7** **Like-Kind Exchange.** In the event that Seller and/or Purchaser shall elect to effectuate the Closing as part of a "like-kind" exchange under Section 1031 of the Code, each party agrees to cooperate with and assist the other in all reasonable respects (at no cost other than incidental attorneys' fees) 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. If either party, or any member/shareholder of either party (the "**Exchanging Party**"), so elects, the other party (the "**Cooperating Party**") shall execute such documents identified at least ten (10) days prior to the scheduled Closing Date and take such action as may be reasonably necessary in order to effectuate this transaction as a like-kind exchange; provided, however, that: (i) the Cooperating Party's cooperation hereunder shall be without cost, expense or liability to the Cooperating Party of any kind or character other than attorneys' fees, costs or expenses incurred in connection with the review of customary documentation in order to effectuate such like-kind exchange, and the Cooperating Party shall have no obligation to take title to any other real property; (ii) the Exchanging Party shall assume all risks in connection with the designation, selection and setting of terms of the purchase or sale of any exchange property; (iii) except as set forth above, the Exchanging Party shall bear all costs and expenses in connection with any such exchange transaction in excess of the costs and expenses which would have otherwise been incurred in acquiring or selling the Property by means of a straight purchase, so that the net effect to the Cooperating Party shall be otherwise identical to that which would have resulted had this Agreement closed on a purchase and sale; (iv) there shall be no delay in the Scheduled Closing Date resulting from such exchange by the Exchanging Party; (v) any documents to effectuate such exchange transaction shall have no practical effect on terms and conditions contained in this Agreement; and (vi) the Exchanging Party shall indemnify, defend and hold the Cooperating Party harmless from

any and all claims, demands, penalties, loss, causes of action, suits, risks, liability, costs or expenses of any kind or nature (including, without limitation, reasonable attorneys' fees) which the Cooperating Party may incur or sustain, directly or indirectly, related to or in connection with, or arising out of, the consummation of this transaction as a like-kind exchange as contemplated hereunder.

**Section 10.8 Conversion Of Phelan into Residential Condominium.** Notwithstanding any provision contained or implied herein to the contrary, Purchaser specifically acknowledges and agrees with Seller that, as additional consideration to Seller for entering into this Agreement and conveying the Property to Purchaser, should Purchaser initiate the conversion of Phelan into a residential condominium project within a three (3) year period commencing on the Closing Date, then Purchaser shall pay to Seller as additional Purchase Price consideration (the "**Additional Sale Consideration**") an amount equal to the lesser of ten percent (10%) of the net profits earned by Purchaser as a result of such conversion and Five Million Dollars (\$5,000,000). In connection with the foregoing, at Closing Purchaser and Seller will enter into and deliver an agreement to document and evidence the continuing obligation of Purchaser in the form attached hereto as **Exhibit S** (the "**Additional Sale Consideration Agreement**"). The obligation of Purchaser to pay the Condo Conversion Participation Consideration will run with the land and be binding upon any successors and assigns of Purchaser. In connection with this obligation, at Closing Purchaser and Seller will enter into, deliver and record against Phelan a memorandum of the Additional Sale Consideration Agreement

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## ARTICLE XI CONDEMNATION AND CASUALTY

**Section 11.1 Casualty.** If, prior to the Closing Date, (i) all or a Significant Portion of the Real Property and Improvements is destroyed or damaged by fire or other casualty, or (ii) if (a) a Major Tenant is permitted to terminate its Lease with respect to a certain Property, or (b) the cost to repair any certain Property exceeds fifteen percent (15%) of the allocated Purchase Price for such Property set forth on **Exhibit K**, Seller will notify Purchaser of such casualty. With respect to subsection (i) above, Purchaser shall have the option to terminate this Agreement upon notice to Seller given not later than fifteen (15) days after receipt of Seller's notice. With respect to subsection (ii) above, Purchaser shall thereafter be entitled to terminate this Agreement as to such Property and shall only be required to purchase the remaining Property on the terms, conditions and provisions of this Agreement as if this Agreement had never included the damaged Property, with the Purchase Price to be reduced by the allocated Purchase Price for such Property. If this Agreement is terminated with respect to such damaged Property, neither Seller nor Purchaser shall have any further obligations under this Agreement with respect to such Property as to which the termination applies other than the Termination Surviving Obligations with respect to such Property. If this Agreement is terminated, the Earnest Money Deposit and all interest accrued thereon 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 does not have the right to do so pursuant to the foregoing provisions of this Section 11.1, Seller will not be obligated to repair such damage or destruction but (a) Seller will assign and 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 up to the amount of the allocated Purchase Price 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 the insurance deductible amount. In the event Seller elects to perform any repairs as a result of a casualty, 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.

