THE CITY OF BALCONES HEIGHTS, TEXAS (the *City*)
AND
BALCONES HEIGHTS
ECONOMIC DEVELOPMENT CORPORATION (the *Corporation*)
Special Joint Meeting
Agenda

Agenda
October 27, 2021 at 5:30 p.m.
Balcones Heights Justice Center – City Council Chamber
3300 Hillcrest Drive, Balcones Heights, TX 78201

City Council

Suzanne de Leon, Mayor
Stephen Lara, Mayor Pro Tem
Gloria Cantu, Councilmember
Juan M. Lecea, Jr., Councilmember
Lamar Gillian, Councilmember
Miguel Valverde, Councilmember

Corporation Board of Directors

Scott Rausch, Director/Chair
Suzanne de Leon, Director
Miguel Valverde, Director
Madeline Slay, Director
Melissa Aguillon, Director/Vice Chair
Gloria Cantu, Director
Stephen Lara, Director

NOTICE IS HEREBY GIVEN THAT THE ABOVE CALLED SPECIAL JOINT MEETING OF THE GOVERNING BODIES OF THE CITY AND THE CORPORATION TO CONSIDER AND ACT UPON ANY LAWFUL SUBJECT WHICH MAY COME BEFORE SAID MEETING, INCLUDING, AMONG OTHERS, THE FOLLOWING ITEMS TO BE DISCUSSED AND ACTED UPON

CALL TO ORDER AND RECORDING OF QUORUM

1. City
2. Corporation

INVOCATION AND PLEDGES OF ALLEGIANCE TO THE U. S. A. AND TEXAS FLAGS

Here are the words to the Texas pledge:

"Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible."

PUBLIC COMMENT PERIOD:

PUBLIC COMMENTS WILL ONLY BE ACCEPTED IN WRITING NO LATER THAN THIRTY (30) MINUTES IN ADVANCE OF THE MEETING BY SENDING THEM TO THE CI TY SECRETARY DELIA R. SANCHEZ AT dsanchez@bhtx.gov. In the body of the email please include date, your name, your address, phone number, agenda item # if applicable or subject of discussion, and your comments.

CORPORATION BUSINESS ITEMS:

1. Review and approval of the minutes for meeting held on September 23, 2021.

2. **Public Hearing:** on the financing of proposed projects founds by the EDC to promote new or expanded business development, including (i) the acquisition of an interest in Crossroads Mall Partners, Ltd., whose primary asset is real property located within the City currently known as Wonderland of the Americas, and which acquisition results in the Corporation's acquisition of land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements and has been or will be found by the Board to promote new or expanded business development, and (ii) the payment of professional services related to the construction and financing of the aforementioned projects.

CITY AND CORPORATION BUSINESS ITEMS:

3. Wonderland of the Americas Project Update and Overview (Binford-McCall, Parkhurst & Horton, L.L.P.)

4. Other topics for future discussion.

5. ADJOURN

THE CITY OF BALCONES HEIGHTS
AND
BALCONES HEIGHTS ECONOMIC DEVELOPMENT CORPORATION, TYPE B

Delia R. Sanchez
City Secretary and Board Secretary

Any disruptive behavior, including shouting or derogatory statements or comments may be ruled out of order by the Presiding Officer. Continuation of this type of behavior could result in a request by the Presiding Officer that the individual be dropped or muted from the call.

The Board of Directors of the Balcones Heights Economic Development Corporation, Type B reserves the right to adjourn into **executive session** at any time to discuss any of the matters listed above, as authorized by Texas Government Code § 551.071 (Consultation with Attorney) and § 551.086 (Economic Development)

I, the undersigned authority, do hereby certify that this Notice of Meeting was posted on the bulletin board, at the Justice Center / City Hall of Balcones Heights, Texas, in a place convenient and readily accessible to the public at all times, and said **Notice was posted on the following date and time: October 22, 2021, at 5:00 P.M**. and remained so posted continuously for at least 72 hours preceding the scheduled time of said Meeting.

BALCONES HEIGHTS ECONOMIC DEVELOPMENT CORPORATION, TYPE B
REGULAR MEETING
In Person and (ZOOM)
Video/Teleconference
MINUTES
3300 Hillcrest Drive
Balcones Heights, TX 78201

DATE: September 23, 2021 TIME: 5:00 p.m.

Members Present:	Scott Rausch	Melissa Aguillon	Suzanne de Leon
	Gloria Cantu	Miguel Valverde	
Members Absent:	Madeline Slay	Stephen Lara	

Sign In Sheet: None

CALL TO ORDER AND RECORDING OF QUORUM

Meeting was called to order and quorum was present.

INVOCATION AND PLEDGES OF ALLEGIANCE TO THE U. S. A. AND TEXAS FLAGS

Director Suzanne de Leon gave the invocation and led pledges.

PUBLIC COMMENT PERIOD:

None

1. Review and approval of the minutes for meeting held on August 17, 2021.

MOTION: Motion to accept the minutes as proposed.

Motion by: Melissa Aguillon Second: Miguel Valverde 6/0/0 PASSED

2. Wonderland of the Americas Proposal Update (Binford)

- Timeline for funding and closing
- Documents will be distributed and highlighted by Clay Binford

3. Discussion and POSSIBLE ACTION regarding the EDC meeting schedule.

MOTION: Keep the schedule as described in the by-laws.

Motion by: Gloria Cantu Second: Melissa Aguillon 6/0/0 PASSED

4. Discussion and POSSIBLE ACTION regarding the meeting requirements of the current by-laws.

This item was covered with Item 3.

5. Other topics for future discussion.

None

6. ADJOURN

Meeting adjourned at 6:19 p.m.

BALCONES HEIGHTS ECONOMIC DEVELOPMENT CORPORATION, TYPE B
Submitted by:

Delia R. Sanchez
Board Secretary

LOAN AGREEMENT

BETWEEN

BALCONES HEIGHTS ECONOMIC DEVELOPMENT CORPORATION, TYPE B

AND

TRUIST BANK

DATED AND EFFECTIVE AS OF

NOVEMBER __, 2021

LOAN AGREEMENT

This LOAN AGREEMENT (this *Loan Agreement*) dated and effective as of November __, 2021, is between the BALCONES HEIGHTS ECONOMIC DEVELOPMENT CORPORATION, TYPE B (the *Borrower* or the *Corporation*), a Texas economic development corporation created by the City of Balcones Heights, Texas (the *City*) and duly organized and existing under Chapters 501, 502, and 505 of the Texas Local Government Code, as amended (the *Act*), and TRUIST BANK, [San Antonio, Texas,] (the *Bank*), a national banking association duly organized and existing under the laws of the United States of America and authorized to transact business in the State of Texas (the *State*).

RECITALS

WHEREAS, the City previously created the Corporation for the purpose of benefiting the City by use of the powers granted to the Corporation under the Act to promote and develop enterprises to promote and encourage employment and the public welfare; and

WHEREAS, the Corporation shall acquire a 45.72% ownership interest (the *Ownership Interest*) in Crossroads Mall Partners, Ltd. (the *Owner*), whose single asset is the Wonderland of the Americas mall (the *Property*), located in the City generally at the intersections of Interstate Highway 10, Loop 410, and Fredericksburg Road; and

WHEREAS, among other benefits to be realized from its acquisition of the Ownership Interest, the Corporation shall enter into a lease with the Owner (the *Lease*), pursuant to which the Owner will, as lessor, lease to the Corporation, as lessee, Space B-61 of the Property, (such space, as described in the hereinafter defined Sublease, *Space B-61*), for nominal annual rent; and

WHEREAS, the Lease allows the Corporation to sublease Space B-61 to the City for fair value rent; and

WHEREAS, the Corporation and the City have entered into that certain "Sublease Agreement Relating to Space B-61 at Wonderland of the Americas" (the *Sublease*) wherein the Corporation will sublease Space B-61 to the City for use by the City for Essential City Functions, as defined in the Sublease, for the duration of the Sublease; and

WHEREAS, the Corporation desires to obtain a loan, in the amount of [$5,400,000] (the *Loan*) from the Bank, the proceeds from which Loan will be used to (i) pay for the Corporation's costs of acquiring the Ownership Interest (the *Project*), and (ii) pay Costs of Issuance; and

WHEREAS, the Corporations shall pledge to the repayment of the Loan (1) Ownership Interest Distributions, as defined herein; and (2) the revenues received by the Corporation from the City under the Sublease; and

WHEREAS, on November __, 2021, the City Council of the City (the *City Council*) adopted the Ordinance formally requesting the Corporation to finance the costs of the acquisition of the Ownership Interest by accepting the Loan and entering into this Loan Agreement and approved and authorized the execution of the Sublease and all other documents to which the City is a party related to the Corporation's accepting the Loan; and

WHEREAS, pursuant to the City Council's request, the Board of Directors of the Corporation (the *Board*) approved the Resolution on November __, 2021, authorizing the Corporation's acceptance of the Loan and entering into this Loan Agreement and approved and authorized the execution of the Sublease and all other documents to which the Corporation is a party related to the Corporation's accepting the Loan; and

WHEREAS, the Bank is willing to make such Loan to the Borrower, on the terms and conditions set forth herein; and

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration and the mutual benefits, covenants and agreements set forth below, the parties agree as follows:

ARTICLE I

DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.01 Definitions.

In addition to the words and terms defined elsewhere herein, the following capitalized words and terms are defined terms under this Loan Agreement. When used herein, such words and terms shall have the meanings given to them by the language employed in this Article defining such words and terms, unless the context clearly indicates otherwise.

Authorized Representative means each of the President, the Vice President, the Secretary, and the Treasurer of the Board, and the City Administrator of the City.

Bank Indemnified Parties means the Bank, the directors, officers, partners, employees, or agents of the Bank, or any heirs, representatives, and successors of such persons or any person owned or controlled by, owning or controlling, or under common control or affiliated with the Bank, respectively.

Bank's Counsel means Moore & Van Allen, PLLC, or any other firm selected by the Bank.

Borrower Documents means this Loan Agreement, the Resolution, the Lease, the Sublease, the Note, any UCC financing statements, and any other documents necessary to effectuate the Loan.

Borrower's Counsel means McCall, Parkhurst & Horton L.L.P., San Antonio, Texas.

Business Day means a day on which the Bank and commercial banks in Texas are generally open for business.

Claims means all claims, lawsuits, causes of action and other legal actions and proceedings of whatever nature brought against (whether by way of direct action, counter claim, cross action or impleader) any Bank Indemnified Party, even if groundless, false, or fraudulent, so long as the claim, lawsuit, cause of action or other legal action or proceeding is alleged or determined, directly or indirectly, to arise out of, to result from, to relate to or to be based upon, in whole or in part:

(a) the making of the Loan, (b) the duties, activities, acts or omissions (even if negligent, but not if grossly negligent or constituting fraud, theft or willful misconduct by a Bank Indemnified Party) of any Person in connection with the making of the Loan, or the obligations of the various parties arising under the Borrower Documents, or (c) the duties, activities, acts or omissions (even if negligent, but not if grossly negligent or constituting fraud, theft or willful misconduct by a Bank Indemnified Party) of any Person in connection with the Project or any part of the transaction that is the subject of this Loan Agreement.

Closing means the delivery of the fully executed Borrower Documents to the Bank.

Closing Date means the date of Closing, anticipated to occur on November __, 2021.

Costs of Issuance means the reasonable costs and expenses incurred by the Borrower with respect to the authorization, execution and delivery of the Borrower Documents and all documentation related thereto, and the reasonable costs and expenses incurred by the Bank with respect to the authorization, execution and delivery of the Borrower Documents and all documentation related thereto.

Debt Service Requirements means, as of any particular date of computation, with respect to any obligations and with respect to any period, the aggregate of the amounts to be paid or set aside by the Borrower as of such date or in such period for the payment of the principal of, premium, if any, and interest (to the extent not capitalized) on such obligations; assuming, in the case of obligations without a fixed numerical rate, that such obligations bear interest at the maximum rate permitted by the terms thereof and further assuming in the case of obligations required to be redeemed or prepaid as to principal prior to Stated Maturity, the principal amounts thereof will be redeemed prior to Stated Maturity in accordance with the mandatory redemption provisions applicable thereto.

Default Rate means the greater of (i) the Prime Rate plus two-hundred basis points (or 2.00%) and (ii) 6.00%; provided, however, that the Default Rate shall never exceed the Maximum Rate.

Event of Default means, unless waived in writing by the Bank, the occurrence of any of the following:

(a) failure of the Borrower to make any payment required to be made hereunder when due;

(b) an event of default shall have occurred under any Borrower Document or any document related to or in connection with the Loan, and the continuation of such event of default beyond any applicable cure period or the occurrence of an event of default under documentation governing other Indebtedness of the Borrower that results in acceleration of such other Indebtedness or, in the Bank's reasonable opinion, will result in a Material Adverse Effect;

(c) any representation or warranty of the Borrower included in any Borrower Document is at any time untrue or inaccurate to a material degree, or the failure of the Borrower to comply with any other covenant, condition, or agreement under the Borrower Documents, respectively, and the continuation of such failure for a period of fifteen (15) days after the date that

the Borrower becomes aware of such untruth, inaccuracy, or failure, or the Borrower receives written notice of such failure from the Bank; or

(d) bankruptcy, insolvency, appointment of a receiver for, or the failure to discharge a judgment against, the Borrower.

Fiscal Year shall mean the Borrower's fiscal year operating period, being a period of time commencing on October 1 and ending on September 30 of each year.

GAAP means generally accepted accounting principles and practices recognized from time to time by the Financial Accounting Standards Board (or any generally recognized successor) consistently applied for all periods to properly reflect the financial condition, and the results of operations and changes in financial position, of the Borrower (and, on a consolidated basis, of the Borrower and its consolidated subsidiaries, if any and as applicable).

Governing Body of the Corporation means the Board of Directors of the Corporation, being its governing body.

Indebtedness means obligations issued or incurred by the Borrower, whether secured or unsecured, for borrowed money, guarantees, leases of real property, installment purchase agreements for real or personal property, or other similar obligations and liabilities which, under GAAP, are or will be required to be capitalized on the financial reports of the Borrower; provided that Indebtedness shall not include trade accounts payable.

Legal Requirements means all laws as now in effect and as hereafter amended, issued, promulgated, or otherwise coming into effect.

Litigation means any proceeding, claim, suit, action, case or investigation by, before or involving any Tribunal.

Loan means the loan from the Bank to the Borrower in the Principal Amount and payable under the terms of Article II hereof, which Loan is evidenced by the Note.

Loan Payments means the payments required by *Section 2.04* hereof to be made by the Borrower to the Bank from time to time in payment of the principal of and interest on the Loan.

Material Adverse Effect means an effect resulting from any circumstance or event of whatever nature (including the filing of, or any adverse determination or development in, any Litigation) which does, or could reasonably be expected to, (a) adversely affect the validity or enforceability of any Borrower Document, (b) materially and adversely affect the condition (financial or otherwise), operations, business or assets of the Borrower, (c) impair the ability of the Borrower to fulfill any material Obligation, or (d) cause an Event of Default or Potential Default.

Maximum Rate means a rate of interest not to exceed the rate specified, from time to time, by Chapter 1204, Texas Government Code, as amended (currently 15% per annum).

Net Excess Space Lease Revenues has the meaning ascribed thereto in the Sublease.

Note means the Borrower's non-negotiable Note delivered to the Bank by the Borrower to evidence the Loan, substantially in the form of the non-assignable promissory note attached hereto as Exhibit A, delivered in appropriate form in conjunction with the effectiveness of this Loan Agreement, and all extensions, renewals, and replacements thereof.

Note Payment Account means the special account created and established by the provisions of the Resolution for the deposit of revenues derived from the Pledged Security.

Note Proceeds Account means the special account created and established by the provisions of the Resolution for the receipt and use by the Corporation of Loan proceeds.

Obligations means the obligations of the Borrower under this Loan Agreement, the Loan, the Note, and any other Borrower Document, and any and all renewals, extensions, amendments, modifications, increases, and supplements or any of the foregoing.

Ordinance means the City ordinance adopted on November __, 2021 by the City Council of the City (i) authorizing the City to enter into, execute and deliver the Sublease (ii) pledging to the Corporation, as security for payment under the Sublease, the Net Excess Space Lease Revenues, as such term is defined in the Sublease, and (iii) authorizing the Corporation's pledge of the Pledged Security for its Obligations under this Loan Agreement.

Ownership Interest Distributions means periodic distributions of revenues received by the Borrower resulting from its ownership of the Ownership Interest.

Payment Date means any date on which a payment of principal of and interest on the Loan is due, to occur quarterly on February 15, May 15, August 15, and November 15 of each year, beginning May 15, 2022, until Stated Maturity or Loan prepayment.

Person means firms, associations, partnerships (including limited partnerships), joint ventures, trusts, corporations, and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

Pledged Security means (1) the Borrower's Ownership Interest; (2) the Borrower's Ownership Interest Distributions; and (3) the revenues received by the Borrower from the City under the Sublease (including the Sublease Payments and any Net Excess Space Lease Revenues) for the payment of the principal of and interest on the Note when due and other Obligations from time to time hereunder arising and owed by the Borrower to the Bank (that are also the obligation of the City under the Sublease).

Potential Default means any condition or event which after notice and/or lapse of time would constitute an Event of Default.

Prime Rate means [NEED FROM TRUIST]

Principal Amount means the sum total of the Note, being [$5,400,000}, and thereafter such initial principal amount less principal payments on the Loan theretofore paid by the Borrower (or on the Borrower's behalf).

Release Date as used herein means the date on which the Loan has been paid and performed in full and this Loan Agreement and the Note have been cancelled and released to the Borrower.

Resolution means the Corporation resolution adopted on November __, 2021 by the Governing Body, a copy of which is attached hereto as Exhibit C, authorizing the Corporation's entering and executing this Loan Agreement, and the other Borrower Documents, authorizing the Corporation's further pledge of the Pledged Security, and addressing other related matters, and any amendments or supplements thereto.

Stated Maturity when used with respect to any Indebtedness or any installment of interest thereon means any date specified in the instrument evidencing such Indebtedness as a fixed date on which the principal of such Indebtedness or a portion thereof or such installment of interest is due and payable.

Sublease means the sublease defined in the recitals to this Loan Agreement, a copy of which is attached hereto as Exhibit D.

Sublease Payments has the meaning ascribed thereto in the Sublease.

Tribunal means any state, commonwealth, county, municipal, federal, foreign, territorial or other governmental body, court, administrative department, commission, board, bureau, district, authority, agency, or instrumentality, or any arbitration authority.

Section 1.02 Interpretative Matters.

(a) Whenever the context requires:

(i) references in this Loan Agreement of the singular number shall include the plural and vice versa; and

(ii) words denoting gender shall be construed to include the masculine, feminine, and neuter.

(b) The titles given to any article or section of this Loan Agreement are for convenience of reference only and are not intended to modify the meaning of the article or section.

ARTICLE II

THE LOAN; REPAYMENT OF THE LOAN

Section 2.01 Agreement to Lend.

Subject to the terms and conditions set forth in this Loan Agreement, and for and in consideration of the payment by the Borrower of its Obligations under this Loan Agreement and the covenants and agreements herein contained, the Bank agrees to make and advance the proceeds (in their entirety) of the Loan to the Borrower, which proceeds will be utilized for the exclusive purpose of paying for the Corporation's costs of acquiring the Ownership Interest, and paying related Costs of Issuance.

Section 2.02 Conditions to Closing the Loan.

The Bank is under no obligation to deliver any Loan proceeds to the Borrower or to any other Person or firm, unless and until all of the conditions of this Loan Agreement have been fully satisfied, and strict proof thereof has been furnished by the Borrower to the Bank, in form and substance acceptable to the Bank, in its discretion, and until the Borrower has delivered the following documents, evidence, certificates, and other instruments to the Bank.

(a) Loan Closing. Closing of the Loan shall be subject to the following conditions:

(i) The representations of the Borrower herein shall be true, complete and correct in all material respects on the date hereof and on the Closing Date as if made on the Closing Date;

(ii) At the time of Closing, the Borrower Documents shall be in full force and effect, assuming due authorization and execution by the other parties thereto (as applicable), and shall not have been amended or supplemented except as may have been agreed to in writing by the Bank; and

(iii) At or prior to the Closing, the Bank shall have received each of the following documents:

(A) a copy of the Resolution and all other resolutions or other proceedings of the Borrower authorizing the acceptance of the Loan and the execution and delivery of the Borrower Documents, such Resolution or other proceedings certified by the Secretary of the Governing Body as having been duly adopted and being in full force and effect and as being true, accurate, and complete copies thereof;

(B) executed copies of the Borrower Documents;

(C) a copy of the Ordinance certified by the City Secretary of the City as having been duly adopted and being in full force and effect and as being true, accurate, and complete copy thereof;

(D) an opinion of Borrower's Counsel in substantially the form attached hereto as Exhibit B;

(E) payment to the Bank's Counsel a fee of $_____ (which may be paid from proceeds of the Loan as Costs of Issuance); and

(F) such other documents, certificates, and items as the Bank may reasonably require from time to time.

Section 2.03 Loan Features; Note.

(a) The Loan, made in its entirety on the Closing Date, shall be evidenced by the Note, which Note shall be dated the Closing Date. Loan proceeds are to be disbursed on the Closing

Date by the Bank to the Borrower, for deposit by the Borrower to the Note Proceeds Account (which proceeds shall be used by the Borrower, upon such deposit, in accordance with the provisions of the Resolution).

(b) Principal payments on the Loan, in the respective amounts indicated on Schedule I hereto, shall be payable on each Payment Date.

(c) Interest shall accrue on the principal of the Loan beginning on the Closing Date in accordance with the provisions hereof and while outstanding and unpaid. Such interest is payable, as set forth in Schedule I hereto, on each Payment Date and shall be computed on the basis of a 360-day year and the actual number of days elapsed. Matured or past due unpaid principal of or interest on the Loan shall bear interest until paid at the Default Rate.

(d) Any payment of interest on and/or principal of the Loan made in an amount less than the full amount then due and payable shall be deemed to constitute a payment of interest to the extent of all accrued interest then due and payable and the remainder of such payment, if any, shall be applied to the reduction of the outstanding Principal Amount of the Loan.

(e) The Bank and the Borrower agree that the Note is not (i) except as specifically (and limitedly) provided in *Section 2.8* hereof for the purpose of applying the provisions of Chapter 1208, as amended, Texas Government Code regarding perfection of the lien on Pledged Security as security for repayment of the Note, a "public security" under State law, or (ii) a "state or local bond" within the meaning of section 103(a) and (c) of the Internal Revenue Code of 1986, as amended (the *Code*) and, therefore, the interest on the Note is not excludable from the gross income of the holders thereof for federal income tax purposes.

(f) If the Bank reasonably determines after the Closing Date that any change in applicable laws, rules, or regulations regarding capital adequacy, or any change in the interpretation or administration thereof by any appropriate governmental agency, or compliance with any request or directive to the Bank regarding capital adequacy (whether or not having the force of law) of any such agency, increases the capital required to be maintained with respect to the Loan and therefore reduces the rate of return on the Bank's capital below the level the Bank could have achieved but for such change or compliance (taking into consideration the Bank's policies with respect to capital adequacy), then the Borrower will pay to the Bank from time to time, within fifteen (15) days of the Bank's written request, any additional amount required to compensate the Bank for such reduction. The Bank will request any additional amount by delivering to the Borrower a certificate of the Bank setting forth the amount necessary to compensate the Bank. The certificate will be conclusive and binding on the Borrower and the Bank, absent manifest error. The Bank may make any assumptions and may use any reasonable allocations of costs and expenses and any reasonable averaging and attribution methods.

Section 2.04 Loan Payments.

All Loan Payments shall be made on the applicable Payment Dates as provided in *Section 2.03* hereof and shall be paid to the Bank as holder of the Note at the address provided to the Borrower pursuant to *Section 7.02* hereof.

Section 2.05 Mandatory Tender.

Notwithstanding the principal amortization schedule agreed to by the Bank and the Borrower, the Loan shall be subject to mandatory tender, and the Borrower shall repay the then-outstanding principal amount of the Loan and all interest to such date accrued but then-remaining unpaid, to the Bank on the 10th anniversary of the Closing Date (being November __, 2031).

Section 2.06 Prepayment of Loan.

The Borrower shall have the right at any time and from time to time, upon at least seven (7) days prior written notice to the Bank, to prepay the outstanding Loan, in whole or in part, without premium or penalty, in an amount no less than the greater of (a) 10% of the outstanding amount of the Loan; and (2) $250,000.

Section 2.07 Limitation on Interest.

All agreements between the Borrower and the Bank, whether now existing or hereafter arising and whether written or oral, are hereby limited so that in no contingency, whether by reason of demand, prepayment, or otherwise, shall the interest contracted for, charged, received, paid or agreed to be paid to the Bank on the Loan, exceed an amount of interested calculated at the Maximum Rate. If, from any circumstances whatsoever, interest on the Loan would otherwise be payable to the Bank in excess of such maximum lawful amount, then the interest payable to the Bank shall be reduced to the maximum amount permitted under applicable law; and if from any circumstances the Bank shall ever receive anything of value deemed interest by applicable law in excess of the maximum lawful amount, an amount equal to any excessive interest shall be applied to the reduction of the outstanding Principal Amount of the Loan and not to the payment of interest, or if such excessive interest exceeds the outstanding Principal Amount of the Loan, such excess shall be refunded to the Borrower. All interest paid or agreed to be paid on the Loan to the Bank shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full period of the Loan until payment in full of the principal so that the interest on the Loan for such full period shall not exceed the maximum amount permitted by applicable law. This paragraph shall control all agreements between the Borrower and the Bank.

Section 2.08 Repayment of Loan; Pledge of Security.

The Borrower's obligation to pay to the Bank the amounts arising under this Loan Agreement, as evidenced by the Note and referred to herein as the Obligations, represents an unconditional and absolute obligation of the Borrower payable solely from the Pledged Security and a promise to pay such Obligations, which includes the Debt Service Requirements on the Loan coming due in any Fiscal Year, being (a) the interest on the Loan and (b) the principal amount of such Loan coming due in such Fiscal Year, as each of the foregoing is identified in Schedule I hereto. As security and as a source of payment for such Obligations, the Corporation hereby grants, assigns, and pledges a first and prior lien on the Pledged Security, and which Pledged Security shall be used by the Borrower for the purpose of paying the Debt Service Requirements on the Loan coming due and payable during any Fiscal Year and any other Obligations of the Borrower hereunder arising and being represented by the Note. In addition to the foregoing, the Borrower grants in favor of the Bank and lien on and pledge of the Note Payment Account and

amounts from time to time deposited to and held therein, as additional security for the payment of the Obligations. Notwithstanding the foregoing pledges and identification of payment source for the Obligations hereunder, the Corporation reserves the right to pay all or any portion of amounts owed by the Corporation hereunder with any other lawfully available funds made available to the Corporation by the City; provided, however, that no pledge or lien of any kind is granted by the City or the Corporation with respect to any such funds, accounts, revenues, or property thereof other than the Pledged Security.

THE LOAN, AS EVIDENCED BY THE NOTE, IS A SPECIAL OBLIGATION OF THE CORPORATION SECURED BY AND PAYABLE ONLY FROM THE SOURCES IDENTIFIED HEREIN. NONE OF THE STATE, OR ANY POLITICAL CORPORATION, SUBDIVISION, OR AGENCY OF THE STATE OR THE CITY SHALL BE OBLIGATED TO PAY THE NOTE OR THE INTEREST THEREON. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE, THE CITY, OR ANY OTHER POLITICAL CORPORATION, SUBDIVISION, OR AGENCY THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR THE INTEREST ON SUCH NOTE.

Chapter 1208, as amended, Texas Government Code, applies to the pledge of the Pledged Security granted by the Borrower under this section, and such pledge is therefore valid, effective and perfected. If Texas law is amended at any time while the Loan is outstanding and unpaid such that the pledge of the Pledged Security granted by the Borrower under this section is to be subject to the filing requirements of Chapter 9, Business & Commerce Code, then in order to preserve to Bank, as the registered owner of the Note, the perfection of the security interest in said pledge, the Borrower agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Business & Commerce Code and enable a filing to perfect the security interest in said pledge to occur.

Section 2.09 Nature of Obligations of the Borrower.

To the extent permitted by applicable law, the Borrower agrees that its obligations to make payments hereunder shall be absolute and unconditional, irrespective of any rights of set-off, diminution, abatement, recoupment or counterclaim the Borrower might otherwise have against any Person, and the Borrower will perform and observe all its payment obligations and covenants, representations and warranties hereunder without suspension and will not terminate the Borrower Documents for any cause, except as allowed for in the Borrower Documents, or as provided for under applicable law. Except to the extent permitted by applicable law, the Borrower covenants not to seek and hereby waives to the extent permitted by applicable law, the benefits of any rights which it may have at any time to any stay or extension of time for performance or to terminate, cancel or limit its liability under the Loan except through payment or deemed payment of the Loan as provided in the Borrower Documents. Further, the Borrower hereby covenants and agrees to not release the City from its obligations under the Sublease for so long as any Obligations hereunder remain unpaid. A holder of the Loan shall be entitled to rely upon the agreements and covenants in this *Section 2.08* regardless of the validity or enforceability of the remainder of this Loan Agreement or any other Borrower Document or agreement relative to the Loan.

The preceding paragraph shall not be construed to release the Bank from the performance of any of its agreements contained in this Loan Agreement, or except to the extent provided in this

Section 2.08, or prevent or restrict the Borrower, at its own cost or expense, from prosecuting or defending any action or proceeding against or by third parties or taking any other action to secure or protect its rights in connection with the Project and its rights under the Borrower Documents and applicable law.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Section 3.01 Representations and Warranties of Bank.

The Bank represents and warrants to the Borrower, the following:

(a) The Bank is a national banking association duly organized and existing under the laws of the United States of America and authorized to transact business in the State.

(b) The Bank has either been furnished with or had access to all necessary information that it desires in order to enable the Bank to make an informed decision concerning its making the Loan and accepting the Note as evidence thereof and security therefor, and the Bank had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the purpose for which the proceeds of the Loan will be utilized, and the security therefor, so that the Bank would have been able to make an informed decision to make the Loan and accept the Note.

(c) The Bank is entering into this Loan Agreement, making the Loan, and accepting the Note for its own account as evidence of a privately placed and negotiated bank loan and not with a view to, and with no present intention of, selling, pledging, transferring, conveying, hypothecating, mortgaging, disposing, reoffering, distributing, or reselling the Note, which is a non-negotiable instrument.

(d) The Bank is responsible for consulting with its advisors concerning any obligations, including, but not limited to, any obligations pursuant to applicable federal and state securities and income tax laws resultant from making the Loan and accepting the Note as evidence thereof.

(e) The Bank has taken all actions required to authorize and execute this Loan Agreement and to perform its obligations hereunder and the execution, delivery and performance by the Bank, and its compliance with the provisions of this Loan Agreement will not conflict with any existing law, regulation, rule, decree, or order or any agreement or other instrument by which the Bank is bound.

Section 3.02 Representations and Warranties of the Borrower.

The Borrower represents and warrants to the Bank as follows:

(a) The Borrower is an economic development corporation duly created and validly existing under the Act, for the purposes of benefiting the City by use of the powers granted to the Corporation under the Act to promote and develop enterprises to promote and encourage employment and the public welfare (as more fully described in the Borrower's creation documentation).

(b) The Borrower has all requisite power, authority and legal right (including, specifically, from authority arising under the Act) to execute and deliver the Borrower Documents and all other instruments and documents to be executed and delivered by the Borrower pursuant thereto, to perform and observe the provisions thereof and to carry out the transactions contemplated by the Borrower Documents.

(c) All necessary action on the part of the Borrower which is required for the execution, delivery, performance and observance by the Borrower of the Borrower Documents has been duly authorized and effectively taken, and such execution, delivery, performance and observation by the Borrower does not contravene applicable law or any contractual restriction binding on or affecting the Borrower.

(d) All necessary action on the respective parts of the City and the Borrower which is required for the execution, delivery, performance and observance by the City and the Borrower, respectively, of the Sublease has been duly authorized and effectively taken, and such execution, delivery, performance and observation by each of the City and the Borrower do not contravene applicable law or any contractual restriction binding on or affecting the City or the Borrower.

(e) The Resolution has been adopted by the Governing Body pursuant to applicable law and it remains valid and in effect as of the date hereof without modification, amendment, revocation or rescission.

(f) The Ordinance has been adopted by the City Council pursuant to applicable law and it remains valid and in effect as of the date hereof without modification, amendment, revocation or rescission.

(g) Pursuant to the Resolution, the Borrower has duly approved the borrowing of funds from the Bank in the form of the Loan; no other authorization or approval or other action by, and no notice to or filing with any Person that has not otherwise been received or obtained is required as a condition to the performance by the Borrower of its obligations under any of the Borrower Documents.

(h) Pursuant to the Ordinance, the City has duly approved the Borrower's pledge of the Pledged Security as security for such Loan.

(i) Assuming due authorization and execution by the other parties thereto, the Borrower Documents are legally valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their respective terms, except to the extent that the enforceability thereof may be affected by bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting creditors' rights or the exercise of judicial discretion in accordance with general principles of equity.

(j) There is no default of the Borrower or the City in the payment of the principal of or interest on any of its Indebtedness for borrowed money or under any instrument or instruments or agreements under and subject to which any Indebtedness for borrowed money has been incurred which does or could affect the validity and enforceability of the Borrower Documents or the ability of the Borrower and to perform its obligations thereunder or which does or could affect the validity and enforceability of the Sublease or the ability of the Borrower or the City perform their respective

obligations thereunder, and no event has occurred and is continuing under the provisions of any such instrument or agreement which constitutes or, with the lapse of time or the giving of notice, or both, would constitute such a default.

(k) There is no pending or, to the knowledge of the undersigned officer of the Borrower, threatened action, proceeding, or Litigation before any court, governmental agency, department, arbitrator, or other Tribunal (i) to restrain or enjoin the execution or delivery of this Loan Agreement, (ii) in any way contesting or affecting the authority for the execution and delivery or the validity of the Borrower Documents, or (iii) could result in a Material Adverse Effect.

(l) To the best of the Borrower's knowledge, neither the Borrower nor the City is in violation of or subject to any existing, pending or threatened investigation that would affect the validity or enforceability of the Note.

(m) To the best of the Borrower's knowledge, no employee, agent or representative of the Bank has any direct or indirect interest of any kind, or any right, agreement or arrangement to acquire such an interest in the Project, as owner, contractor, subcontractor, shareholder, general or limited partner, tenant or otherwise that would violate or require disclosure or other action under any law, regulation, charter or ordinance of the State or the Bank.

(n) Any certificate with respect to factual or financial matters signed by an Authorized Representative and delivered to the Bank shall be deemed a representation and warranty by the Borrower, and as applicable, the City, as to the statements made therein.

(o) All financial statements and other financial information regarding the City and the Borrower furnished by the City or on behalf of the Borrower by the City in writing to the Bank are true and correct in all material respects as of the dates specified therein, accurately present the financial condition of the Borrower and the City in all material respects as of the dates specified, and have been prepared in accordance with GAAP. No change has occurred in the City's or the Borrower's financial condition reflected therein (which are the financial statements of the City) since the respective dates of the most recent financial statements for such Person delivered to the Bank which constitutes a Material Adverse Effect.

(p) The Borrower and the City are both solvent after giving effect to the Loan.

(q) The proceeds of the Loan are not being used and shall not be used to purchase or carry any "margin stock" within the meaning of Regulation "U" of the Board of Governors of the Federal Reserve System, nor to extend credit to others for that purpose. To the extent required by applicable law, the Borrower is in compliance (and will comply) in all material respects with the Employee Retirement Income Security Act of 1974, as amended, and the Borrower has not incurred (and will not incur) any liability to the Pension Benefit Guaranty Corporation or any Tribunal succeeding to any or all of its functions thereunder. The Borrower is not a "foreign person" within the meaning of Sections 1445 and 7701 of the Code.

(r) The principal office, chief executive office and principal place of business of the Borrower, and the place where the Borrower maintains its principal records and books, is at the Borrower's address for notices as specified in *Section 7.02* hereof (which is also the address of the

City). The Loan is solely for the purposes specified in *Section 2.01* hereof, and not for personal family, household or agricultural purposes.

(s) Both the Borrower and the City, are in compliance with the Sublease and, to the extent applicable, this Loan Agreement.

(t) Each of the foregoing representations and warranties, which the Borrower represents are true and correct, shall be deemed to have been made as of the date of this Loan Agreement and (if different) the Closing Date. Any document delivered by the Borrower, or on the Borrower's behalf by the City, to the Bank is a true and accurate original or copy of such document.

ARTICLE IV

COVENANTS OF THE BORROWER

Section 4.01 Financial Covenants.

(a) For so long as this Loan Agreement remains in effect, the Borrower covenants to the Bank that it will:

(i) retain in the Note Payment Account the excess amount, if any, of Ownership Interest Distributions that are not otherwise required for annual Loan Payments until such time that this amount is equal to the minimal amount required by Section 2.06 for optional prepayment of the Loan and, immediately thereafter, use such Note Payment Account balance to optionally prepay, in accordance with the requirements of Section 2.06, the Loan in such corresponding principal amount within 30 days of the Corporation's accumulation of such threshold balance in the Note Payment Account.

(ii) provide to the Bank, not later than the day that is the 270th day after the end of its Fiscal Year, the Borrower's Comprehensive Annual Financial Report;

(iii) provide or cause to provide to the Bank, not later than the day that is 12 months after the end of the City's fiscal year, the City's Comprehensive Annual Financial Report;

(iv) deliver to the Bank such other information that the Bank shall reasonably request in writing from time to time;

(v) maintain a ratio of (1) change in unrestricted net assets plus depreciation expense, plus amortization expense, plus interest expense, plus unrealized and realized losses on investments, assets and derivative obligations, minus unrealized and realized gains on investments, assets and derivative obligations, minus net assets released from restriction to the extent not available for operations or debt service to (2) the sum of interest expense plus prior period's current portion of long-term debt (including the Loan) of not less than 1.0 to 1.0, tested annually (beginning with the fiscal year ending September 30, 2022); and

(vi) maintain the Bank as the Borrower's primary depository bank.

Section 4.02 Preservation of Existence and Rights.

The Borrower shall maintain and preserve its existence under the laws of the State and preserve, protect, renew and extend all franchises, permits, licenses, privileges, concessions, service contracts, and other material rights applicable to the Borrower.

Section 4.03 Payment and Performance.

The Borrower shall perform all the obligations arising under the Borrower Documents in accordance with their terms. The Borrower shall enforce its rights and remedies to compel the City performance of its obligations arising under the Sublease in accordance with its terms.

Section 4.04 Notice to the Bank.

The Borrower shall promptly notify the Bank in writing of any of the following events, specifying in each case the action the Borrower has taken or proposes to take with respect thereto: (a) the existence of any Event of Default or Potential Default; (b) any default by the Borrower or the City under any Legal Requirement, or any default by the Borrower or the City in the performance of any obligation, which constitutes a Material Adverse Effect; or (c) any change in the Borrower's name.

Section 4.05 Negative Covenants.

Except as expressly permitted herein, so long as all or any part of the Loan remains outstanding, the Borrower shall not, without the Bank's prior written consent, directly or indirectly waive or transfer any of the Borrower's rights, powers, duties, or obligations under this Loan Agreement. The Borrower shall not, without the Bank's prior written consent, (1) pledge the Pledged Security, including the revenues to be received from the City pursuant to the Sublease, as security for the source of repayment of any other Indebtedness of the Borrower; (2) otherwise incur Indebtedness that is payable from revenues of the Pledged Security.

Section 4.06 Further Assurances.

The Borrower shall promptly and duly execute and deliver to the Bank, at Borrower's own expense, such further documents, instruments and assurances and take such further action as the Bank may from time to time reasonably request in order to carry out the intent of the Borrower Documents, and to establish and protect the rights and remedies created or intended to be created in favor of the Bank hereunder and thereunder. The Borrower shall additionally provide, at its own expense, such certificates, documents, reports, information, affidavits and other instruments and do such further acts reasonably deemed necessary, desirable or proper by the Bank to comply with the requirements of any agency having jurisdiction over the Bank.

Section 4.07 No Assignment.

Neither the Bank nor the Borrower shall assign, transfer, or encumber its rights or obligations under any Borrower Document.

Section 4.08 Estoppel Certificate.

The Borrower shall at any time furnish within ten (10) days of request by the Bank a written statement in such form as may be required by the Bank, stating (a) that the Borrower Documents are valid, binding and enforceable obligations of the Borrower; (b) the outstanding Principal Amount of the Loan; (c) the dates on which interest and principal is paid; (d) that the Borrower Documents have not been released, subordinated or modified; (e) that there are no offsets or defenses against the enforcement of the Borrower Documents; and (f) any such other matters reasonably requested by the Bank. If any of the foregoing statements are untrue, the Borrower shall, alternatively, specify the reasons therefor.

Section 4.09 Books and Records; Inspection by the Bank.

The Borrower will keep accurate books and records in accordance with GAAP in which full, true and correct entries shall be promptly made with respect to the Project and the Borrower's operations. The Borrower shall permit the Bank to inspect such books and records, at all reasonable times.