**Section 11.2 Condemnation of Property.** In the event of (a) any condemnation or sale in lieu of condemnation of all of the Property; or (b) any condemnation or sale in lieu of condemnation of greater than twenty-five percent (25%) of the fair market value of the Property prior to the Closing, 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. In the event that either (i) any condemnation or sale in lieu of condemnation of the Property is for less than twenty-five percent (25%) of the fair market value of the Property, or (ii) Purchaser does not terminate this Agreement pursuant to the preceding sentence, Seller will assign 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 with the assignment of such proceeds and 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 and any interest thereon will be returned to Purchaser and neither Seller nor Purchaser will have any further obligation under this Agreement, except for the Termination Surviving Obligations. Notwithstanding anything to the contrary herein, if any eminent domain or condemnation proceeding is instituted (or notice of same is given) solely for the taking of any subsurface rights for utility easements or for any right-of-way easement, and the surface may, after such taking, be

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used in substantially the same manner as though such rights have not been taken, Purchaser will not be entitled to terminate this Agreement, but any award resulting therefrom will be assigned to Purchaser at Closing and will be the exclusive property of Purchaser upon Closing. Notwithstanding anything to the contrary set forth herein, in the event of any condemnation or sale in lieu of condemnation of any certain Property (i) exceeds fifteen percent (15%) of the allocated Purchase Price of such Property (as set forth on **Exhibit K**) condemned or sold in lieu of condemnation, (ii) permits a Major Tenant to terminate its Lease with respect to such Property, or (iii) results in a loss of access to such Property, Seller shall notify Purchaser of the same. In such event, Purchaser shall thereafter be entitled to terminate this Agreement as to such Property and shall only be required to purchase the remaining Property on the terms, conditions and provisions of this Agreement as if this Agreement had never included the condemned Property, with the Purchase Price to be reduced by the allocated Purchase Price of such Property as set forth on **Exhibit K**.

## 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, conditions, and negotiations concerning the same will be held in the strictest confidence by each of them and will not be disclosed by either of them except to their respective legal counsel, accountants, consultants, officers, partners, and directors and any other of Purchaser's Permitted Outside Parties, and except and only to the extent that such disclosure may be necessary for their respective performances hereunder, and Purchaser shall indemnify and hold Seller harmless from and against any breach by such individuals or entities of the confidentiality provisions applicable to Purchaser under this Agreement. 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 without the prior written consent of Seller. 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 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 advice of counsel. Nothing in this Article XII will negate, supersede or otherwise affect the obligations of the parties under the Confidentiality Agreement. In addition, after the Closing, any press release with respect to the transaction will be made only in the form approved by Purchaser and Seller and their respective counsel, which approval shall not be unreasonably withheld, conditioned or delayed. The provisions of this Article XII will survive the Closing or any termination of this Agreement.

## ARTICLE XIII REMEDIES

**Section 13.1 Default by Seller.** In the event the Closing and the transactions contemplated hereby do not occur as herein provided by reason of any default of

Seller, 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: (a) to terminate this Agreement, in which event Purchaser will receive from the Escrow Agent the Earnest Money

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Deposit, together with all interest accrued thereon, whereupon Seller and Purchaser will have no further rights or obligations under this Agreement, except with respect to the Termination Surviving Obligations; or (b) enforce specific performance of Seller's obligation to execute the documents required to convey the Property 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. Except as expressly set forth in this Section 13.1, Purchaser expressly waives its rights to seek damages in the event 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 an appropriate court in the City and County of San Francisco on or before forty-five (45) days following the Scheduled Closing Date. Notwithstanding the foregoing, Seller and Purchaser agree that in the event that Purchaser is unable to obtain specific performance, then in such event, Purchaser shall in the alternative have the right to commence an action against Seller for damages for Seller's breach and default under this Agreement; provided, however, (that in addition to Purchaser being entitled to receive the prompt return of its Earnest Money Deposit with interest), Seller's liability for damages shall not exceed the amount of the Earnest Money Deposit posted with Escrow Agent at such time. Notwithstanding the foregoing, 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.

**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 establish with precision the damages which Seller may suffer. Purchaser and Seller hereby agree that (a) an amount equal to the Earnest Money Deposit, together with all interest accrued thereon, 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 the Property, 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, 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.

ACKNOWLEDGEMENT OF PROVISIONS OF SECTION 13.2:

SELLER'S INITIALS           /s/ MEH          

PURCHASER'S INITIALS           /s/ DA          

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**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 with proof of delivery, or by facsimile transmission (provided that such facsimile is confirmed by the sender by overnight 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:

If to Purchaser:           Westcore Properties AC, LLC  
4445 Eastgate Mall, Suite 210  
San Diego, California 92121  
Attn.: Mr. Don Ankeny  
(858) 625 – 4100 (tele.)  
(858) 678 – 0060 (fax)

with a copy to :

Pircher, Nichols & Meeks  
1925 Century Park East, Suite 1700  
Los Angeles, California 90067  
Attention: Real Estate Notices (MES/EBS/4422-48)  
(310) 201-8900 (tele.)  
  
(310) 201-8922 (fax)

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

with separate notices to the attention of:

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

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

If Escrow Agent:

LandAmerica Financial Group, Inc.  
Commercial Services  
One Market, Spear Tower, Suite 1850  
San Francisco, California 94105  
Attn: Carol Carozza  
Vice President & Sr. Commercial Closer  
(415) 247-2421 (tele.)  
(415) 512-0146 (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. (EST) on a Business Day (if sent later or on a non-Business Day, 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 ASSIGNMENT AND BINDING EFFECT

**Section 15.1** **Assignment: Binding Effect.** Purchaser will not have the right to assign this Agreement, except to an affiliate or affiliates of Westcore Properties AC, LLC. In the event of such an assignment, the Purchaser named herein shall continue to be liable for the performance of Purchaser's obligations hereunder.

#### ARTICLE XVI BROKERAGE

**Section 16.1** **Brokers.** Purchaser and Seller represent that they have not dealt with any brokers, finders or salesmen, in connection with this transaction, or, if either Purchaser or Seller has dealt with any such broker, finder or salesman, such party agrees to pay any fee or commission in connection therewith and agrees to indemnify, defend and hold other the party 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. The provisions of this Article XVI will survive any Closing or termination of this Agreement.

#### ARTICLE XVII ESCROW AGENT

##### **Section 17.1** **Escrow.**

(a) Subject to the provisions of Section 4.1 above, 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. All interest earned on the Earnest Money Deposit shall be paid to the party entitled to the Earnest Money Deposit. In the event this Agreement is terminated prior to the expiration of the Evaluation Period, the Earnest Money Deposit and all interest accrued thereon will be returned by the Escrow Agent to Purchaser. In the event the Closing occurs, the Earnest Money Deposit and all interest accrued thereon will be released to Seller, and Purchaser shall receive a credit against the Purchase Price in the amount of the Earnest Money Deposit, including the interest. 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 and has given the other party five (5) Business Days to dispute, or consent to, the release of the Earnest Money Deposit. Purchaser represents that its tax identification number, for purposes of reporting the interest earnings, is 16-1632621. Seller represents that their tax identification number, for purposes of reporting the interest earnings, is 94-3290210 for Phelan Realty, and 22-3654950 for Folsom Realty.

(b) Escrow Agent shall not be liable to any party for any act or omission, except for bad faith, 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 and the interest earned thereon (the "**Escrowed Funds**"), Escrow Agent shall not be bound to release and deliver the Escrowed Funds to either party but may either (i) continue to hold the Escrowed Funds until otherwise directed in a writing signed by all parties hereto or (ii) deposit the Escrowed Funds with the clerk of the Denver District Court. 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 XVIII  
MISCELLANEOUS**

**Section 18.1** **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 18.2** **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 18.2 shall survive the entry of any judgment, and shall not merge, or be deemed to have merged, into any judgment.

**Section 18.3** **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 may be taken on the next succeeding Business Day.

**Section 18.4** **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. If a party to this Agreement delivers via telecopier or pdf e-mail a copy of this Agreement executed by such party, it shall have the same legal effect as the delivery of an original executed counterpart of the Agreement.

**Section 18.5** **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.

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**Section 18.6** **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 18.7** **Governing Law.** THIS AGREEMENT WILL BE CONSTRUED, PERFORMED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED. SELLER AND PURCHASER HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF THE APPROPRIATE COURT IN THE CITY AND COUNTY OF SAN FRANCISCO 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 SUCH COURT.

**Section 18.8** **No Recording.** The parties hereto agree that neither this Agreement nor any affidavit or memorandum concerning it will be recorded and any recording of this Agreement or any such affidavit or memorandum by Purchaser will be deemed a default by Purchaser hereunder.