Section 4.10 Indemnification of Bank Indemnified Parties.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE BORROWER SHALL INDEMNIFY AND HOLD HARMLESS THE BANK INDEMNIFIED PARTIES FROM AND AGAINST, AND REIMBURSE THEM ON DEMAND FOR, ANY AND ALL CLAIMS. SUCH INDEMNITIES SHALL NOT APPLY TO ANY BANK INDEMNIFIED PARTY TO THE EXTENT THAT THE SUBJECT OF THE INDEMNIFICATION IS CAUSED BY OR ARISES OUT OF THE GROSS NEGLIGENCE, FRAUD OR WILLFUL MISCONDUCT OF SUCH BANK INDEMNIFIED PARTY. ANY AMOUNT TO BE PAID UNDER THIS SECTION 4.10 BY THE BORROWER TO A BANK INDEMNIFIED PERSON SHALL BE A DEMAND OBLIGATION OWING BY THE BORROWER (WHICH THE BORROWER HEREBY PROMISES TO PAY FROM ANY LAWFULLY AVAILABLE SOURCE) TO SUCH BANK INDEMNIFIED PERSON, SHALL BE PART OF AND AN OBLIGATION UNDER THIS LOAN AGREEMENT, EVEN IF IN EXCESS OF THE SUM TO WHICH THE BANK AND THE BORROWER HAVE COMMITTED, AND SHALL BE SECURED BY THE BORROWER DOCUMENTS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, NOTHING IN THIS SECTION 4.10, ELSEWHERE IN THIS LOAN AGREEMENT OR IN ANY OTHER BORROWER DOCUMENT SHALL LIMIT OR IMPAIR ANY RIGHTS OR REMEDIES OF ANY BANK INDEMNIFIED PARTY (INCLUDING WITHOUT LIMITATION ANY RIGHTS OF CONTRIBUTION OR INDEMNIFICATION) AGAINST THE BORROWER OR ANY OTHER PERSON UNDER ANY OTHER PROVISION OF THIS LOAN AGREEMENT, THE NOTE, ANY OTHER AGREEMENT OR ANY APPLICABLE LEGAL REQUIREMENT. THE INDEMNITIES IN THIS SECTION 4.10 SHALL NOT TERMINATE UPON THE RELEASE DATE OR UPON THE RELEASE, OR OTHER TERMINATION OF ANY BORROWER DOCUMENT, INCLUDING THE NOTE, BUT WILL SURVIVE THE RELEASE DATE IDENTIFIED IN ARTICLE VI HEREOF, THE PAYMENT OF THE LOAN, THE DISCHARGE AND RELEASE OF THIS LOAN AGREEMENT AND THE NOTE, ANY BANKRUPTCY OR OTHER DEBTOR RELIEF PROCEEDING, AND ANY OTHER EVENT WHATSOEVER.

Section 4.11 Margin Loans.

Loan proceeds shall not be used to purchase or carry any "margin stock" within the meaning of Regulation "U" of the Board of Governors of the Federal Reserve System, nor to extend credit to others for that purpose. To the extent required by applicable law, the Borrower will comply in all material respects with the Employee Retirement Income Security Act of 1974, as amended, and the Borrower will not incur any liability to the Pension Benefit Guaranty Corporation or any Tribunal succeeding to any or all of its functions thereunder.

ARTICLE V

REMEDIES

Section 5.01 Remedies Available.

(a) Upon the occurrence of any Event of Default and at any time thereafter for so long as the Event of Default has not been cured, or the failure of the Bank to perform its duties and obligations arising hereunder, the non-defaulting party to this Loan Agreement may (i) take any action at law or in equity to enforce compliance with any obligation of the defaulting party under this Loan Agreement, and (ii) with respect to default by the Borrower, to collect all amounts then due under this Loan Agreement.

(b) In addition to the remedies provided in subsection (a) of this *Section 5.01*, the Bank shall, to the extent permitted by law, be entitled to recover the reasonable costs and expenses, including reasonable attorney's fees and court costs, incurred by the Bank in the proceedings authorized under subsection (a) of this *Section 5.01*, but only to the extent awarded under applicable law by a court of competent jurisdiction.

(c) Should an Event of Default occur, the Bank may (but without any obligation to do so) at its option and at any time, and without presentment, demand, or protest, notice of default, dishonor, demand, non-payment, or protest, or notice of any other kind, all of which the Borrower hereby expressly waives, except for any notice required by applicable statute which cannot be waived: (i) reduce any claim to judgment; (ii) to the maximum extent permitted under applicable laws, set-off and apply any and all deposits (general or special, time or demand, provisional or final), funds, or assets at any time held and any and all other indebtedness at any time owing by the Bank to or for the credit or the account of the Borrower against any and all obligations, whether or not the Bank exercises any other right or remedy hereunder and whether or not such obligations are then matured; and/or (iii) exercise any and all rights and remedies afforded by any of the Borrower Documents, or by law or equity or otherwise, as the Bank deems appropriate.

Section 5.02 Fees and Expenses.

(a) The Borrower agrees to pay promptly upon demand therefor all reasonable costs paid, incurred or charged by the Bank in connection with the Loan, including without limitation (i) all Costs of Issuance required to be paid to the Bank with respect to the Loan; (ii) all costs reasonably incurred by the Bank in connection with the enforcement of any of its rights or remedies or the performance of its duties under this Loan Agreement, the Sublease, or the Note, but only to the extent awarded under applicable law by a court of competent jurisdiction; and (iii) all

reasonable out-of-pocket expenses (including reasonable fees and expenses of attorneys employed by the Bank) reasonably incurred by the Bank in connection with the enforcement of any of its rights or remedies or the performance of its duties under this Loan Agreement or the Note, but only to the extent awarded under applicable law by a court of competent jurisdiction.

(b) The Bank may enforce the Borrower's obligations under this *Section 5.02* independently of any other remedies available to any Person against the Borrower pursuant to the terms and provisions of this Loan Agreement, the Sublease, and the Borrower Documents.

Section 5.03 Application of Money Collected.

Any money collected as a result of the taking of remedial action pursuant to this Article V, including money collected as a result of foreclosing the liens of this Loan Agreement, shall be applied in the Bank's discretion, including without limitation, to the costs of collection of such money, to the payment of the Loan and to cure the Event of Default with respect to which such remedial action was taken.

Section 5.04 Non-Exclusive Remedies.

No remedy conferred upon or reserved to a party under this Loan Agreement is intended to be exclusive of any other available remedy, and each such remedy shall be in addition to any other remedy given under this Loan Agreement or the Borrower Documents or now or hereafter existing at law or in equity.

Section 5.05 Delays.

No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or be construed to be a waiver thereof, and all such rights and powers may be exercised as often as may be deemed expedient.

Section 5.06 Limitation on Waivers.

If an Event of Default is waived, such waiver shall be limited to the particular Event of Default so waived and shall not be deemed a waiver of any other Event of Default; provided, that no waiver of an Event of Default shall be effective unless such waiver is made in writing.

ARTICLE VI

DISCHARGE BY PAYMENT

When the Loan has been paid in full (including all interest that has accrued thereon or that may accrue to the date of maturity or prepayment, as applicable), and all other amounts payable by the Borrower under this Loan Agreement have been paid, the Note shall be cancelled and liens of this Loan Agreement shall be discharged and released.

ARTICLE VII

MISCELLANEOUS

Section 7.01 Term of Loan Agreement.

This Loan Agreement shall become effective upon the Closing and shall continue in full force and effect until all obligations of the Borrower under this Loan Agreement have been fully paid.

Section 7.02 Notices.

(a) All notices, certificates, or other communications required by or made pursuant to this Loan Agreement shall be in writing and given by certified or registered United States mail, return receipt requested, addressed as follows:

(i) if to the Bank:

Truist Bank
100 NE Loop 410, Suite 806
San Antonio, Texas 78216
Attention: Cristina R. Martin
Telephone: 210.247.2978
Email: cristina.martin@truist.com

(ii) if to the Borrower:

Balcones Heights Economic Development Corporation, Type B
3300 Hillcrest
Balcones Heights, TX 78201
Attention: Executive Director

with copy to:

McCall, Parkhurst & Horton L.L.P.
112 E. Pecan Street, Suite 1310
San Antonio, Texas 78205
Attention: Clay Binford

(b) The Bank and the Borrower may designate any further or different addresses to which subsequent notices shall be sent; provided, that, any of such parties shall designate only one address for such party to receive such notices.

(c) Except as otherwise provided by this Loan Agreement, any communication delivered by mail in compliance with this Section is deemed to have been given as of the date of deposit in the mail.

(d) A provision of this Loan Agreement that provides for a specific method of giving notice or otherwise conflicts with this *Section 7.02* supersedes this Section to the extent of the conflict.

Section 7.03 Amendments.

No modification, alteration, or waiver of any term, covenant, or condition of this Loan Agreement shall be valid unless such modification is evidenced by written instrument duly executed by the parties hereto.

Section 7.04 Survival of Representations and Warranties.

All representations and warranties made in this Loan Agreement or any other Borrower Document shall survive the execution and delivery of this Loan Agreement, the Sublease, and the other Borrower Documents, and no investigation by the Bank or any closing shall affect the representations and warranties or the right of the Bank to rely upon them.

Section 7.05 Non-Application of Chapter 346 of Texas Finance Code.

The provisions of Chapter 346 of the Texas Finance Code, as amended, are specifically declared by the Bank and the Borrower not to be applicable to this Loan Agreement or any of the other Borrower Documents or the transactions contemplated hereby or thereby.

Section 7.06 Entire Agreement.

THIS LOAN AGREEMENT AND ALL OTHER INSTRUMENTS, DOCUMENTS AND AGREEMENTS EXECUTED AND DELIVERED IN CONNECTION WITH THIS LOAN AGREEMENT (INCLUDING THE OTHER BORROWER DOCUMENTS) EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THIS LOAN AGREEMENT, AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO.

Section 7.07 Binding Effect.

This Loan Agreement shall (a) be binding upon the parties hereto and their respective legal successors in interest, and (b) inure to the benefit of and be enforceable against such parties and their respective legal successors in interest.

Section 7.08 Severability.

If any part of this Loan Agreement is ruled invalid or unenforceable by a court of competent jurisdiction, the invalidity or unenforceability thereof shall not affect the remainder of this Loan Agreement.

Section 7.09 Survival.

The provisions of this Loan Agreement shall survive the execution of all instruments herein mentioned, and shall continue in full force until the Loan has been paid in full.

Section 7.10 Counterparts.

This Loan Agreement may be executed in several identical counterparts, each of which is to be deemed an original for all purposes, and all of which constitute, collectively, one agreement. In making proof of this Loan Agreement, it is not be necessary to produce or account for more than one such counterpart. Delivery of an executed counterpart of a signature page of this Loan Agreement by fax or other electronic imaging means will be effective as delivery of a manually executed counterpart of this Loan Agreement.

Section 7.11 Note Not a Public Security.

For the avoidance of doubt, the Note, made by the Borrower in favor of the Bank as security for the Loan (and not issued and sold, as contemplated by Section 1201.022, as amended, Texas Government Code), evidences a borrowing of the Borrower and is not a "public security" as such term is defined in Chapter 1201, as amended, Texas Government Code. The Bank does not intend to negotiate or sell participations in the Note.

Section 7.12 Applicable Law.

This Loan Agreement shall be governed in all respects, whether as to validity, construction, performance, or otherwise, by the laws of the State and, if applicable, federal law.

Section 7.13 USA PATRIOT ACT.

The Bank hereby notifies the Borrower and the City that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107 56 (signed into law October 26, 2001)) (the *Patriot Act*), it is required to obtain, verify and record information that identifies the Borrower and the City, which information includes the name and address of the Borrower and the City and other information that will allow the Bank to identify the Borrower and the City in accordance with the Patriot Act, and the Borrower hereby agrees to take any reasonable action necessary to enable the Bank to comply with the requirements of the Patriot Act. The Borrower and the City shall, promptly following a written request by the Bank, provide all documentation (to the extent such documentation is prepared or maintained in the ordinary course of business or may be prepared using such ordinarily available documentation) and other information that the Bank reasonably requests in order to comply with its ongoing obligations under applicable law or regulation, including, without limitation, "know your customer" and anti-money laundering rules and regulations, including the Patriot Act, and shall comply, and cause any of its affiliates, if any, to comply, with all applicable Bank Secrecy Act (BSA) laws and regulations, as amended.

The Borrower and the City shall (a) use their best efforts to ensure that no person who owns a controlling interest in or otherwise controls the Borrower or the City is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Asset Control (the *OFAC*), the Department of the Treasury or included in any

Executive Orders, that prohibits or limits the Bank from making any advance or extension of credit to the Borrower or the City or from otherwise conducting business with the Borrower or the City, and (b) ensure that the proceeds of the Loan shall not be used to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto.

Section 7.14 Electronic Storage.

The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files, and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action, or suit in the appropriate court of law.

Section 7.15 No Personal Liability.

None of the members of the Governing Body, the City Council, nor any officer, agent, or employee of the Borrower or the City, shall be charged personally by the Bank with any liability, or be held liable to the Bank under any term or provision of this Loan Agreement, any other Borrower Document, the Resolution, the Ordinance, or because of execution or attempted execution, or because of any breach or attempted or alleged breach, of any such document or agreement.

Section 7.16 Waiver of Jury Trial.

TO THE EXTENT ALLOWED BY LAW, EACH PARTY HERETO HEREBY WAIVES, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS LOAN AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS LOAN AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

* * *

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be executed by their respective duly authorized officer as of the date first above written.

BALCONES HEIGHTS ECONOMIC
DEVELOPMENT CORPORATION, TYPE B

By: _____
Name: _____
Title: Authorized Representative

TRUIST BANK

By: _____

Name: _____

Title: Authorized Officer

SCHEDULE I

DEBT SERVICE SCHEDULE

EXHIBIT A

FORM OF NOTE

THIS NOTE MAY NOT BE NEGOTIATED IN THE NAME OF BEARER AND IS NOT A REGISTERED OBLIGATION UNDER CHAPTER 1201, AS AMENDED, TEXAS GOVERNMENT CODE

PROMISSORY NOTE

Principal Amount: $_____ Date: _____ __, 2021

FOR VALUE RECEIVED, THE BALCONES HEIGHTS ECONOMIC DEVELOPMENT CORPORATION, TYPE B (the *Borrower*), does hereby promise to pay to the order of Truist Bank (the *Bank*), in lawful money of the United States of America, the Principal Amount set forth above, by and between the Borrower and the Bank (as amended, restated, supplemented and/or otherwise modified, the *Loan Agreement*), as made and for so long as the same remains outstanding and unpaid, until the earlier of the maturity or prepayment hereof, with interest thereon calculated as further set forth in Schedule I to the Loan Agreement, unless modified in accordance with the terms thereof. Such interest shall be calculated on the basis of a 360-day year and the number of days actually elapsed. Principal of the Loan evidenced by this Note shall be due and owing, and is payable, as described in the Loan Agreement.

Notwithstanding any other provisions of this Note, interest payable on this Note, together with any other costs, consideration, or payments in the nature of and constituting interest under applicable law (whether denominated as interest or as any other type of payment hereunder or thereunder, respectively) shall not exceed, and shall automatically be reduced to, the maximum amount or rate of interest permitted by applicable law as from time to time in effect (the *Maximum Rate*); and all such costs, consideration, and payments constituting interest shall be pro-rated, spread, and allocated, to the fullest extent permitted by law, to such periods and loan amounts as will cause the money so paid or received to conform to and comply with applicable law and the Maximum Rate.

UNLESS THE BORROWER SHALL BE IN DEFAULT under the Loan Agreement (in which case the amounts paid hereon shall be applied to the payment of the amounts and in the order specified in Subsection 2.03(c) of the Loan Agreement), all sums paid hereon shall be applied first to the satisfaction of interest, and the balance to the unpaid principal amount of this Note.

THIS NOTE is the Note referred to in the Loan Agreement, and is subject to all of the terms, conditions, and provisions thereof, including those respecting the prepayment and the acceleration of maturity hereof.

THIS NOTE is payable solely from the sources and funds provided in the Loan Agreement and from no other source. The holder of this Note shall have no recourse against the Borrower or any of its assets other than those provided in the Loan Agreement.

THIS NOTE is a contract made under and shall be construed in accordance with and governed by the laws of the State of Texas.

BALCONES HEIGHTS ECONOMIC
DEVELOPMENT CORPORATION, TYPE B

By: _____
Name: _____
Title: Authorized Representative

EXHIBIT B

FORM OF OPINION OF BORROWER'S COUNSEL

See Tab __

EXHIBIT C

RESOLUTION

See Tab __

EXHIBIT D

SUBLEASE

See Tab __

SECOND AMENDED AND RESTATED

LIMITED PARTNERSHIP AGREEMENT

OF

CROSSROADS MALL PARTNERS, LTD.

a Texas limited partnership

THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE. SUCH SECURITIES MAY NOT BE SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED AT ANY TIME WHATSOEVER, EXCEPT UPON SUCH REGISTRATION OR UPON DELIVERY TO THE PARTNERSHIP OF AN OPINION OF COUNSEL SATISFACTORY TO THE GENERAL PARTNERS OF THE PARTNERSHIP THAT REGISTRATION IS NOT REQUIRED FOR SUCH TRANSFER AND/OR THAT SUCH TRANSFER SHALL NOT BE IN VIOLATION OF THE SECURITIES ACT OF 1933, AS AMENDED, AND/OR APPLICABLE STATE SECURITIES LAWS AND/OR ANY RULE OR REGULATION PROMULGATED THEREUNDER.

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SECOND AMENDED AND RESTATED
LIMITED PARTNERSHIP AGREEMENT
OF
CROSSROADS MALL PARTNERS, LTD.
(a Texas limited partnership)

THIS SECOND AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT OF CROSSROADS MALL PARTNERS, LTD. (the "Agreement") is made and entered into to be effective as of this the __ day of November, 2021 (the "Effective Date"), by and among SCW CROSSROADS MALL GP, LLC, a Texas limited liability company (the "SCW General Partner"), SR CROSSROADS MALL GP, LLC, a Texas limited liability company (the "SR General Partner"), as co-general partners, and the Class A limited partners, Class B limited partners and Class C limited partner identified on Exhibit "D" attached hereto (each, a "Limited Partner" and collectively, the "Limited Partners").

WITNESSETH:

WHEREAS, the Partnership has been governed by that certain Amended and Restated Partnership of Crossroads Mall Partners, Ltd., a Texas limited partnership dated as of November 7, 2012, as amended by that certain First Amendment to Amended and Restated Limited Partnership Agreement of the Partnership dated January 1, 2013, that certain Second Amendment to Amended and Restated Limited Partnership Agreement dated March 25, 2015, that certain Third Amendment to Amended and Restated Limited Partnership Agreement dated January 1, 2017, and that certain Fourth Amendment to Amended and Restated Limited Partnership Agreement dated January 1, 2017 (collectively, as amended, the "Original Partnership Agreement");

WHEREAS, the Partners desire to create a new class of Partners to admit Balcones Heights Economic Development Corporation, Type B, as the Class C Limited Partner in the Partnership in exchange for the Balcones Heights Economic Development Corporation, Type B's Capital Contribution into the Partnership on the Effective Date;

WHEREAS, the Partners now wish to amend and restate the Original Partnership Agreement to formalize their understanding and agreements and reduce such agreements to writing;

WHEREAS, pursuant to Section 5.2(xi) and Section 11.3 of the Original Partnership Agreement, the Original Partnership Agreement can be amended with the approval and consent of the Managing General Partner and the SR General Partner, without requiring the consent of the remaining Partners; and

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

ARTICLE I.

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

(a) "Adjusted Capital Account Deficit" means, with respect to any Partner, the deficit balance, if any, in such Partner's Capital Account as of the end of the relevant Partnership Year, after giving effect to the following adjustments:

(i) Credit to such Capital Account any amounts which such Partner is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(ii) Debit to such Capital Account the items described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), and 1.704-1(b)(2)(ii)(d)(6).

The foregoing definition is intended to comply with the provisions of Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted and applied consistently therewith.

(b) "Affiliate" means, with respect to a Partner (i) any member of the immediate family of an individual Partner, including parents, siblings, spouse and children (including those by adoption); the parents, siblings, spouse, or children (including those by adoption) of such immediate family member; and in any such case any trust whose primary beneficiary is such individual Partner or one or more members of such immediate family and/or such Partner's lineal descendants; (ii) the legal representative or guardian of such individual Partner or of any such immediate family members in the event such individual Partner or any such immediate family members becomes mentally incompetent; (iii) any Person that, either directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Partner, and (iv) any agency of any Partner. The term "control", as used in the immediately preceding sentence, means, with respect to a Person that is a corporation, the ownership of or the right to exercise, directly or indirectly, more than twenty percent (20%) of the voting rights attributable to the shares of the controlled corporation or, with respect to a Person that is not a corporation, the ownership of more than twenty percent (20%) of such Person, or being in possession, directly or indirectly, of the power to direct or cause the direction of the day-to-day management or policies (whether through ownership of securities or any partnership or other ownership interest, by contract or otherwise) of the Person.

(c) "Agreement" means this Second Amended and Restated Limited Partnership Agreement, as amended from time to time.

(d) "Bankruptcy" means, as to any Partner, that Partner's taking or acquiescing in the taking of any action seeking relief under, or advantage of, any applicable debtor relief, liquidation, receivership, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization, or similar law affecting the rights or remedies of creditors generally, as in effect from time to time. For the purpose of this definition, the term "acquiescing" shall include, without limitation, (i) the failure to cause to be dismissed, within thirty (30) days after its commencement, any action against such Partner seeking any liquidation, receivership, conservatorship, bankruptcy,

moratorium, rearrangement, insolvency, reorganization or similar relief under any present or future law; (ii) the failure to have stayed, within thirty (30) days after its entry, any order or proceeding affecting the business operations of such Partner; or (iii) the failure to have vacated any order or proceeding if the stay of such order or proceeding shall thereafter be set aside.

(e) "Capital Account" means the account established for each Partner pursuant to Section 4.4.

(f) "Capital Contributions" means, with respect to the General Partners, the Class A Limited Partners, or the Class C Limited Partner, the aggregate amount of money and the fair market value of any property (other than money) contributed to the Partnership with respect to the Ownership Interests held by such Partner, including, without limitation, the amount of capital described in Section 4.1 contributed by the Class A Limited Partners to the Partnership. Loans to the Partnership shall not be included in the Capital Account of any Partner. The principal amount of a promissory note which is not readily traded on an established securities market and which is contributed to the Partnership by the maker of the note shall not be included in the Capital Account of any Partner until the Partnership makes a taxable disposition of the note or until (and to the extent) principal payments are made on the note, all in accordance with Regulations.

(g) "Capital Event" means (i) the sale of the Property, (ii) the sale of a majority of the Ownership Interests of the Partnership to an unrelated (meaning not a Permitted Transferee under Section 6.2(b)) third party, or (iii) a refinance of any indebtedness due and owing on the Property that produces proceeds in excess of the indebtedness being refinanced.

(h) "Certificate" means the certificate of formation concerning the Partnership filed with the Secretary of State of the State of Texas in accordance with the TLPL.

(i) "Change of Control" means with respect to a person, any direct or indirect change in the ownership or control of any legal, beneficial, or equitable interest in any or all of the shares or equity in the person (including the control over the exercise of voting rights conferred on equity share capital, unit interests or the control over the right to appoint or remove directors, a general partner, a managing member, or other managers), including change arising from assignment or transfer of existing shares of equity, issuance of new shares or equity amalgamation, merger, consolidation, amendment of a limited liability company certificate, or other reorganization, or any other direct or indirect change which results in a person or group of persons, other than the equity holders of the entity immediately prior to the change, directly or indirectly:

(A) Controlling the composition of the majority of the board of directors of the entity or of a general partner or manager of the entity;

(B) Controlling the decisions made by or on behalf of the person, including by controlling the voting power of the board of directors or by controlling the voting power of any class of shareholders or equity holders of any of the entity, a general partner of the entity, or a manager of the entity, or otherwise;

(C) Holding equity (either beneficially or otherwise) of that entity with a subscribed value (taking into account contributions to be made in the case of a limited liability company) of more than one half of the subscribed value (taking into account contributions to be made in the case of a limited liability company) or equity (either beneficially or otherwise) of that entity with more than one half of the voting rights; or

(D) Having the ability to direct or cause the direction of the management, actions, or policies of the entity.

(j) "Code" means the Internal Revenue Code of 1986, as amended.

(k) "Class A Limited Partners" means the Limited Partners identified as Class A Limited Partners on Exhibit D attached hereto. Class A Limited Partners have the same voting rights as Class B Limited Partners.

(l) "Class A/B Limited Partner Partnership Interest" means the combined percentage ownership of the Class A Limited Partners and the Class B Limited Partners in the Partnership, as set forth on Exhibit "D" attached hereto.

(m) "Class B Limited Partners" means the Limited Partners identified as Class B Limited Partners on Exhibit "D" attached hereto. Class B Limited Partners have the same voting rights as Class A Limited Partners.

(n) "Class C Limited Partner" means the Balcones Heights Economic Development Corporation, Type B. The Class C Limited Partner has the voting rights as stated on Exhibit "E" attached hereto.

(o) "Depreciation" means, for each Partnership Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable for federal income tax purposes with respect to an asset for such Partnership Year, except that (i) with respect to any asset the Gross Asset Value of which differs from its adjusted basis for federal income tax purposes and with respect to which the "remedial method" under Regulations Section 1.704-3(d) is used to eliminate such difference, Depreciation for such Partnership Year shall be the amount of book basis recovered for such Partnership Year under the rules prescribed by Regulations Section 1.704-3(d)(2), and (ii) with respect to any other asset the Gross Asset Value of which differs from its adjusted basis for federal income tax purposes at the beginning of such Partnership Year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Partnership Year bears to such beginning adjusted basis; provided, however, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Partnership Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any

reasonable method approved by the Managing General Partner, the SR General Partner and the Class C Limited Partner.

(p) "General Partners" means the Managing General Partner and the SR General Partner.

(q) "Gross Asset Value" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(i) The initial Gross Asset Value of any asset contributed by a Partner to the Partnership shall be the gross fair market value of such asset, as determined by the contributing Partner and the Managing General Partner and approved by the Class C Limited Partner;

(ii) The Gross Asset Values of all Partnership assets shall be adjusted to equal their respective gross fair market values, as determined by the Managing General Partner, as of the following times: (A) the acquisition of additional Ownership Interests by any new or existing Partner in exchange for more than a *de minimis* contribution to the capital of the Partnership; (B) the distribution by the Partnership to a Partner of more than a *de minimis* amount of Partnership assets as consideration for all or a portion of an Ownership Interest; and (C) the liquidation of the Partnership within the meaning of Regulations Section 1.704-1(b)(2)(ii)(*g*); provided, however, that adjustments pursuant to clauses (A) and (B) shall be made only if the Managing General Partner reasonably determines based on the advice of the Partnership's tax advisors that such an adjustment is necessary or appropriate to reflect the relative economic interests of the Partners in the Partnership. For purposes of making adjustments pursuant to this subparagraph (ii), the gross fair market values of Partnership assets shall be determined immediately prior to the event causing such adjustment;

(iii) the Gross Asset Value of any Partnership asset distributed to any Partner shall be adjusted to equal the gross fair market value of such asset on the date of distribution as determined by the distributee and the Managing General Partner; and

(iv) the Gross Asset Values of Partnership assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(*m*); provided, however, that Gross Asset Values shall not be adjusted pursuant to this subparagraph (iv) to the extent the Managing General Partner determines that an adjustment pursuant to subparagraph (ii) is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subparagraph (iv).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to subparagraphs (i), (ii), or (iv), such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

(r) "Imputed Underpayment" means an imputed underpayment within the meaning of Section 6225(b) of the Code, and any associated penalties, interest and additions to tax for such imputed underpayment.

(s) "Income Tax Liability" of any Partner with respect to any calendar year means the deemed liabilities of such Partner for U.S. federal income taxes for such year imposed under any applicable U.S. federal tax law (i.e., reflecting all items and the amounts thereof in the period properly applicable thereto for tax accounting purposes) resulting from allocations of net taxable income and net short-term and long-term capital gains by the Partnership to such Partner, as determined by the Managing General Partner assuming that the then applicable maximum U.S. federal income tax rates for individuals apply to each such Partner (and taking into account the different character of the net taxable income and net short-term and long-term capital gains allocated by the Partnership).

(t) "Liquidating Trustee" means the Person appointed pursuant to Section 9.4 to supervise the liquidation of the Partnership.

(u) "Lockout Period" shall mean the ten (10) year period following the Effective Date.

(v) "Majority-in-Interest" means the vote of the Limited Partners possessing in the aggregate more than fifty-one percent (51%) of the Voting Percentages of the Limited Partners.

(w) "Managing General Partner" means the SCW General Partner or any other person admitted under this Agreement in the capacity of managing general partner in the Partnership, each for only so long as the person remains as a managing general partner in accordance with this Agreement and the TLPL.

(x) "Nonrecourse Deductions" has the meaning assigned to that term in Regulations Section 1.704-2(b)(1).

(y) "Nonrecourse Liability" has the meaning assigned to that term in Regulations Section 1.704-2(b)(3).

(z) "Ownership Interest" means the interest in the Partnership owned by a Partner in accordance with this Agreement.

(aa) "Partner" means a Limited Partner or either General Partner, as the case may be.

(bb) "Partner Nonrecourse Debt" has the meaning assigned to that term in Regulations Section 1.704-2(b)(4).

(cc) "Partner Nonrecourse Deductions" has the meaning assigned to that term in Regulations Section 1.704-2(i).

(dd) "Partners" means collectively the General Partners and the Limited Partners.

(ee) "Partnership" means the limited partnership formed pursuant to this Agreement.

(ff) "Partnership Assets" means the real, personal and intangible property of the Partnership.

(gg) "Partnership Minimum Gain" has the meaning assigned to that term in Regulations Section 1.704-2(d).

(hh) "Person" means an individual, partnership, corporation, limited liability company, trust, unincorporated association, or other entity or association.

(ii) "Preferred Return" means, with respect to each Class A Limited Partner and Class B Limited Partner, a return in dollars, computed as interest at a rate equal to fifteen percent (15%) per annum (simple and not compounded) which shall accrue on a day-by-day basis on the balance of the excess (the "Contribution Excess") of (i) the Capital Contributions made to the Partnership by such Class A Limited Partner or Class B Limited Partner since the inception of the Partnership and prior to the Effective Date (the "Partnership Capital Contributions"), over (ii) the amounts distributed to such Limited Partner pursuant to Section 8.7(e)(ii) (including by way of Section 9.5) since the inception of the Partnership (the "Partnership Distributions").

(jj) " Preferred Return on 2021 Working Capital Contribution" means, with respect to each Class A Limited Partner and Class B Limited Partner who makes a 2021 Working Capital Contribution, a return in dollars, computed as interest at a rate equal to three quarters of one percent (0.75 %) above the Prime Rate per annum (simple and not compounded) which shall accrue on a day-by-day basis on the balance of the (i) the 2021 Working Capital Contribution made to the Partnership by such Class A Limited Partner or Class B Limited Partner pursuant to Section 4.1 over (ii) the amounts distributed to such Limited Partner pursuant to Section 8.7(d) (including by way of Section 9.5) since advanced to the Partnership.

(kk) "Prime Rate" means the Prime Rate announced and in effect from time to time by the Wall Street Journal (being a composite of the prime rates from time to time announced or in effect at the 30 largest U.S. banks) or, if the Wall Street Journal discontinues publication of such rate, a reasonably equivalent substitute rate selected by the General Partners and approved by the Class C Limited Partner.

(ll) "Profits" and "Losses" mean, for each Partnership Year, an amount equal to the Partnership's taxable income or loss for such Partnership Year, determined in accordance with Code Section 703(a), including all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1), with any adjustments that are necessary or appropriate in order that the Capital Accounts will be considered to be determined and maintained in accordance with the rules of Regulations Section 1.704-1(b)(2)(iv); provided, however, that in lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account depreciation, amortization, and other cost recovery deductions for such Partnership Year, computed in accordance with the definition of "Depreciation"; provided, further, that any items which are specially allocated pursuant to the Regulatory Allocations shall not be taken into account in computing Profits or Losses. The amounts of the items of Partnership income, gain, loss, or deduction available to be specially allocated pursuant to the Regulatory Allocations shall be determined by applying rules analogous to those applicable pursuant to the foregoing requirements.

(mm) "Property" means that certain tract of land located in Bexar County, Texas, and more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference, together with all improvements thereon and rights and appurtenances thereto.

(nn) "Regulations" means the Treasury Regulations on Income Tax, 26 C.F.R., as effective as of the date of this Agreement.

(oo) "TLPL" means the Texas Limited Partnership Law, part of the Texas Business Organizations Code, as amended from time to time.

(pp) "Voting Percentage" means the voting percentages of the Class A Limited Partners, the Class B Limited Partners and the Class C Limited Partner in the Partnership, as set forth on Exhibit "E" attached hereto.

The definitions contained in this Section 1.1 are operative terms of this Agreement and the covenants or agreements of the parties contained in any definition paragraph in this Section shall be as much a part of this Agreement as any other operative part of this Agreement.

Each of the following terms is defined in the part or Section of this Agreement set opposite such term:

Term	Section
2021 Working Capital Contribution	4.1
Agreement	Preamble
Allocation Provisions	8.20
Available Cash	8.5
Bankrupt Partner	6.4(a)
Bankruptcy Notice	6.4(a)
Bankruptcy Notice Date	6.4(a)
Budget	5.1(b)(i)
Call Option	6.14
Call Option Notice	6.14(a)
Call Option Price	6.14(b)
Capital Account	4.4
Collateral	11.13
Contribution Excess	1.1(ii)
Closing	6.6
Death Notice	6.3(a)
Deceased Partner	6.3(a)
Effective Date	Preamble
Fair Market Value	6.5(a)
Falcon Bank Loan	11.13
Indemnified Parties	5.6
Lender	11.13
Limited Partner(s)	Preamble
Liquidating Trustee	9.4
Loan Agreement	11.13

Loan Documents	11.13
Major Decisions	5.2
Management and Leasing Agreement	5.1(a)(ii)
Notice Date	6.3(c)
Optional Loan(s)	4.5
Original Partnership Agreement	Recitals
Partnership Assets	6.5
Partnership Loans	10.1(b)
Partnership Representative	5.11(b)
Partnership Year	8.4
Permitted Transfer	6.2(b)
Purchaser	6.5(a)
Regulatory Allocations	8.10(i)
Reserves	8.5
SCW General Partner	Preamble
Securities Acts	6.9
Section 6.3 Selling Partner	6.3
Section 7.04 Rules	8.20
Security Instrument	11.13
Selling Partner	6.3(a)
Space B-61 Lease	12.1
Special Class C Contribution	4.3
SR General Partner	Preamble
Winding Up Event	9.1(a)
WRM	5.1(a)(ii)

ARTICLE II.

2.1 **Formation of Partnership**. The parties hereto have formed the Partnership as a limited partnership pursuant to the TLPL. The rights and liabilities of the Partners shall, except as hereinafter expressly stated to the contrary, be as provided for in the TLPL. All costs of formation of the Partnership will be paid by the Partnership.

2.2 **Partnership Name**. The business of the Partnership shall be conducted under the name of "Crossroads Mall Partners, Ltd." or such other name as the General Partners may select from time to time with the consent of the Class C Limited Partner.

2.3 **Principal Office; Agent for Service of Process**. The principal place of business of the Partnership shall be at 730 N. Post Oak Road, Suite 730, Houston, Texas 77024, and at such other locations within or outside the State of Texas as may be determined by the Managing General Partner and approved by the Class C Limited Partner. The agent and his office for service of process on behalf of the Partnership shall be Sid C. Weiss, 730 N. Post Oak Road, Suite 730, Houston, Texas 77024, until changed by the Managing General Partner, with the consent of the Class C Limited Partner.

2.4 **Term of Partnership**. The Partnership shall commence on the first proper filing of a certificate of formation as provided in the TLPL and the execution of this Agreement, and shall continue as provided herein until the business and affairs are wound up as provided in Section 9.1.

2.5 **Certificate of Formation**. The Managing General Partner shall, for and on behalf of the Partnership, immediately execute, file, record and/or publish such certificates and other documents, including, without limitation, a certificate of formation to be filed pursuant to Section 3.005 of the TLPL, and take all other appropriate action, to comply with all legal requirements for the formation of a limited partnership under the TLPL. Copies of all such documents will be provided to all Partners by the Managing General Partner.

ARTICLE III.

3.1 **Purposes of the Partnership**. The sole purpose of the Partnership shall be to acquire, develop, own, hold, sell (all or a portion), lease, transfer, exchange, manage, maintain and operate all or part of the Property and incidental personal and intangible property related thereto, finance and refinance the Property, and transact lawful business that is incident, necessary and appropriate to accomplish the foregoing.

3.2 **Ownership of Partnership Assets**. The Partners hereby acknowledge and agree that the Partnership will hold legal title to the Partnership Assets and, insofar as permitted by applicable law, no Partner shall have any ownership interest in any Partnership Assets in such Partner's individual name or right, and each Partner's Ownership Interest in the Partnership shall be personal property for all purposes. No Partner or any principal of any Partner has any interest in the Partnership or proceeds from the Partnership other than as expressly set forth herein.

ARTICLE IV.

4.1 **Capital Contributions of the Partners**.

(a) As of the Effective Date, each Class A Limited Partner and Class B Limited Partner has made the Capital Contributions set forth on Exhibit "D" in exchange for the Ownership Interest granted to such Partners and such Partners respective Class A/B Limited Partner Partnership Interests are as set forth on Exhibit "D" attached hereto. The General Partner is hereby authorized to amend Exhibit "D" from time to time to reflect the admission of new Limited Partners, issuance of additional Ownership Interests and/or the making of any additional Capital Contributions, provided they are done in accordance with the terms of this Agreement. The Class C Limited Partner has contributed $5,000,000 as of the Effective Date, in exchange for the Ownership Interest in the Partnership to be issued to such Class C Limited Partner as evidenced on Exhibit "D".

(b) As of the Effective Date one or more Class A and/or Class B Limited Partners as listed on Schedule 2 attached hereto has contributed the aggregate sum of $500,000 in cash (the "2021 Working Capital Contribution") to the Partnership, which 2021 Working Capital Contribution shall immediately upon deposit constitute a Partnership asset and Reserves under Section 8.5, respectively. Unreimbursed portions of the 2021 Working Capital Contribution shall accrue interest at three quarters of one percent (0.75%) above the Prime Rate, adjusted daily and be repaid to the contributing Partners in accordance with Section 8.7 below.

Except as set forth in this Section 4.1 and Section 4.3, the Partners shall have no other mandatory obligations to contribute capital to the Partnership.

4.2 **No Third-Party Beneficiary**. The Partners hereby confirm and acknowledge that it is their intention that the covenants and agreements contained in Section 4.1 are personal between and among the Partners and that no third party, including without limitation, any third-party creditor of the Partnership or of the General Partners, shall be entitled to the benefits of those Sections.

4.3 **Additional Class C Capital Contribution**. In the event the Class C Limited Partner exercises its right to occupy lease Space B-61 within the Property, the Class C Limited Partner shall, prior to the Partnership's commencement of tenant improvements for Space B-61, make a cash contribution to the Partnership in an amount equal to the lesser of $400,000 and the estimated cost of such tenant improvements (the "Special Class C Contribution"). The Partnership shall not be required to spend more than the Special Class C Contribution for construction of the tenant improvements for Space B-61. The Partnership shall deposit the Special Class C Contribution in a separate unencumbered account and apply the same solely toward the payment of costs incurred in the tenant improvements for Space B-61. Upon completion of such tenant improvements and payment of all associated costs, the Partnership shall refund to the Class C Limited Partner any portion of the Special Class C Contribution that remains unspent, and the Special Class C Contribution shall be reduced by such refunded amount.

4.4 **Capital Accounts**.

(a) Capital accounts shall be maintained for each Partner which shall reflect the value of their investment in the Partnership (a "Capital Account"). Capital Accounts shall be maintained in accordance with the applicable Regulations, or any successor regulation, and the provisions of this Agreement relating to the maintenance of Capital Accounts shall be interpreted and applied in a manner consistent therewith.

(b) Subject to Section 4.4(a), the Capital Account of each Partner shall be (i) credited with (A) the amount of cash and the Gross Asset Value (determined by the General Partners and the contributing party) of any property contributed to the Partnership by such Partner (net of liabilities secured by such contributed property that the Partnership is considered to assume or take subject to under Section 752 of the Code), (B) any Profits and individual items thereof allocated to such Partner pursuant to Article VIII, and (C) the amount of any Partnership liabilities assumed by such Partner, and (ii) debited with (D) the amount of cash and the Gross Asset Value of any property (determined by the Managing General Partner and the receiving party) distributed to such Partner (net of liabilities secured by such distributed property that such Partner is considered to assume or take subject to under Section 752 of the Code), (E) any Losses and individual items thereof allocated to such Partner pursuant to Article VIII, and (F) the amount of any liabilities of such Partner assumed by the Partnership. Notwithstanding anything to the contrary contained herein, the Capital Accounts of the Partners shall be determined and maintained in all events solely in accordance with the capital account maintenance rules set forth in Sections 1.704-1(b) of the Regulations, and this Section 4.4 shall be interpreted and applied in a manner consistently therewith. Any references in this Agreement to the Capital Account of a Partner shall be deemed to refer to such Capital Account as the same may be credited or debited from time to time as set forth above.

(c) In the event all or a portion of an Ownership Interest is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Ownership Interest.

4.5 **Optional Loans**. Subject to the prior approval of the Managing General Partner, any Partner or an affiliate of any Partner, may, but shall not be obligated to, make loans to the Partnership (individually, an "Optional Loan," and collectively, the "Optional Loans"), from time to time, to cover Partnership obligations and operating cash deficits. Such Optional Loans shall be offered to all Partners *pro rata*, and shall be evidenced by promissory notes executed by the Partnership, which shall bear interest at a variable annual rate equal to the Prime Rate, plus two percent (2%) or such other rate as may be agreed upon by the Managing General Partner and the loaning Partner. Such Optional Loans shall be repaid by the Partnership in accordance with Section 8.7 and Section 9.5. As of the Effective Date, certain Partners have made Optional Loans as set forth on Schedule 1 attached hereto.