**Section 18.9** **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 18.10** **Exhibits.** The following sets forth a list of Exhibits to the Agreement:

|              |  |
|--------------|--|
| Exhibit A -  | Assignment   |
| Exhibit B -  | Assignment of Leases   |
| Exhibit C -  | Bill of Sale   |
| Exhibit D -  | Legal Description of Real Property   |
| Exhibit E -  | Service Contracts  |
| Exhibit F -  | Lease Schedule   |
| Exhibit G -  | Form of Tenant Estoppel Certificate  |
| Exhibit G-1- | Form of Kiosk Tenant Estoppel Certificate                                      |
| Exhibit H -  | Existing Surveys   |
| Exhibit I -  | Suits and Proceedings  |
| Exhibit J -  | Certificate as to Foreign Status   |
| Exhibit K -  | Purchase Price Allocation  |
| Exhibit L -  | Market Rents   |
| Exhibit M -  | List of Environmental Reports  |
| Exhibit N -  | List of Company California Employees   |
| Exhibit O -  | Arrearage Schedule, Material Non-Monetary Defaults and Uncured Default Notices |
| Exhibit P -  | Real Estate Tax Appeals  |
| Exhibit Q -  | Leasing Commission Agreements  |
| Exhibit R -  | Purchaser's Tenant Expenses  |

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Exhibit S - Additional Sale Consideration Agreement  
Exhibit T - Commercial Property Owner's Guide to Earthquake Safety  
Exhibit U - Grant Deed

**Section 18.11 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 18.12 Limitations on Benefits.** It is the explicit intention of Purchaser and Seller that no person or entity other than Purchaser, Seller, Seller's Affiliates and the Company California Employees with respect to Section 7.3 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, Seller and Seller's Affiliates and the Company California Employees with respect to Section 7.3 or their respective successors and assigns as permitted hereunder. Except as set forth in this Section 18.12, nothing contained in this Agreement shall under any circumstances whatsoever be deemed or construed, or be interpreted, as making any third party (including, without limitation, any broker) 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 18.13 Discharge of Obligations.** The acceptance of the Deed by Purchaser shall be deemed to be a full performance and discharge of every representation and warranty made by Seller herein and every agreement and obligation on the part of Seller to be performed pursuant to the provisions of this Agreement, except those which are herein specifically stated to survive the Closing.

**Section 18.14 Catastrophic Unavailability of Wire Transfers.** In the event that on the date on which a wire transfer of monies is required under this Agreement the Federal Reserve wire transfer system is not operating as a result of some catastrophic damage to the system, then the period for tendering payment hereunder shall be extended for two (2) Business Days, and Seller agrees that it shall accept another form of legal tender of United States dollars at such time.

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

**PURCHASER:**

WESTCORE PROPERTIES AC, LLC

By: \_\_\_\_\_ /s/ Donald Ankeny  
Name: \_\_\_\_\_ Donald Ankeny  
Title: \_\_\_\_\_ President

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**SELLER:**

PHELAN REALTY ASSOCIATES L.P., a  
California limited partnership  
By: Mack-Cali Sub VI, Inc., a Delaware  
corporation, as General Partner

By: \_\_\_\_\_ /s/ Mitchell E. Hersh  
Mitchell E. Hersh  
President and Chief Executive Officer

795 FOLSOM REALTY ASSOCIATES L.P., a  
California limited partnership  
By: Mack-Cali Sub VI, Inc., a Delaware  
corporation, as General Partner

By: \_\_\_\_\_ /s/ Mitchell E. Hersh  
Mitchell E. Hersh  
President and Chief Executive Officer

**As to Article XVII only:**

**ESCROW AGENT:**

COMMONWEALTH LAND TITLE

By: \_\_\_\_\_ /s/ Carol Carozza  
Name: \_\_\_\_\_ Carol Carozza  
Title: \_\_\_\_\_ Vice President

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**MACK-CALI REALTY CORPORATION**  
**Certification**

I, Mitchell E. Hersh, 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)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 1, 2006

By: /s/ Mitchell E. Hersh  
Mitchell E. Hersh  
President and  
Chief Executive Officer

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**MACK-CALI REALTY CORPORATION**  
**Certification**

I, Barry Lefkowitz, 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)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 1, 2006

By: /s/ Barry Lefkowitz  
Barry Lefkowitz  
Executive Vice President and  
Chief Financial Officer

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**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, 2006, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Mitchell E. Hersh, as President and 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 §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 1, 2006

By: /s/ Mitchell E. Hersh  
Mitchell E. Hersh  
President and  
Chief Executive Officer

Date: November 1, 2006

By: /s/ Barry Lefkowitz  
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 §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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