ARTICLE V.

5.1 **Rights and Obligations of the Managing General Partner**. Until Sid C. Weiss' retirement, death, disability for a period of more than 90 consecutive days that interferes with his daily management responsibilities, or until the date that is ten (10) years from the Effective Date hereof, the SCW General Partner shall be the Managing General Partner of this Partnership. Subject to the limitations of this Agreement, the Managing General Partner shall have full, exclusive, and complete authority and discretion to manage and control the Partnership and make all decisions affecting the management and operation of the Partnership's business, and to exercise all rights and powers generally conferred by law in connection therewith. Subject to the limitations of this Agreement, the Managing General Partner shall have full authority to take any action that the Managing General Partner believes in good faith to be in furtherance of the Partnership's business and purposes and to exercise all rights and powers generally conferred by law in connection therewith. In carrying out its duties and obligations hereunder, the Managing General Partner shall have full power and authority to execute any and all documents on behalf of the Partnership. When carrying out its obligations as Managing General Partner hereunder, no Person or governmental body dealing with the Partnership shall be required to inquire into, or obtain any consents or other documentation as to, the authority of the Managing General Partner to take any such action or to exercise any such rights or powers, whether or not the Managing General Partner is required by the terms of this Agreement to first obtain the consent of the Limited Partner for the particular act in question. The Managing General Partner shall manage the Partnership affairs in a prudent and businesslike manner and in accordance with general practices and standards of operators of businesses similar to the Partnership. Additionally, the Managing General Partner shall manage the affairs of the Partnership in such a manner as to not reflect poorly on the Class C Limited Partner or the City of Balcones Heights, nor shall it engage in partisan political activities or controversial social issues on behalf of the Partnership and shall cease such actions if notified in writing by the Class C Limited Partner or the City of Balcones Heights of their objections thereto. Without limiting the generality of the preceding provisions, and subject to the express restrictions in this Agreement, including, without limitation, provisions set forth below in this Section 5.1 and in Sections 5.2 and 5.10, by executing this Agreement the SR General Partner and the Limited Partners hereby expressly authorize and empower the Managing General Partner,

acting alone and without the joinder or separate consent of the SR General Partner or the Limited Partners, on behalf of and at the cost and expense of the Partnership:

(a) **Rights of Managing General Partner**.

(i) To cause the Partnership to acquire and operate the Property, and to take any and all actions and execute and deliver any and all documents (including, without limitation, deeds, bills of sale, assignments, assumptions, agreements, instruments and certificates), as deemed necessary or desirable by the Managing General Partner in connection therewith;

(ii) To cause the Partnership to enter into and perform an exclusive Management and Leasing Agreement (the "Management and Leasing Agreement") with Weiss Realty Management, LLC or its affiliate ("WRM"), in the form attached hereto as **Exhibit "B"**;

(iii) To operate the Property consistent with the then effective approved Budget as described in Section 5.1(b)(i);

(iv) To execute leases for spaces within the mall on the Property so long as the terms thereof are within the leasing parameters approved by the General Partner and the Class C Limited Partner from time to time, or such lease is otherwise approved by the General Partners; and

(v) So long as approved pursuant to Section 5.2(iii), to cause the Partnership to obtain any financing or refinancing and to execute any documentation on behalf of the Partnership relating to same.

(b) **Duties of Managing General Partner**.

(i) To prepare and present to the SR General Partner and the Class C Limited Partner no later than October 1 of each calendar year a budget for the operation of the Property for the next succeeding Partnership Year (the "Budget"), and to make any necessary, appropriate or desirable amendments or revisions thereto as approved by the General Partners;

(ii) To oversee and carry out the day-to-day operations of the Property;

(iii) To monitor the operations of the Property to ensure (to the extent reasonably feasible) that the Property is being operated within the Budget;

(iv) To retain or employ for the Partnership's account and coordinate the services of all employees, supervisors, accountants, attorneys, architects, engineers and other persons necessary or appropriate to carry out the business of the Partnership;

(v) To keep the Limited Partners informed of Partnership operations through written progress reports rendered at such intervening periods as deemed appropriate by the Managing General Partner, but no less frequently than monthly, or as reasonably requested by SR General Partner or any Limited Partner, such information to include, without limitation, the most current financial statements/balance sheet, statement of operations, statement of cash flow

and statement of Partners' equity as may then be on hand and prepared in the ordinary course of the Partnership's business, and with respect to the Class C Limited Partner, bank account statements of the type described in Section 5.7;

(vi) To cause , an audit by an independent certified public accountant to be made of the financial condition of the Partnership for each Partnership Year within a reasonable time after the close of each Partnership Year (but not later than March 15), and the Managing General Partner shall furnish a copy of such report to the SR General Partner and the Limited Partners as soon as such report is available. Any Partner may, at any time and at such Partner's expense, cause an audit to be made of the financial condition of the Partnership and the compliance of the Managing General Partner with the financial, accounting and reporting provisions of this Agreement; provided, however, that if such audit reveals any errors of more than 5% on any line item, then the Partnership will pay the cost of such audit;

(vii) For the purpose of managing and minimizing adverse media events and publicity that may reflect poorly on the ownership of the Property, develop in cooperation with and with input from the Class C Limited Partner, and then implement and apply to the operation of the Property and its tenants to the extent permitted by existing leases and rules, and future tenants a Media and Public Relations Policy to deal with media activities and public relations – related activities on and or involving the Property. This policy shall also include a plan for the Property Manager to keep the General Partners and the Class C Limited Partner informed of scheduled and occurring special events in a timely manner and allow each General Partner and the Class C Limited Partner time and opportunity to reject a special event that such Partner feels may reflect negatively on the Property or the Partner.

(viii) To maintain complete and accurate books of the Partnership, showing all receipts, income, expenditures, assets, and liabilities, profits and losses, and all other records necessary for recording the Partnership's business and affairs, and furnish the Partners all reasonably necessary tax reporting information, all of such books and records to be available for any Limited Partner's review upon request of that Limited Partner;

(ix) To incur and/or pay any and all costs and expenses, including, without limitation, recording fees and taxes, title company charges and premiums, and fees and costs owed to the mortgage lender, if any, or its counsel or consultants in connection with any such mortgage financing, as the Managing General Partner deems necessary or desirable and incidental to the consummation of the mortgage financing and/or the acquisition of the Property;

(x) To initiate with the Managing General Partner and the Class C Limited Partner, and complete by the first anniversary of the Effective Date a marketing and rebranding study for the Property which shall include employing a third-party consultant/facilitator approved by the Class C Limited Partner and the Managing General Partner and implement such recommended plans within a reasonable period of time thereafter as agreed upon by the Managing General Partner and the Class C Limited Partner. Any rebranding or material change in marketing decision and or branding of the Property shall require the agreement of the Managing General Partner and the Class C Limited Partner. The Managing General Partner and the Class C Limited Partner shall regularly meet at intervals deemed by either Partner to be reasonable and necessary, and after delivery of the study and determination of an implementation strategy at least semiannually thereafter to review implementation progress and perform additional long-range

marketing and brand planning. The Managing General Partner shall circulate the proposed agenda and discussion materials at least seven days before any such meeting;

(xi) Subject to the terms of Section 5.2 to execute leases and renewals for spaces within the mall on the Property and to cause the Partnership to perform its obligations under such leases of the Property.

(xii) To timely address and resolve, within the approved operating Budget of the Property, repair, maintenance and operating issues raised and presented in writing by the Class C Limited Partner to the Managing General Partner. The Managing General Partner shall, within thirty (30) days of receipt of a written request, resolve or present a written plan to the Class C Limited Partner to address the issue(s) raised. If not reasonably resolved or a reasonable plan is not adopted by the Managing General Partner (in the Class C Limited Partner's reasonable judgement) within forty-five (45) days after the Class C Limited Partner's notice and pursued with reasonable diligence, then the Class C Limited Partner may request that the Managing General Partner and Class C Limited Partner convene a meeting with the property manager to adopt a plan of action to address the Class C Limited Partner's concerns. If no action is agreed upon within sixty (60) days after such meeting has been requested that addresses the Class C Limited Partner's issues, then the Class C Limited Partner may call for selection of a new property manager pursuant to the terms of Section 5.14 (which may not include Sid C. Weiss or a company within his control).

5.2 **Decisions Requiring Prior Approval of the SR General Partner and Class C Limited Partner**. The Managing General Partner shall not do any of the following without first obtaining the prior written approval and consent of the SR General Partner and the Class C Limited Partner (the "Major Decisions"), which approval will not be unreasonably withheld, conditioned or delayed:

(i) Cause the Partnership to execute any new lease or renewal for any portions of the Property in excess of 5,000 square feet or not consistent with leasing parameters approved by the General Partners and the Class C Limited Partner from time to time;

(ii) Cause the Partnership to sell or otherwise dispose of all or any portion of the Property;

(iii) Cause the Partnership to obtain any financing or refinancing of any debt of the Partnership;

(iv) Cause the Partnership to deviate from the Budget by more than ten percent (10%) on a line-item basis unless the deviation is to resolve a major maintenance issue that presents an immediate safety concern , a mechanical failure or breakdown or a casualty event;

(v) Cause the Partnership to make an expenditure over $50,000 not set forth in the Budget (except in the case of an emergency or as a result of increased property taxes, insurance premiums, or utility charges);

(vi) Cause the Partnership to execute any third-party vendor contracts for expenses not provided for in the Budget or which would result in expenditures in excess of $10,000 a year;

(vii) Cause the Partnership to execute any amendment or modification to that certain Operation and Easement Agreement dated March 2002, by and between Target Corporation and MRO Southwest, Inc., predecessor-in-interest to Seller;

(viii) Windup the affairs of, or liquidate, the Partnership;

(ix) File a voluntary petition or otherwise initiate proceedings to have the Partnership adjudicated bankrupt or insolvent, or consent to the institution of Bankruptcy or insolvency proceedings against the Partnership, or file a petition seeking or consenting to reorganization or relief of the Partnership as debtor under any applicable federal or state law relating to Bankruptcy, insolvency, or other relief for debtors with respect to the Partnership; or seek or consent to the appointment of any trustee, receiver, conservator, assignee, sequestrator, custodian, liquidator (or other similar official) of the Partnership or all or any substantial part of the Partnership Assets and assets of the Partnership, or make any general assignment for the benefit of creditors of the Partnership, or admit in writing the inability of the Partnership to pay its debts generally as they become due or declare or effect a moratorium on the Partnership debt or take any action in furtherance of any such action or proceeding;

(x) Amend, modify or alter this Agreement;

(xi) Admit additional partners into the Partnership;

(xii) Settle any dispute or lawsuit to which the Partnership is a party in excess of $25,000;

(xiii) Modify the capital structure in a way that impacts the Class C Limited Partner's overall Ownership Interest; or

(xiv) Replace WRM or amend, supplement or extend the WRM Management Agreement.

In addition, with respect to the Management and Leasing Agreement, it is agreed that the SR General Partner shall, without the Managing General Partner, have the right to represent the Partnership in dealing with WRM and to exercise the Partnership's rights under the Management and Leasing Agreement, and the SR General Partner will have the right to approve all payments by the Partnership of management fees to WRM under such Management and Leasing Agreement.

Other than as expressly provided in this Agreement, including Section 5.2, the Managing General Partner shall not be required to seek or obtain the SR General Partner's or the Class C Limited Partner's approval or vote with regard to any action to be taken by the Partnership through the Managing General Partner.

Notwithstanding any provision in this Agreement to the contrary, neither the Managing General Partner nor the SR General Partner shall be authorized to take any action that could cause the other General Partner to incur personal liability without the prior written approval of such other General Partner. Furthermore, the Partners agree that the failure to take any action that could cause either General Partner to incur personal liability shall not be deemed to be a breach of the fiduciary duties of the Managing General Partner or the SR General Partner to the Partnership.

5.3 **Other Interests and Transactions**. The Managing General Partner shall devote such part of its time as is reasonably necessary to manage the Partnership's business, it being understood that the Managing General Partner and its Affiliates may engage in activities and transactions, for their own respective accounts and for the accounts of others during the term of the Partnership. No Partner shall, merely by virtue of its interest in the Partnership, be in any way prohibited from, or restricted in engaging in, or possessing an interest in, any other business venture of any nature. Notwithstanding the foregoing, unless approved by the General Partners, no Partner will engage in any activity or take any action which conflicts with the operations of the Partnership or obtain personal benefits under any arrangement with the Partnership and, if approved, shall be on market-based terms.

5.4 **Voting**. In those cases where the TLPL or other law requires that the Partners vote on a matter relating to the Partnership notwithstanding the broad authorities granted to the Managing General Partner herein (it being the intent of the parties that provisions hereof allowing action by the Managing General Partner without a vote of the Limited Partners controls over any conflicting requirement of the TLPL to the maximum extent allowed by applicable law), the voting of the Partners shall be in accordance with their Voting Percentages as exist on the date of such vote.

5.5 **Meetings of Partners; Action Without Meeting**. A meeting of the Partners shall be held at such times and at such places in Balcones Heights, Texas, as determined by the General Partners. The Partners may hold a meeting in person, over the telephone or through written consents or correspondence. Any action required or permitted to be taken at a meeting of the Partners may be taken without a meeting if consent, in writing setting forth the actions so taken or to be taken, is signed by the Partners holding the requisite Voting Percentages in the Partnership for such action to be approved. Such consent shall have the same force and effect as a vote of the Partners at a meeting properly called.

5.6 **Indemnification of the General Partners**. Except as provided in Section 5.6(a), (b) or (c), the General Partners (including the Managing General Partner in its role as Partnership Representative) shall not be liable to the Limited Partners or their respective Affiliates, for any loss of their contributions or loans to the Partnership or any loss of potential profit. In addition, the General Partners, their respective members, officers, managers, employees and agents ("Indemnified Parties") shall be indemnified and held harmless by the Partnership (but only to the extent that the Partnership assets are sufficient therefor) from and against, and the Partnership shall reimburse the Indemnified Parties for, all judgments, penalties, including excise and similar taxes, fines, settlements and reasonable expenses if such Indemnified Party was, is (or is threatened to be) named as a defendant or respondent in any legal proceeding based upon or arising out of its having acted as a co-general partner hereunder in good faith on behalf of the Partnership and in a manner reasonably believed by the General Partner to be within the scope of authority granted to it by this Agreement (including under Section 5.11) to the fullest extent permitted by Chapter 8 of the TLPL. It is expressly stipulated, however, that the Indemnified Parties shall not be entitled to indemnification hereunder where the claim at issue is based upon:

(a) The gross negligence or willful misconduct of an Indemnified Party;

(b) The material breach by the particular General Partner of any duty owed by law to the Partnership; or

(c) The material breach by the particular General Partner of any provision of this Agreement.

5.7 **Banking**. All funds of the Partnership shall be deposited into such account or accounts at a bank or banks as the Managing General Partner shall determine from time to time, and all withdrawals may be made therefrom by the Managing General Partner. Funds may be withdrawn from the Partnership account or accounts only for the furtherance of the Partnership business. Notwithstanding the foregoing, upon written notice from the SR General Partner, expenditures from any accounts of the Partnership which are not consistent with the then-applicable Budget will require the signatures of both General Partners and notice to the Class C Limited Partner.

5.8 **Books and Records to be Maintained**. The Managing General Partner shall diligently record on a current basis in the books and records of the Partnership:

(a) All loan proceeds, revenues, reimbursements, capital contributions and loans by the Partners, including the dates of receipt by the Partnership and the amounts thereof; and

(b) All Partnership expenditures, including the dates of payment by the Partnership, the amounts thereof and the name of the payee.

5.9 **Reimbursement of Fees and Expenses**. All reasonable out-of-pocket expenses of the General Partners incurred from time to time on behalf of the Partnership will be reimbursed by the Partnership upon receipt of invoices and adequate documentation that the costs were incurred for the direct and sole benefit of the Partnership.

5.10 **Prohibited Actions**. The Partners hereby covenant and agree that, without the written approval or deemed approval of the General Partners and the Class C Limited Partner, no Partner shall:

(a) Execute or deliver any assignment for the benefit of creditors or any bond, confession or judgment, mortgage, deed, guaranty or contract of sale of all or substantially all of the assets of the Partnership;

(b) Except as otherwise provided herein, pledge, hypothecate, mortgage, encumber, or in any manner sell, assign or transfer such Partner's Ownership Interest;

(c) Utilize Partnership Assets in any way for the furtherance of activities or business unrelated to the Partnership business;

(d) Voluntarily withdraw from the Partnership; or

(e) Admit any other Person as a Partner into the Partnership except as expressly permitted by this Agreement.

5.11 **Tax Rules Governing the Partnership**.

(a) The Partners hereby acknowledge and agree that it is the intention of the Partnership to be governed by the provisions of Subchapter K of the Code and all rules and regulations promulgated thereunder. The Partners shall take any and all actions necessary to ensure full compliance by the Partnership with all such applicable provisions, rules and regulations, including, but not limited to, the filing of information returns as required by Section 6031 of the Code, or similar provisions of later law.

(b) The Managing General Partner shall serve as the "partnership representative" for the Partnership as that term is described in Code Section 6223 (the "Partnership Representative"). To the extent required by law, the Partnership Representative shall appoint a qualified "designated individual" for each Partnership Year (as described in Regulations Section 301.6223-1(b)(3)(ii)).

(c) The Partnership Representative is authorized and required to represent the Partnership (at the Partnership's expense) in connection with all examinations and audits of the Partnership's affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Partnership funds for professional services reasonably incurred in connection therewith. Each Partner agrees to reasonably cooperate with the Partnership Representative and to do or refrain from doing all things reasonably requested by the Partnership Representative with respect to the conduct of such proceedings. The Partnership Representative will on a timely basis keep all Partners fully informed of the progress of any examinations, audits or other proceedings, and all Partners will have the right to participate in any such examinations, audits or other proceedings. The Partnership Representative will not settle or otherwise compromise any issue in any such examination, audit or other proceeding without first obtaining approval by the Limited Partners. Expenses incurred by the Partnership Representative shall be borne by the Partnership. Such expenses shall include, without limitation, fees of attorneys and other tax professionals, accountants, appraisers and experts, filing fees and reasonable out-of-pocket costs.

(d) For any notice of final partnership adjustment which may reasonably result in an Imputed Underpayment, the Partnership Representative may, solely at its discretion, make an election under Section 6225(c) with respect to such Imputed Underpayment or to timely cause the Partnership to elect application of Section 6226 of the Code and timely furnish to each Partner of the Partnership for the reviewed year and to the Internal Revenue Service a statement of each Partner's share of any adjustment to income, gain, loss, deduction, or credit (as determined in the notice of final partnership adjustment), which share shall be determined by allocating the Imputed Underpayment among the Partners to whom such amounts are specifically attributable (whether as a result of their status, actions, inactions or otherwise), as determined in good faith by the Partnership Representative.

(e) Each Partner agrees to promptly provide to the Partnership Representative any information requested by the Partnership Representative so as to enable the Partnership to make any election under Section 6225 or 6226 of the Code, comply with any documentation requirements in connection with any such election, modify any Imputed Underpayment, and comply with any other requirements in the Code.

(f) For the avoidance of doubt, any taxes, penalties, and interest payable under the Code by the Partnership shall be treated as specifically attributable to the Partners other than the Class C Limited Partner, and the Partnership Representative shall use commercially reasonable efforts to allocate the burden of (or any diminution in distributable proceeds resulting from) any such taxes, penalties or interest to those Partners to whom such amounts are specifically attributable (whether as a result of their status, actions, inactions or otherwise), as determined in good faith by the Partnership Representative. In connection with the foregoing, to the extent that the Partnership is assessed amounts under Section 6221(a) of the Code, the Partnership Representative may deduct amounts attributable to each Partner (other than the Class C Limited Partner) from such Partner's Capital Account or reduce distributions to such Partners (other than the Class C Limited Partner), or with the consent of a Majority-in-Interest of the Limited Partners, the Partnership Representative may require current or former Partners to which the assessment relates to remit to the Partnership, within thirty (30) days' written notice by the Partnership Representative, an amount equal to each such Partner's allocable share of the assessment, including such Partner's allocable share of any interest imposed on the Partnership. The foregoing sentence shall survive the dissolution of the Partnership, the withdrawal of any Partners from the Partnership and the transfer of any Partner's Ownership Interest. For the avoidance of doubt. because the Class C Limited Partner is not a taxpayer, it shall be excluded for purposes of interpreting and applying provisions of this Section 5.11.

5.12 **Budget**. On or before October 1 of each Partnership Year, the Managing General Partner will present to the SR General Partner and the Class C Limited Partner a proposed Budget for the next Partnership Year. The SR General Partner and the Class C Limited Partner agree to provide any objections to such proposed Budget by November 20 or the proposed Budget will be deemed disapproved. The Managing General Partner, the SR General Partner and the Class C Limited Partner will thereafter work to resolve any issues regarding the Budget raised by the SR General Partner and/or the Class C Limited Partner so it can be finalized prior to December 15 of the applicable Partnership Year. If the Managing General Partner, the SR General Partner and the Class C Limited Partner are unable to agree on the Budget by December 15 of the applicable Partnership Year, then the Partnership will operate under (i) the portions of the proposed Budget that are agreed to by the General Partners and the Class C Limited Partner and (ii) for portions of the proposed Budget where unresolved issues exist, the applicable portions of the approved Budget for the previous Partnership Year (but with no cap on non-variable expenses such as real estate taxes, insurance and utilities).

5.13 **Consent of General Partners**. All determinations of the General Partners will be reasonable, in good faith and in the best interests of the Partnership. In addition, any consent of a General Partner will not be unreasonably withheld or delayed.

5.14 **Death, Disability, Retirement of Sid C. Weiss**. On the earliest to occur of: (i) Sid C. Weiss' retirement, (ii) Sid C. Weiss' death, (iii) Sid C. Weiss' disability for a period for more than 90 consecutive days (during which period the SR General Partner shall serve as the interim Managing General Partner), (iv) a Change of Control of the SCW General Partner or WRM, (v) the circumstances described in Section 5.1(b)(xii), or (vi) the date that is ten (10) years following the Effective Date, the following shall occur:

(a) Robert Rosenthal, Kenneth Gindy and the Class C Limited Partner, shall unanimously select a new Managing General Partner of the Partnership;

(b) The Management and Leasing Agreement with WRM shall be terminated and any and all unpaid management fees shall be paid to WRM;

(c) Robert Rosenthal, Kenneth Gindy and the Class C Limited Partner shall unanimously select a third-party management company or manager to enter into and perform a management agreement and a third party leasing company to enter into and perform a leasing agreement; provided, however, that the onsite personnel shall remain in place for a period of two (2) years unless otherwise removed for cause or failure to perform or adequately perform its job duties) ; and

(d) The Ownership Interests held by Sid C. Weiss, directly or indirectly, shall be subject to the provisions set forth in Section 6.13.

ARTICLE VI.

6.1 **Limitation of Liabilities and Rights of the Limited Partners**. Except as otherwise provided or specified herein, the Limited Partners shall not be:

(a) Personally liable for any of the debts of the Partnership or to the Partnership or any of the General Partners beyond such Limited Partner's contributions made to the Partnership;

(b) Personally liable for any losses of the General Partners, any Limited Partners or the Partnership;

(c) Allowed to take part in the management or control of the Partnership business, or to sign for or to bind the Partnership, merely because of such Limited Partner's interest in the Partnership, which power is vested solely and exclusively in the General Partners;

(d) Entitled to be paid any salary or to have a Partnership drawing account;

(e) Entitled to a partition of Partnership Assets, notwithstanding any other provision of law to the contrary.

6.2 **Assignments of Ownership Interests**.

(a) Except as provided in Sections 6.2(b), Section 6.3, Section 6.4 or Article X, no Partner may sell, assign, transfer, pledge, mortgage, or grant a lien or security interest in its Ownership Interest, or portions of such Ownership Interest, and thereby constitute the vendee or assignee a substituted Partner, without first having obtained the written consent of the General Partners.

(b) Notwithstanding the foregoing provisions of Section 6.2(a), a Limited Partner (and the SCW General Partner if the SCW General Partner is no longer the Managing General Partner) may transfer, assign or convey all or any part of his/her Ownership Interest to: (a) a descendant of a Partner, including descendants by adoption if the adoption was a court adoption of a minor; (b) any parent or sibling of a Partner; (c) a descendant of a sibling of a Partner including those by adoption as defined in (a) above; (d) a trust created for the benefit of anyone in (a) through (c) above; (e) an organization described in each of the following Sections of the Code:

Section 170(b)(1)(A), Section 170(c), Section 2055(a) and Section 2522(a); (f) a charitable remainder trust created under Section 664 of the Code; (g) the trustee of a trust created for the benefit of such Limited Partner; (h) any other Partner with the consent of the Managing General Partner; (i) any entity wholly owned by such Partner, or anyone in (a) through (c) above; (j) the guardian or legal representative of the Partner as to whose estate a guardian or legal representative is appointed and to the executor or administrator of the estate of a deceased Partner; (k) any beneficiary of a trust that is a Limited Partner; (l) any owner of a beneficial interest in any limited partnership, corporation, limited liability company, or other entity that is a Limited Partner; (m) with respect to the Class C Limited Partner, the City of Balcones Heights, and (n) to any other Person approved by all of the Partners (any such transfer described above is referred to in this Agreement as a "Permitted Transfer").

(c) Any purported sale or assignment consummated without first complying with all of the requirements of this Section 6.2 shall, as between the Partnership, on the one hand, and the assignor/vendor and assignee/vendee, on the other hand, be null and void. The Managing General Partner may deny consent to a requested assignment for any reason in its sole and absolute judgment and discretion, including for the reason that the effect of any such assignment would be to result in a termination of the Partnership for federal income tax purposes pursuant to Section 708 of the Code.

(d) If a Partner desires to transfer all or any of its Ownership Interest, and such transfer is permitted by Section 6.2(b) or approved in writing by the Managing General Partner and the Class C Limited Partner, then the transferring Partner shall arrange for its transferee to be bound by the provisions of this Agreement, as it may then be amended, by having such transferee execute two (2) counterparts of an instrument of assignment and assumption in a form satisfactory to the Managing General Partner and by delivering the same to the Managing General Partner. In addition, if required by the Managing General Partner, appropriate amendments to this Agreement shall be executed by all of the Partners to reflect the transfer. It is understood that the proposed transferee shall be required to pay any and all reasonable filing and recording fees, legal fees, accounting fees and other charges and fees incurred by the Partnership and its counsel as a result of any such transfer. Each permitted assignment or transfer shall be effective as of the date on which the Managing General Partner actually receives the aforesaid instrument of assignment executed by both the transferor and transferee. If and when the requirements of this Section 6.2 are satisfied, the transferee shall become a substituted Partner.

(e) If any interest in the Partnership is transferred in a manner not expressly permitted under this Agreement such transfer shall be null and void and of no force or effect whatsoever; provided, however, the Managing General Partner, the SR General Partner and the Class C Limited Partner may, in their sole respective discretion, elect to recognize such transfer, and may, in their sole respective discretion, elect to cause the interests in the Partnership so transferred to be deemed strictly limited to the transferor's rights to allocations and distributions as provided by this Agreement with respect to the Partnership interest transferred, and such allocations and distributions may be applied (without limiting any other legal or equitable rights of the Partnership) to satisfy any debt, obligations, or liabilities for damages that the transferor or transferee of such Partnership interest may have to the Partnership.

(f) None of the Bankruptcy, death, disability or declaration of incompetence of a Limited Partner shall dissolve the Partnership, but the rights of a Limited Partner to share in the

profits and losses of the Partnership and to receive distributions of Partnership funds shall, on the happening of such an event, devolve upon the Limited Partner's estate, legal representative or successor in interest, as the case may be, subject to this Agreement, and the Partnership shall continue as a limited partnership under the TLPL. Except as otherwise provided in this Agreement, the Limited Partner's estate, representative or successor in interest shall be entitled to receive distributions and tax allocations with respect to such Limited Partner's Ownership Interest and shall be liable for all of the obligations of the Limited Partner. Furthermore, the Limited Partner's estate, representative or successor in interest shall have no right to any information or accounting of the affairs of the Partnership, shall not be entitled to inspect the books or records of the Partnership and shall not be entitled to any of the rights of a general partner or limited partner under the TLPL or this Agreement and shall be treated as an assignee under Section 6.2(d) unless such estate, representative or successor in interest is admitted to the Partnership as a substituted Limited Partner in accordance with Section 6.2(d) or until such Ownership Interest is transferred to a permitted party in a Permitted Transfer.

6.3 **Disposition Upon Death**.

(a) Upon the death of a Limited Partner who is a natural person (such deceased Limited Partner being referred to herein as the "Deceased Partner" and the estate of the Deceased Partner as represented by the Deceased Partner's heirs, executors, devisees, and personal representatives being referred to herein as the "Section 6.3 Selling Partner"), the Section 6.3 Selling Partner shall give notice of such death (the "Death Notice") to the Class C Limited Partner and the General Partners within 30 days following such death. In such event, except as provided in Section 6.3(b), the Section 6.3 Selling Partner shall be deemed to have granted an option to purchase the Ownership Interest owned by the Deceased Partner at the date of death in the following order of priority: (i) the Class C Limited Partner may elect to acquire all or any portion of the Ownership Interest, and (ii) the Class A Limited Partners and the Class B Limited Partners may elect to acquire all or any portion of the Ownership Interest not acquired by the Class C Limited Partner.

(b) The option described in Section 6.3(a) shall not be deemed to have been granted if (i) the Ownership Interest of the Deceased Partner passes pursuant to such Deceased Partner's will to such Deceased Partner's (A) spouse or (B) trust established for the benefit of such Deceased Partner's children or spouse and (ii) such spouse or trust enters into a written agreement with the Partnership to be bound by the provisions of this Agreement including, without limitation, the provisions of this Section 6.3. This Section 6.3(b) shall not apply in the event of the subsequent death of the spouse of a Deceased Partner who succeeded to such Deceased Partner's Ownership Interest.

(c) Within 60 days after the date of delivery of the Death Notice (the "Notice Date"), the Class C Limited Partner shall notify the Partnership and the Section 6.3 Selling Partner in writing of the amount of Ownership Interest, if any, that such Partner elects to purchase. If such Partner fails to notify the Section 6.3 Selling Partner of its election to purchase all or a portion of the Ownership Interest within such 60-day period, such Partner shall be deemed to have elected not to purchase any of the Ownership Interest.

If the Class C Limited Partner notifies the Partnership that it will exercise the option for less than all of the Ownership Interest or the Class C Limited Partner is deemed not to have exercised its

option by expiration of the 60-day period specified in Section 6.3(c) without action by the Class C Limited Partner, the Class A Limited Partners and Class B Limited Partners shall have the option to purchase all or any of the Ownership Interest that the Class C Limited Partner has elected not to purchase. Within 75 days after the Notice Date, the Class A Limited Partners and Class B Limited Partners shall notify the Section 6.3 Selling Partner in writing of the amount of Ownership Interest, if any, to be purchased by such Partner. The option hereunder shall expire as to the Class A Limited Partners and Class B Limited Partners if such Partner does not deliver such a notice within such 75-day period. If all of the interest of the Deceased Partner is not acquired by the other Partners pursuant to this Section 6.3 then the deceased Partner's interest not purchased by the other Partners shall pass in accordance with the Deceased Partner's will and / or applicable law.

6.4 **Bankruptcy, Reorganization or Involuntary Taking**.

(a) If a Partner files for Bankruptcy (a "Bankrupt Partner"), such Partner or his administrators and legal representatives shall give notice of such event (the "Bankruptcy Notice") to the Managing General Partner within 20 days following the date of the event which caused such Partner to be a Bankrupt Partner. In such event, the Bankrupt Partner shall be deemed to have granted an option to purchase any and all of Ownership Interests owned by the Bankrupt Partner in the following order of priority: (a) the Class C Limited Partner may elect to acquire all, or a portion of, such Ownership Interest, and (b) the Class A Limited Partners and Class B Limited Partners may elect to acquire all, or a portion, of such Ownership Interest not acquired by the Class C Limited Partner.

(b) Within 60 days after the receipt of the Bankruptcy Notice by the Managing General Partner (the "Bankruptcy Notice Date"), the Class C Limited Partner shall notify the Partnership in writing of the amount of Ownership Interest, if any, that the Class C Limited Partner elects to purchase.

If the Class C Limited Partner notifies the Class A Limited Partners and Class B Limited Partners that it will exercise the option to purchase less than all of the Ownership Interest, the Class A Limited Partners and Class B Limited Partners shall have the option to purchase any or all of the Ownership Interest that the Class C Limited Partner elected not to purchase. Within 75 days after the Bankruptcy Notice Date, the Class A Limited Partners and Class B Limited Partners shall notify the Bankrupt Partner in writing of the amount of Ownership Interest, if any, to be purchased by such Partner. The option hereunder shall expire as to the Class A Limited Partners and Class B Limited Partners if such Partners do not deliver such a notice within such 75-day period. If all of the interest of the Bankrupt Partner is not acquir4ed by the other Partners pursuant to this Section 6.4 then the Bankrupt Partner's interest not purchased by the other Partners shall pass in accordance with the Bankruptcy court plan or orders.

6.5 **Price**. The purchase price at which all or any portion of Ownership Interests may be purchased pursuant to Section 6.3 and Section 6.4 shall be the amount that would have been distributed with respect to such Ownership Interests had the assets and business of the Partnership (the "Partnership Assets"), including, without limitation, the net value of all tangible and intangible assets of the Partnership, and the net value of any cash, notes or any other net financial assets of the Partnership, been sold on the date that the applicable option was exercised at a cash sales price equal to the Fair Market Value (as defined herein) for the Partnership Assets determined in

accordance with the appraisal procedure described in this Section 6.5 and the proceeds of such hypothetical sale distributed to the Partners in accordance with Section 9.5.

The determination of the Fair Market Value of the Partnership Assets for purposes of calculating the purchase price for the Ownership Interests shall be made as follows:

(a) The purchaser of the Ownership Interests pursuant to Sections 6.3 and 6.4 (the "Purchaser") shall so notify the Limited Partner whose Ownership Interests are being purchased or the representative of the Limited Partner whose Ownership Interests are being purchased, as applicable (the "Selling Partner"), and the Purchaser and the Selling Partner shall first attempt to agree upon the Fair Market Value of the Partnership Assets. For purposes of this Agreement, the term "Fair Market Value" of the Partnership Assets shall mean the cash price which a sophisticated purchaser would pay on the effective date of the valuation of the Partnership Assets, but shall not include any transaction costs, including without limitation, brokerage commissions, title policy fees, transfer fees or legal expenses. A sophisticated purchaser shall be one who would take into account the overall financial condition of the Partnership, including the nature of the assets and liabilities, any financing affecting the Partnership, and the Partnership's performance in recent periods and minority and limited voting interests. The Purchaser and Selling Partner shall promptly deliver written notice of their agreement as to Fair Market Value of the Partnership Assets to the General Partners.

(b) In the event that the Purchaser and the Selling Partner or its representative are unable to agree upon the Fair Market Value of the Partnership Assets within ten (10) days after the date that notice was first given to the Selling Partner of the initiation of the appraisal process hereunder, then the Purchaser and the Selling Partner shall, by mutual agreement, select a certified MAI appraiser who shall have at least ten (10) years' experience in appraising properties similar in type and nature to the assets and business of the Partnership who shall determine the Fair Market Value of the assets and business of the Partnership.

(c) If the Purchaser and the Selling Partner are unable to agree upon a single appraiser within such ten (10) day period, then the Selling Partner shall select one appraiser, and the Purchaser shall select one appraiser, and the two selected appraisers shall select a third appraiser. All three appraisers shall each have the qualifications recited in Section 6.5(b). Each appraiser so selected shall furnish the Purchaser, the independent certified public accountant of the Partnership and the Selling Partner with a written MAI appraisal within thirty (30) days of his selection (or as quickly thereafter as is possible), setting forth his determination of the Fair Market Value of the Partnership Assets as of the date of the Purchaser's notice to the Selling Partner. The Fair Market Value of the Partnership Assets shall be the fair market value of the Partnership Assets agreed upon by the three appraisers; provided, however, that if the three appraisers cannot agree upon such value, then the valuations of each of the three appraisers shall be submitted to the General Partner and to the independent certified public accountant for the Partnership and the Fair Market Value of the Partnership Assets shall be determined as follows:

(i) If any two or more of the appraisers are able to agree on the fair market value of the Business, then the "Fair Market Value" of the Partnership Assets shall be the value agreed upon by the two (or more) appraisers.

(ii) If no two appraisers agree upon such value, then the "Fair Market Value" of the Partnership Assets shall be determined in the following manner:

A. If the highest value set by one appraiser is not more than one hundred ten percent (110%) percent of the next lower value set by another appraiser and the lowest value set by one appraiser is not less than ninety percent (90%) percent of the next higher value set by another appraiser, then the values set by the three appraisers shall be added together and divided by three, and the amount resulting shall represent the Fair Market Value of the Partnership Assets for purposes of this Section 6.5

B. If the highest value set by one appraiser is more than one hundred ten percent (110%) percent of the next lower value set by another appraiser, then the highest value shall be reduced to an amount equal to said one hundred ten percent (110%) percent figure; and if the lowest value set by one appraiser is less than ninety percent (90%) percent of the next higher value set by another appraiser, then the lowest value shall be increased to an amount equal to said ninety percent (90%) percent figure. The three values, adjusted as provided above, shall be added together and divided by three, and the amount resulting shall represent the Fair Market Value of the Partnership Assets for purposes of this Section 6.5.

(d) Upon receipt of the appraisals, the independent certified public accountant of the Partnership shall make the final calculation as to the Fair Market Value of the Partnership Assets and of the purchase price for purposes of the provision of this Agreement that necessitated such appraisal. The accountant shall notify the Purchaser and the Selling Partner in writing of its calculation within ten (10) days of the date of receipt of the appraisals prepared by the appraisers. The calculation of the independent certified public accountant as to the Fair Market Value of the Partnership Assets and the amount of the purchase price shall be binding upon the Purchaser and the Selling Partner. The cost of such appraisals shall be paid for one-half by the Purchaser and one-half by the Selling Partner.

6.6 **Terms of Purchase of Ownership Interests.** Any Purchaser shall pay the full amount of the purchase price for the Ownership Interests being purchased by it pursuant to Section 6.5 in cash at the time of purchase ("Closing").

6.7 **Closing of Purchases**. Except as otherwise provided elsewhere in this Article VI, the Closing of the purchase of any Ownership Interests by the Purchaser pursuant to Section 6.6 shall take place within thirty (30) days following the date of determination of the applicable purchase price for such Ownership Interests in the manner required in Section 6.5, at the time and place chosen by the General Partners, which shall be reasonably convenient to all parties. Upon such determination, the General Partners shall deliver written notice to the Selling Partner of the purchase price for the Ownership Interests to be purchased and details of the calculation of such purchase price, as well as the date, time and place of the Closing.

6.8 **Survival of Liabilities**. Subject to Section 5.11(f), it is expressly understood and agreed that (i) a sale or assignment of an Ownership Interest under Section 6.2(a), Section 6.3 or Section 6.4 will result in a release of the assignor or vendor from its obligations and liabilities to the Partnership having arisen prior to such sale or assignment, and (ii) a sale or assignment of an Ownership Interest under Section 6.2(b) will not release the assignor or vendor from its obligations and liabilities to the Partnership contained herein.

6.9 **Investment Representations**. Each of the Limited Partners understands that its Ownership Interest in the Partnership has not been registered under the Securities Act of 1933, as amended, the Texas Securities Act or the securities laws of any state (the "Securities Acts"), on the grounds that the Limited Partner's acquisition of such Ownership Interest is exempt from the registration requirements of such Securities Acts. In this connection, each of the Limited Partners represents and warrants with respect to the acquisition of its respective Ownership Interest in the Partnership that:

(a) He, she or it is acquiring his, her or its interest in the Partnership for his, her or its own account, as an investment, and not with a view to the resale, pledge, hypothecation or other transfer or distribution of such interest.

(b) He, she or it is an Accredited Investor (as defined on **Exhibit "C"** attached hereto) and has such knowledge and experience in financial and business matters that he or it is capable of evaluating the merits and risks of investing in the Partnership.

(c) *[intentionally left blank]*

(d) He, she or it is a sophisticated investor and the nature and amount of the contributions he, she or it agrees to make hereunder is consistent with his, hers or its investment program, and that he, she or it has adequate net worth and means of sustaining a complete loss of this investment. He, she or it has no need for liquidity of this investment, and his, hers or its total commitment to investments that are not readily marketable is not disproportionate as a result of his, hers or its investment in the Ownership Interest.

(e) He, she or it has had access to or has been furnished with sufficient written and oral information about the Partnership to facilitate making an informed investment decision prior to purchasing an interest in the Partnership, and has been furnished access to any and all additional information requested; and he, she or it either (i) has experience in business enterprises or investments entailing risks of a type or to a degree substantially similar to those entailed in an investment in the Partnership, or (ii) has obtained independent financial advice with respect to investment in the Partnership.

(f) The offer and purchase of such Ownership Interest has been made in the course of a negotiated transaction involving direct communication between the General Partners and such Limited Partner.

(g) He, she or it has been advised that a Limited Partner's Ownership Interest may not be sold, transferred or otherwise disposed of in the absence of either an effective registration statement covering such interest under the Securities Act, or an opinion of counsel satisfactory to the General Partners that registration is not required under the Securities Act, and that no Limited Partner will have any rights to require registration of any interest under the Securities Act.

(h) He, she or it agrees to hold the General Partners, the other Limited Partners, the Partnership or any person controlling the Partnership, and their respective heirs, successors, assigns, or other controlling persons harmless and to indemnify them against all liabilities, costs, and expenses incurred by them as a result of any sale or distribution by such Limited Partner of

his, hers or its Ownership Interest in violation of the Securities Acts. Additionally, each Limited Partner shall and does hereby agree to indemnify and save harmless the Partnership, the General Partners, and the other Limited Partners from any damages, claims, expenses, losses or actions resulting from the untruth of any of the warranties and representations made by such Limited Partner contained herein. If the warranties and representations herein are either breached or not true, then such Limited Partner, as to whom the warranties and representations are not true or who breached the warranties and representations, shall, at the election of the Managing General Partner, allow the Managing General Partner to exercise the right of rescission pursuant to Section 6.10 with respect to such Limited Partner's Ownership Interest.

6.10 **Alternate Right of Rescission**. In the event that either General Partner discovers any material breach or untruth of any of the foregoing representations and warranties set out in Section 6.9 by a Limited Partner that results in adverse consequences to the Partnership or any other Partner, the General Partners may, at their election, rescind the sale of any Ownership Interests to such Limited Partner. In the event of any such rescission of the sale by the General Partners, the capital contribution of such Limited Partner, any security pledged by such Limited Partner or any other funds of such Limited Partner held by the Partnership or the General Partners or their agent may, at the election of the General Partners, be retained (in an amount equal to the good faith reasonable estimate of the General Partners as to damages) and applied in satisfaction of the indemnification obligation of such Limited Partner set out in Section 6.9(h).

6.11 **Conversion of Managing General Partner's Ownership Interest**. In event that the Managing General Partner files for Bankruptcy or is adjudicated insolvent, or Sid C. Weiss dies, becomes incapacitated for a period of at least 90 consecutive days, or is otherwise no longer controlling the Managing General Partner, the Ownership Interest of the Managing General Partner will, upon notice of such event to the SR General Partner, convert to a limited partner interest in the Partnership, and thereafter, the SR General Partner will be the sole general partner of the Partnership.

6.12 **Class C Limited Partner Acquisition of Class A or Class B Ownership Interests**. In the event the Class C Limited Partner acquires any Class A Limited Partner or Class B Limited Partner Ownership Interest pursuant to Section 6.3 or Section 6.4, such Ownership Interests shall be deemed to be non-voting until the earlier to occur of (a) the end of the Lockout Period or (b) the occurrence of a Winding Up Event.

6.13 **Ownership Interests of Sid C. Weiss**. In the event of that Sid. C. Weiss dies, becomes incapacitated for a period of at least 90 consecutive days, or becomes a Bankrupt Partner, the Limited Partners acknowledge that Kenneth Gindy has the first option to purchase the Ownership Interests held by Sid C. Weiss, directly or indirectly, including the Ownership Interests of Sid C. Weiss in the Managing General Partner, pursuant to a separate agreement between Sid C. Weiss and Kenneth Gindy. In the event the option of Kenneth Gindy to purchase the applicable Ownership Interest is not exercised, the Ownership Interests of Sid C. Weiss shall be offered to the Limited Partners in accordance with Section 6.3 and Section 6.4, respectively and as applicable.

6.14 **Call Option**. Each of the Class A and Class B Limited Partners and the General Partners hereby grants to the Class C Limited Partner the right and option (the "Call Option"), exercisable at any time following the Lockout Period or upon the occurrence of a Winding Up

Event (whichever occurs first), to require that all of the General Partners and all of the Class A and Class B Limited Partners sell all of their Ownership Interests to the Class C Limited Partner on the terms and conditions set forth in this Section 6.14.

(a) If the Class C Limited Partner wishes to exercise its Call Option after the Lockout Period, it shall give written notice (the "Call Notice") to the General Partners and the Class A and Class B Limited Partners of its desire to exercise its Call Option. The Call Notice shall constitute the Class C Limited Partner's election to exercise its Call Option right.

(b) The purchase price for each General Partner's and each Class A and Class B Limited Partner's Ownership Interests subject to the Call Option (the "Call Option Price") shall be an amount equal to the Fair Market Value as determined in accordance with Section 6.5.

(c) The Class C Limited Partner shall pay each General Partner and each Class A and Class B Limited Partner the Call Option Price for such General Partner's Ownership Interest and each Class A and Class B Limited Partner's Ownership Interests by delivery of immediately available funds to an account designated in writing by such General Partner and Limited Partner within thirty (30) days following the final determination of the Call Option Price in accordance with Section 6.14(b).

ARTICLE VII.

7.1 **Compensation of the Partners**. Except as otherwise provided herein, no Partner shall be entitled to any compensation, whether by way of a percentage return or interest on capital accounts or otherwise, other than the share of profits and cash flow expressly set forth herein.

ARTICLE VIII.

Notwithstanding anything herein to the contrary, this Article VIII and all other provisions in this Agreement shall be subject to Section 8.21.

8.1 **Allocation of Profits and Losses**. Except as otherwise provided in this Article VIII or elsewhere in this Agreement, for purposes of this Agreement, and for federal, state and local income tax purposes, Profits and Losses shall be allocated annually (and at such other times in which it is necessary to allocate Profits and Losses) by the Partnership in a manner such that, after such allocations have been made, the balance of each Partner's Capital Account shall, to the extent possible, be equal to an amount that would be distributed to such Partner if (a) the Partnership were to sell its assets for their Gross Asset Values, (b) all Partnership liabilities were satisfied (limited with respect to each nonrecourse liability to the Gross Asset Values of the assets securing such liability), (c) the Partnership were to distribute the proceeds of sale pursuant to Section 9.5, and (d) the Partnership were to dissolve pursuant to Article IX, minus the sum of (i) such Partner's share of Partnership Minimum Gain or Partner Nonrecourse Debt Minimum Gain (as determined according to Regulations Section 1.704-2(i)(3)), and (ii) the amount, if any, that such Partner is obligated to contribute, in its capacity as a Partner, to the Partnership, computed immediately prior to the hypothetical sale of assets.

8.2 *[Intentionally Deleted.]*

8.3 **Loss Limitation**. Losses allocated to a Partner pursuant to Section 8.1 shall not exceed the maximum amount of Losses that can be so allocated without causing any Partner to have an Adjusted Capital Account Deficit at the end of any Partnership Year. All Losses in excess of the limitations set forth in this Section 8.3 shall be allocated to other Partners to whom the Losses can be allocated in compliance with this Section 8.3 in proportion to the amounts which can be so allocated.

8.4 **Partnership Year and Accounting Method**. The Partnership fiscal year shall be the calendar year (with such fiscal year and any other period for which the Partnership is required to allocate Profits, Losses or any other item of Partnership income, gain, loss or deduction constituting the "Partnership Year"). The Partnership books shall be kept on such method of accounting as the Partners determine after consultation with the Partnership's tax advisors.

8.5 **Reserves**. The General Partners shall be entitled at any time to establish such reserves (collectively, the "Reserves") out of available funds of the Partnership, if any, after providing for the satisfaction of current debts and obligations ("Available Cash"), in such amounts as the General Partners reasonably determine to be appropriate or desirable to provide for, without limitation, the following:

(a) Payment of operating or capital expenses and expenditures incurred or anticipated to be incurred; and

(b) Any and all contingent liabilities including, without limitation, any actual, threatened or potential claims, suits or other actions, which reserve accounts shall be maintained until such time as the Managing General Partner believes and is satisfied that the need and necessity for such account no longer exists or that such claims, suits or contingent liabilities are (after consultation with the Partnership's legal counsel) fully and completely satisfied, settled, barred by the applicable statute of limitations, or otherwise conclusively disposed of.

The 2021 Working Capital Contribution shall be treated as part of the Reserves.

8.6 **Determination of Profit and Loss**. At the end of each Partnership Year, all Partnership Profits and Losses and Regulatory Allocations shall be determined for the accounting period then ending with respect to the Ownership Interests of each Partner and shall be allocated to the accounts of the Partners. However, in instances where a Partner has sold, assigned, transferred or otherwise disposed of all or part of its Ownership Interest during such accounting period, all such allocations shall be made between the transferor and the transferee as determined by the Managing General Partner in accordance with any permissible method under Section 706 of the Code and the Regulations thereunder. The determinations made pursuant to this Section 8.6 shall be binding on all Partners.

8.7 **Distributions of Available Cash**. As determined by the General Partners (but no less often than quarterly), the Managing General Partner shall distribute the Available Cash, if any (less any Reserves established pursuant to Section 8.5), as follows:

(a) First, if the Class C Limited Partner has made the Special Class C Contribution pursuant to Section 4.3, then first, 100% to the Class C Limited Partner until such time as the Class C Limited Partner has received 100% of its Special Class C Contribution;

(b) Second, to the Class C Limited Partner the sum of $*(Number to be set when debt service is locked; expected to equal about $100,000/quarter) per quarter, which amounts, if unpaid, shall accrue from quarter to quarter until paid;

(c) Third, to the Class A and Class B Limited Partners the aggregate sum of $_____(match (b)) per quarter, in accordance with their respective Class A and Class B Limited Partner Partnership Interests;

(d) Fourth to the Class A and Class B Limited Partners who made the 2021 Working Capital Contribution (in proportion to their respective percentage contribution of the 2021 Working Capital Contribution), the total sum of $15,150.00 (approximately 4% per annum over ten (10) years or forty (40) quarters) per quarter, to be applied first to the Preferred Return on 2021 Working Capital and then to the 2021Working Capital Contribution until the 2021 Working Capital Contribution is paid in full;

(e) Fifth, 45.72% to the Class C Limited Partner, and 54.28% to the Class A Limited Partners and the Class B Limited Partners, with such 54.28% to be distributed among the Class A Limited Partners and Class B Limited Partners as follows:

(i) First, to any Class A Limited Partner or Class B Limited Partner, an amount equal to the amount of their respective Optional Loans made pursuant to Section 4.6, if any, with such distributions to be applied first to the Optional Loans of the most distant date and origin and then applied to the Optional Loans of the second most distant date and origin, and so on, until the principal and interest of all Optional Loans have been paid in full, and made pro rata among the Partners based upon the total amount of Optional Loans of even date made by each, to be applied first against interest, then against principal;

(ii) Second, 100% to the Class A Limited Partners and the Class B Limited Partners in accordance with their respective accrued and unpaid Preferred Returns until an amount equal to such accrued and unpaid Preferred Returns are reduced to zero; and

(iii) Third, to the General Partners, the Class A Limited Partners and the Class B Limited Partners in accordance with their respective General Partner and Class A/B Limited Partner Partnership Interests.

In the event a quarterly payment due in any quarter under Section 8.7(b) or 8.7(c) is not paid in full the amount remaining to be paid shall be carried forward and added to the appropriate 8.7(b) or 8.7(c) payment due for the next succeeding quarter. The carry forward shall continue from quarter to quarter until such carried amount is paid in full. Amounts owed but not paid because of insufficient revenue or cash for distribution and carried forward shall not bear interest

8.8 **Distributions on Capital Event.** Net proceeds from a Capital Event will be used to make certain distributions to the Limited Partners as follows:

(a) First, to pay all known debts owing to third-party creditors of the Partnership (other than Partners);

(b) Second, to the Preferred Return on 2021 Working Capital;

(c) Third, to pay the 2021Working Capital Contribution until the 2021 Working Capital Contribution is paid in full;

(d) Fourth, 100% to the Class C Limited Partner until such time as the Class C Limited Partner has received 100% of its Capital Contributions;

(e) Fifth, 100% to the Class A and Class B Partners until such time as the Class A and Class B Partners have received 100% of their accrued and unpaid Preferred Return and their unreturned Capital Contributions; and

(f) Thereafter, in accordance with Section 8.7(e).

8.9 **Elections by Partnership as to Optional Adjustment to Basis**. Where a distribution of property is made in the manner provided in Section 734 of the Code or where a transfer of Ownership Interest permitted by this Agreement is made in the manner provided in Section 743 of the Code, the General Partner shall file on behalf of the Partnership, upon any remaining Partner's request, an election under Section 754 of the Code in accordance with the procedures set forth in the applicable Regulations.

8.10 **Special Allocations**. Notwithstanding the provision of Section 8.1 to the contrary, the following special allocations, if any, shall apply, and the allocations set forth in this Section 8.10(a) through (g) shall be made in the following order and priority:

(a) **Minimum Gain Chargeback**. Notwithstanding any other provision of this Article VIII, if there is a net decrease in Partnership Minimum Gain during any Partnership Year, each Partner shall be specially allocated items of Partnership income and gain for such Partnership Year (and, if necessary, subsequent Partnership Years) to the extent required and in the manner provided in Section 1.704-2(f) of the Regulations. This Section 8.10(a) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(f) of the Regulations and shall be interpreted and applied consistently therewith.

(b) **Partner Minimum Gain Chargeback**. Notwithstanding any other provision of this Article VIII except Section 8.10(a), if there is a net decrease in Partner Nonrecourse Debt Minimum Gain (having the meaning assigned to the term "partner nonrecourse minimum gain" in Section 1.704-2(i)(3) of the Regulations) attributable to a Partner Nonrecourse Debt (having the meaning assigned to the term "partner nonrecourse debt" in Section 1.704-2(b)(4) of the Regulations) during any Partnership Year, each Partner who has a share of the Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(5) of the Regulations, shall be specially allocated items of Partnership income and gain for such Partnership Year (and, if necessary, subsequent Partnership Years) in an amount equal to such Partner's share of the net decrease in Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, to the extent required and in the manner provided in Section 1.704-2(i)(4) of the Regulations. This Section 8.10(b) is intended to comply with the minimum gain chargeback requirement set forth in Section 1.704-2(i)(4) of the Regulations and shall be interpreted and applied consistently therewith.

(c) **Qualified Income Offset**. In the event any Partner unexpectedly receives any adjustments, allocations, or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), (5) or

(6) of the Regulations, items of Partnership income and gain shall be specially allocated to each such Partner in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of such Partner as quickly as possible, provided that an allocation pursuant to this Section 8.10(c) shall be made only if and to the extent that such Partner has an Adjusted Capital Account Deficit after all other allocations provided for in this Article VIII have been tentatively made as if this Section 8.10(c) were not in this Agreement.

(d) **Gross Income Allocation**. In the event any Partner has a deficit Capital Account at the end of any Partnership Year which is in excess of the sum of (i) the amount such Partner is obligated to restore pursuant to any provision of this Agreement and (ii) the amount such Partner is deemed to be obligated to restore pursuant to Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations, each such Partner shall be specially allocated items of Partnership income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 8.10(d) shall be made only if and to the extent that such Partner has a deficit Capital Account in excess of such sum after all other allocations provided for in this Article VIII have been tentatively made as if Section 8.10(c) and this Section 8.10(d) were not in this Agreement.

(e) **Partner Nonrecourse Deductions**. Any Partner Nonrecourse Deductions (having the meaning assigned to the term "partner nonrecourse deductions" in Section 1.704-2(i)(1) and 1.704-2(i)(2) of the Regulations) for any Partnership Year shall be specially allocated to the Partner who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which such Partner Nonrecourse Deductions are attributable in accordance with Section 1.704-2(i)(1) of the Regulations.

(f) **Nonrecourse Deductions**. Nonrecourse Deductions for any fiscal year or other period shall be specially allocated among the Partners in proportion to their Ownership Interests.

(g) **Section 754 Adjustments**. To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Section 1.704-1(b)(2)(iv)(m) of the Regulations, to be taken into account in determining Capital Accounts, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Partners or Partner in accordance with Section 1.704-1(b)(2)(iv)(m) of the Regulations.

(h) **Code Section 704(c) Allocations**. In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss and deduction with respect to any property contributed to the capital of the Partnership shall, solely for tax purposes, be allocated among the Partners so as to take account of any variation between the adjusted basis of such property to the Partnership for federal income tax purposes and its initial Gross Asset Value in any permissible manner determined by the Managing General Partner. In the event the Gross Asset Value of any Partnership asset is adjusted pursuant to subparagraph (ii) of the definition of "Gross Asset Value", subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder. Any elections or other decisions relating to such allocations shall be made by the Managing General Partner in any manner that reasonably reflects the purpose and intention of this

Agreement. Allocations pursuant to this Section 8.10(h) are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provisions of this Agreement. Except as otherwise provided in this Agreement, all items of Partnership income, gain, loss, deduction, and any other allocations not otherwise provided for shall be divided among the Partners in the same proportions as they share Profits or Losses, as the case may be, for the Partnership Year.

(i) **Curative Allocations**. The allocations set forth in Section 8.3 and Section 8.10(a) through (g) (the "Regulatory Allocations") are intended to comply with certain requirements of the Regulations. It is the intent of the Partners that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Partnership income, gain, loss, or deduction pursuant to this Section 8.10(i). Therefore, notwithstanding any other provision of this Article VIII (other than the Regulatory Allocations), the Managing General Partner shall make such offsetting special allocations of Partnership income, gain, loss, or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Partner's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Partner would have had if the Regulatory Allocations were not part of this Agreement and all Partnership items were allocated pursuant to Section 8.1 (ignoring the Regulatory Allocations) and Section 8.20. In exercising its discretion under this Section 8.10(i), the Managing General Partner shall take into account future Regulatory Allocations under Sections 8.10(a) and 8.10(b) that, although not yet made, are likely to offset other Regulatory Allocations previously made under Sections 8.10(e) and 8.10(f).

8.11 **Application of Special Allocations**. The Regulatory Allocations are intended to comply with the provisions of Treasury Regulation Section 1.704-2 and are to be interpreted and applied to accomplish that result; provided, however, that to the extent possible, the Regulatory Allocations shall be taken into account in allocating items of income, gain, loss, and deduction among the Partners in such a manner that the net amount of the allocations to each Partner shall be the same as such Partner's distributive shares of Profit and Losses would have been had the events requiring the Regulatory Allocations not occurred. The Managing General Partner shall have reasonable discretion to apply the Regulatory Allocations in whatever order is likely to minimize the economic distortions that otherwise might result from the application of the Regulatory Allocations; provided, however, that the Managing General Partner shall apply the Regulatory Allocations in the order set forth in Section 8.10(a) through (g) to the extent that doing so does not have a material adverse effect on the Partners.

8.12 **Excess Nonrecourse Liabilities**. Solely for purposes of determining each Partner's proportionate share of the "excess nonrecourse liabilities" of the Partnership within the meaning of the applicable Regulations, each Partner's interest in the Profits of the Partnership shall be its Ownership Interest.

8.13 **Time of Allocations**. Except as otherwise required by any other Sections of this Agreement or the Code, allocations pursuant to this Article VIII shall be made as of the last day of each Partnership Year; provided, however, that Profits, Losses and other items shall also be allocated at such times as the Gross Asset Value of Partnership property are adjusted pursuant to subparagraph (ii) of the definition "Gross Asset Value".

8.14 **Transferor-Transferee Allocations**. As to any Ownership Interest which is transferred of record during any year, unless required otherwise by applicable law, the profits or losses allocable in respect of such Ownership Interest shall be prorated between the transferor and the transferee on the basis of the number of days in such year that each was the holder of record of such Ownership Interest without regard to the results of the Partnership operations during the period before and after the transfer, unless the transferor and transferee agree to an allocation based on the results as of the record date of transfer and agree to reimburse the Partnership for all costs, including accounting fees, incurred in making and reporting an allocation on such basis.

8.15 **Income, Gains, Losses and Deductions and Credits**. For U.S. federal income tax purposes, each item of income, gain, loss, deduction and credit for a Partnership Year not specifically allocated pursuant to Section 8.9 shall be allocated among the Partners in the same manner as the Profit or Loss for such Partnership Year is allocated. Notwithstanding the foregoing, to the extent permitted by applicable law, the Class C Limited Partner's losses which the Class C Limited Partner may not take advantage of due to non-taxpayer status shall be specially allocated to Class A and Class B Limited Partners, to the extent that such allocation will not adversely affect the Class C Limited Partner. ***(subject to review by tax counsel)***

8.16 **Treatment of Loans**. Any Optional Loan shall, as provided in Section 707(a)(1) of the Code, be treated for federal income tax purposes as a loan to the Partnership from a Partner not acting in his capacity as a Partner and shall not be treated as a contribution to the capital of the Partnership.

8.17 **Treatment of Fees and Reimbursement**. No reimbursements pursuant to Section 5.9 shall be treated as distributions by the Partnership to the Partners.

8.18 **Distribution of Certain Proceeds**. To the extent permitted by Regulations Section 1.704-2(h)(3), the Partners shall endeavor not to treat distributions of cash as having been made from the proceeds of a Nonrecourse Liability (having the meaning assigned to that term in Regulations Section 1.704-2(b)(3)) or a Partner Nonrecourse Debt, but only to the extent that such distributions would cause or increase an Adjusted Capital Account Deficit for any Partner.

8.19 **Non-dilution of Partner's Interest in Profits and Losses.** The application or use of any special allocation or related provision shall not dilute or reduce the Class C Limited Partner's or any other Partner's Partnership Interest and/or interest in cash distributions. ***(subject to review by tax counsel)***

8.20 **Application of Allocation Provisions**. The allocations and related provisions (but in all cases excluding Section 8.5, 8.7, 8.17, and 8.18 and 8.21) set forth in this Article VIII and Section 4.4 (the "Allocation Provisions") are intended to comply with Section 704(b) and (c) of the Code and the Regulations thereunder (the "Section 704 Rules"), including but not limited to complying with the capital account maintenance rules thereunder and achieving "economic effect equivalence" as set forth in Treasury Regulation Section 1.704-1(b)(2)(ii)(i) to the greatest extent possible. To the extent the Allocation Provisions do not fully comply with the Section 704 Rules the Managing General Partner is authorized to apply the Allocation Provisions in a manner such that, as so applied, they fully comply therewith to the greatest extent possible. With respect to any election or discretionary matter contemplated under the Section 704 Rules and not addressed in this Agreement, the Managing General Partner shall have the authority on behalf of the Partnership

to make or forego making any such election and to take any action with respect to any such discretionary matter as may be permitted under the Section 704 Rules.

8.21 **Acknowledgment of Tax Consequences**. Each Partner (other than the Class C Limited Partner) hereby acknowledges awareness of the tax consequences of the allocations made by this Article VIII and agrees to be bound by the provisions of this Article VIII in reporting their shares of Partnership income and loss for income tax purposes, except to the extent otherwise required by applicable law.

ARTICLE IX.

9.1 **Events Requiring Winding Up**. The Partnership shall be immediately wound up upon:

(a) The winding up, liquidation, or Bankruptcy of both General Partners or the occurrence of any other act which would legally disqualify or prevent both General Partners from acting under Section 153.155(a) of the TLPL (a "Winding Up Event"); provided, however, that if, within ninety (90) days after the occurrence of a Winding Up Event, a Majority-in-Interest of the Limited Partners exercise any of the options described in Section 9.3, then the event requiring the wind up shall be revoked and the Partnership shall continue;

(b) The consent of all of the Partners to dissolve;

(c) Upon the sale, conveyance, transfer or other voluntary disposition of all or substantially all of the Partnership Assets (including receipt of payment in full of or sale for cash of any residual note receivable or contingent or deferred purchase price) or upon the foreclosure or other involuntary disposition, or deed in lieu of foreclosure, of all or substantially all of the Partnership Assets;

(d) The occurrence of an event which would render the continuation of the Partnership business or operation unlawful; or

(e) If none of the foregoing events have previously occurred, then the Partnership shall automatically wind up on July 28, 2070.

9.2 **Effect of Death, Incapacity or Bankruptcy of a Limited Partner**. The death, incapacity or Bankruptcy of a Limited Partner shall not result in the termination of the Partnership. Upon the death, incapacity or Bankruptcy of a Limited Partner, the legal representative of such Limited Partner or of such Limited Partner's estate, as the case may be, shall have the respective rights and liabilities as set forth in Section 153.113 of the TLPL. In no event shall a creditor of the bankrupt Limited Partner be treated as an assignee of such Limited Partner's Ownership Interest.

9.3 **Effect of Winding Up Event**. In the event of the occurrence of a Winding Up Event, the Limited Partners shall have the option, which must be exercised by written notice within forty-five (45) days after the date of any of the events described in Section 9.1(a), to convert the Managing General Partner's or the SR General Partner's Ownership Interests into a limited partnership interest, and transfer up to one percent (1%) of the Class C Limited Partner's Ownership Interest to a new general partner designated by the Class C Limited Partner and convert

such interest to a general partnership interest having the rights, obligations, benefits and responsibilities of the General Partners with respect to the management and operation of the Partnership. The results of such exercise shall be reflected in an amendment to this Agreement, which shall be executed by the Class C Limited Partner, including the new general partner.

9.4 **Liquidation of Assets**. On the effective date of the dissolution of the Partnership, the Managing General Partner (or a Person designated by the SR General Partner if the Managing General Partner causes such termination) shall act as agent of the terminated Partnership in liquidation, and of the Partners, for winding up all Partnership affairs and all business transactions of the Partnership (the "Liquidating Trustee"). The Liquidating Trustee shall continue to serve until the completion of the winding up and liquidation, unless Bankruptcy, insolvency or resignation shall intervene. The Liquidating Trustee shall not be paid for its services after the termination of the Partnership and the winding up for liquidating operations. It may, out of the assets and proceeds of the assets on hand, employ such assistance as it determines appropriate, and it may employ and pay any one of the Partners that is not its Affiliate to take any such actions and render any such services in the winding up and liquidation.

9.5 **Distribution of Proceeds from Liquidation**. In the event of termination of the Partnership, the business affairs of the Partnership shall be wound up and liquidated as promptly as business circumstances and orderly business practices will permit. The proceeds of liquidation and all Partnership cash shall be used to pay all known debts owing to third-party creditors of the Partnership (other than Partners) and then, after making any Profit and Loss allocations to the Partners as called for herein, to make distributions to the Partners in accordance with Section 8.7.

No Partner shall upon or at any time after the liquidation of the Partnership have any obligation to return to the Partnership any amounts distributed to such Partner unless such distributions were not made in accordance with this Agreement. If any Partner has a negative Capital Account balance on the date of liquidation of such Partner's Ownership Interest, that Partner shall have no obligation to restore such negative balance.

Notwithstanding anything to the contrary set forth hereinabove, if after the payment of current Partnership liabilities and obligations to the extent of the funds and/or other assets available for that purpose, either any portion of Partnership liabilities remains unpaid or the Liquidating Trustee determines that additional funds will be required to meet Partnership costs and expenses theretofore incurred or for which the Partnership may become responsible, then the Liquidating Trustee shall be obligated to retain such required amounts, if available (or as and when they become available), before any partnership cash or other assets are distributed to any of the Partners.

9.6 **Indemnification of the Liquidating Trustee**. The Liquidating Trustee shall be indemnified and held harmless by the Partnership (but with respect to the Class C Limited Partner, to the extent permitted under applicable law) from and against any and all claims, demands, liabilities, costs, damages and causes of action of any nature whatsoever, arising out of or incidental to the Liquidating Trustee's taking of any action authorized under, or within the scope of, this Article IX; provided, however, that the Liquidating Trustee shall not be entitled to indemnification hereunder where the claim at issue arose out of:

(a) A matter entirely unrelated to the Liquidating Trustee's acting under the provisions of this Article IX;

(b) The gross negligence or willful misconduct of the Liquidating Trustee; or

(c) The material breach by the Liquidating Trustee of its obligations under this Article IX.

The indemnification rights herein contained shall be cumulative of, and in addition to, any and all other rights, remedies and recourses to which the Liquidating Trustee shall be entitled, at law or in equity.

9.7 **Final Accounting**. Within a reasonable time following the completion of liquidation, an accounting shall be made of the accounts of the Partnership, the account of each Partner thereof, and of the Partnership's Assets, liabilities, and operations from the date of the last previous accounting to the date of such liquidation.

ARTICLE X.

10.1 **Buy-Sell**.

(a) At any time during the term of this Agreement, the Managing General Partner shall promptly notify all Partners of any offers it receives for the purchase of all or any part of the Property. If such notice is during the Lockout Period, the Class C Limited Partner has the right to cause the Partnership to reject the offer upon notice to the Managing General Partner within ten (10) days after receipt of the Managing General Partner's notice. If either (i) during the Lockout Period the Class C Limited Partner fails give notice to the Managing General Partner within the ten (10)-day period to reject the offer, or (ii) the offer is received after the Lockout Period, either General Partner and/or the Class C Limited Partner shall have the right to require that the Property be marketed for sale. In such event, the Managing General Partner shall immediately implement a marketing plan for the sale of the Property, designed to sell the Property at market rates through an approved broker and in such a manner as would result in the highest and best price for the Property. If the Managing General Partner does not actively market the Property in this manner and such failure continues for 15 days after written notice from the SR General Partner, the SR General Partner will have the right to implement a marketing plan of its own on behalf of and at the cost of the Partnership and shall have the power to bind the partnership in this limited instance to an agreement with a real estate broker for this purpose. If a good faith, written, third party offer to purchase the Property is received that a General Partner wants the Partnership to accept, each of the Partners will have 10 days after receipt of that notice to notify the Managing General Partner whether it approves the sale on the terms offered. Failure of a Partner to timely respond to a request to accept an offer will be deemed an approval of the offer and that Partner's consent to sell the Property in accordance with the terms of the offer. If all of the Partners approve or are deemed to have approved the offer, the Property shall be sold in accordance with that offer.

(b) If the Partnership receives a good faith, written, third party offer to purchase the Property, and a Majority-in-Interest of the Class A Limited Partners and Class B Limited Partners, desire to accept and the Class C Limited Partner chooses not to accept the offer, the Class C Limited Partner shall purchase the Ownership Interest of the General Partners, Class A Limited Partners and Class B Limited Partners. The purchase price for the Ownership Interests of the General Partners, the Class A Limited Partners and the Class B Limited Partners will be equal to

the amount the General Partners, the Class A Limited Partners and the Class B Limited Partners would receive as distributions from the Partnership if the Property were sold on the terms of such offer and the net proceeds of such sale (after taking into consideration all expenses that the Partnership would reasonably expect to incur in connection with such sale and also any costs associated with the sale of the Ownership Interest) were distributed in accordance with this Agreement (provided if such offer provides for payment of a portion of the purchase price after the closing of the sale of the Property, the amounts payable to the General Partners, the Class A Limited Partners and the Class B Limited Partners that are attributable thereto shall be deferred in the same manner). The purchase will be closed on a date selected by the Class C Limited Partner on or before the date for closing specified in such offer, subject to limitations applicable to the Class C Limited Partner as a public entity. As a condition to any purchase of the Managing General Partner's Ownership Interest, the Class C Limited Partner shall arrange the release of all liability of the Managing General Partner under any guarantees under any loans to the partnership from financial institutions) ("Partnership Loans"). If the Class C Limited Partner is unable to obtain a release of that liability of the Managing General Partner, the Class C Limited Partner may instead arrange for refinancing of the Partnership Loans to close simultaneously with the purchase of the Managing General Partner's Ownership Interest. If the Class C Limited Partner is required to obtain a release of the guaranty or a refinancing of the Partnership Loans as provided above, the Class C Limited Partner may extend the date for closing for up to an additional 120 days to complete the release or refinancing, in which case the Class C Limited Partner will deliver written notice of such election and such delay to the Managing General Partner at any time prior to the date scheduled for closing. If the Majority-in-Interest of the Class A Limited Partners and Class B Limited Partners desire to sell the Property pursuant to this Section 10.1(b), then each of the General Partners and each Class A Limited Partner and Class B Limited Partner hereby agrees to execute and deliver all related documentation and take such other action in support of the sale of the Ownership Interests as shall reasonably be requested by the Partnership or the Majority-in-Interest of the Limited Partners in order to carry out the terms and provisions of this Section 10.1(b) including without limitation, executing and delivering instruments of conveyance and transfer, and any purchase agreement, merger agreement, indemnity agreement, escrow agreement, consent, waiver, governmental filing, certificates duly endorsed for transfer (free and clear of impermissible liens, claims, and encumbrances), and any similar or related documents.

(c) In connection with the transfer of an Ownership Interest by the Managing General Partner, the Managing General Partner shall warrant to the transferee that it has disclosed to the transferee all liabilities burdening the Property, its Ownership Interest and all liabilities of the Partnership known to the Managing General Partner and not reflected in the Partnership's financial statements or otherwise disclosed by the Managing General Partner to the transferee. An Ownership Interest transferred by any Partner shall be free of encumbrances and adverse claims at the time of its transfer, and the transferor will be in breach of its obligation to transfer the Ownership Interest if the Ownership Interest is subject to any encumbrance or adverse claim at the time of its transfer. Each Partner will be responsible for all legal, accounting and similar fees incurred by it in connection with any transfer of an Ownership Interest. All transfer taxes and recording fees in connection with any transfer of an Ownership Interest will be shared equally by the transferor and the transferee.

ARTICLE XI.

11.1 **Notices**. All notices or other communications required or permitted to be given pursuant to this Agreement (except normal financial reporting and status reporting from the Managing General Partner to the Limited Partners, which may also be given by regular first-class mail) shall be in writing and shall be considered as properly given if hand delivered or if mailed from within the United States by first class United States certified mail, postage prepaid, or by overnight carrier guaranteeing next day delivery, and addressed as follows:

If to the Managing General Partner:

SCW Crossroads Mall GP, LLC
730 N. Post Oak Road, Suite 330
Houston, Texas77024
Attn: Mr. Sid C. Weiss
Telecopy No.: (713) 960-1400

With copy to:

BoyarMiller
Kirby Grove
2925 Richmond Avenue, 14th Floor
Houston, Texas 77098
Attn: Mr. Bill Boyar
E-mail: bboyar@boyarmiller.com

If to the SR General Partner:

SR Crossroads Mall GP, LLC
755 East Mulberry Avenue, Suite 200
San Antonio, Texas 78212
Attn: Mr. Robert Rosenthal
Telecopy No.: (210) 244-8892

BRosenthal@rpsalaw.com

With copy to:

Ken Gindy
2538 SW 36th Street
San Antonio, Texas 78237
kgindy@kgindy.com

If to the Limited Partners:

See attached **Exhibit "F"** for addresses of the Limited Partners.

In the case of any notices under Articles VI or IX, such notices shall be given only by courier delivery (including overnight courier delivery) or telecopy, and shall not be deemed given or received until actual receipt at the designated notice address or telecopy number of the recipient party (a confirmation of completed telecopy transmission by the sender's telecopy machine shall be prima facie evidence of actual receipt by the recipient party). A Partner may change its address by giving notice in writing, stating its new address, to the other Partner. Notice to a Partner, if deposited in the United States mail in the manner herein provided, shall be deemed given to and received by the named addressee on the earlier of actual receipt or three (3) business days after it is so deposited. Notice to a Partner given by hand delivery or by overnight carrier shall be effective upon receipt by at the designated notice address of the addressee named therein.

11.2 **Law Governing**. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

11.3 **Amendments**. This Agreement may be amended in accordance with Section 5.2(x).

11.4 **Successors and Assigns**. Subject to the provisions of Article VI, this Agreement, and all the terms and provisions hereof, shall be binding upon and shall inure to the benefit of the Partners, and their respective heirs, legal representatives, successors and permitted assigns.

11.5 **Counterparts**. This Agreement shall be executed in multiple independently signed or fully signed counterparts, each of which shall be considered an original but all of which together shall constitute one agreement. If each party signs a separate original, this Agreement shall be effective (as of the effective date) when the last party has signed his or its separate original, and the separate signature pages may be collated and attached hereto as if they were one.

11.6 **Gender and Number**. Whenever required by the context, as used in this Agreement, the singular number shall include the plural, and the masculine gender shall include the feminine or the neuter.

11.7 **Severability**. If any provision of this Agreement, or the application thereof to any person or circumstance, shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

11.8 **Headings**. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation thereof.

11.9 **References**. Any reference to an "Article" or to a "Section" contained in this Agreement shall be to a provision of this Agreement, unless such provision specifically provides otherwise.

11.10 **Entire Agreement**. This Agreement represents the entire agreement among the parties hereto regarding the formation and operation of the Partnership that is the subject of this Agreement, and all other prior or contemporaneous verbal (or prior written) discussions,

negotiations, assurances, representations, proposals and similar matters are superseded hereby and merged out of existence by the execution of this Agreement.

11.11 **Amendment and Restatement**. This Agreement hereby amends, supersedes and replaces in its entirety the Original Partnership Agreement, and the Original Partnership Agreement is hereby null, void and of no further force or effect other than specific obligations that expressly survive the termination of the Original Partnership Agreement. This Agreement will be binding on all Partners of the Partnership pursuant to the approval procedures set forth in Section 5.2(xi) and Section 11.3 of the Original Partnership Agreement, despite the fact that not all Partners have executed, and are not required to execute, this Agreement.

11.12 **Time of the Essence**. Time is of the essence in all matters of performance under this Agreement.

11.13 **Special Purpose Entity**. Unless and until the Falcon Bank $22,000,000 loan to the Partnership (the "Falcon Bank Loan"), evidenced and secured by certain loan documents (the "Loan Documents") including, without limitation, (i) a $22,000,000 promissory note, (ii) a Loan Agreement ("Loan Agreement") and (iii) a mortgage, deed of trust or deed to secure debt (the "Security Instrument") encumbering the Property (the "Collateral") has been paid in full in accordance with the terms and provisions of such Loan Agreement, Security Instrument and other Loan Documents, the Partnership will not:

(a) engage in any business or activity other than the acquisition, development, ownership, operation, leasing, managing and maintenance of the Collateral, and activities incidental thereto;

(b) acquire or own any material assets other than (i) the Collateral, and (ii) such incidental personal property related to or as may be necessary for the operation of the Collateral;

(c) merge into or consolidate with any Person or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure;

(d) (i) fail to observe its organizational formalities or preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, and qualification to do business in the State where the Collateral is located, if applicable, or (ii) without the prior written consent of Lender, amend, modify, terminate or fail to comply with the provisions of the Partnership's Certificate of Formation, Certificate of Partnership, Partnership Agreement or similar organizational documents, as the case may be;

(e) own any subsidiary or make any investment in, any Person without the prior written consent of Lender;

(f) commingle its assets with the assets of any of its members, general partners, Affiliates, principals or of any other Person, participate in a cash management system with any other Person or fail to use its own separate stationery, telephone number, invoices and checks;

(g) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Falcon Bank Loan and trade payables in the ordinary course of its business of owning and operating the Collateral, in amounts as are normal and reasonable under the circumstances;

(h) become insolvent and fail to pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due;

(i) (i) fail to maintain its records (including financial statements), books of account and bank accounts separate and apart from those of the members, general partners, principals and Affiliates of the Partnership, the Affiliates of a member, general partner or principal of the Partnership, and any other Person, (ii) permit its assets or liabilities to be listed as assets or liabilities on the financial statement of any other Person or (iii) include the assets or liabilities of any other Person on its financial statements;

(j) enter into any contract or agreement with any member, general partner, principal or Affiliate of the Partnership, or any member, general partner, principal or Affiliate thereof (except those existing on the Effective Date) without the consent of the Lender;

(k) seek the dissolution or winding up in whole, or in part, of the Partnership;

(l) fail to correct any known misunderstandings regarding the separate identity of the Partnership, or any member, general partner, principal or Affiliate thereof or any other Person;

(m) guarantee or become obligated for the debts of any other Person or hold itself out to be responsible for the debts of another Person;

(n) make any loans or advances to any third party, including any member, general partner, principal or Affiliate of the Partnership, or any member, general partner, principal or Affiliate thereof, and shall not acquire obligations or securities of any member, general partner, principal or Affiliate of the Partnership, or any member, general partner, or Affiliate thereof;

(o) fail to file its own tax returns or be included on the tax returns of any other Person except as required by applicable law;

(p) fail either to hold itself out to the public as a legal entity separate and distinct from any other Person or to conduct its business solely in its own name or a name franchised or licensed to it by an entity other than an Affiliate of the Partnership, and not as a division or part of any other entity in order not (i) to mislead others as to the identity with which such other party is transacting business, or (ii) to suggest that the Partnership is responsible for the debts of any third party (including any member, general partner, principal or Affiliate of the Partnership, or any member, general partner, principal or Affiliate thereof);

(q) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(r) fail to allocate fairly and reasonably any overhead expenses that are shared with an Affiliate, including paying for office space and services performed by any employee of an Affiliate;

(s) pledge its assets for the benefit of any other Person;

(t) fail to maintain a sufficient number of employees in light of its contemplated business operations; or

(u) fail to hold its assets in its own name;

ARTICLE XII.

12.1 **Lease of Space B-61 to Class C Limited Partner**. Simultaneous with the execution of this Agreement and the Class C Limited Partner's capital contribution described in Section 4.1(a), the Partnership and the Class C Limited Partner will enter into a lease agreement for Space B-61, which consists of 15,490 square feet, more or less, on the upper level of the Property ("Space B-61"). The lease will commence on the January 1, 2022 and expire on December 31, 2041. Such lease will include the following terms: (i) the rental shall be $1.00 per year plus applicable operating expense pass through charges, including taxes, insurance, utilities, HVAC and other common area expenses paid by tenants (but excluding marketing and property taxes for any tenant space that is excluded from mall property taxes because such space is leased or subleased to a governmental entity such as the City of Balcones Heights; (ii) the Class C Limited Partner will accept Space B-61 in as-is, where-is condition and the Partnership as landlord will not be required to (A) provide any tenant improvements (other than as provided in Section 4.3) or (B) provide maintenance inside Space B-61 other than maintenance of the Property structure and common systems serving Space B-61; (iii) the Class C Limited Partner shall have the right to sublease Space B-61 to any other party as long as the subtenant(s) do not violate any then existing tenant exclusives or restrictions applicable to the Property, and such sublease(s) shall be at such rental rates as the Class C Limited Partner shall determine and any amounts received by the Class C Limited Partner for the any sublease in excess of the $1.00 a year base rent and pass through charges shall belong solely and exclusively to the Class C Limited Partner; (iv) the Class C Limited Partner shall be entitled to receive a tenant improvement payment from the Partnership from first available cash flow distributions (cash flow or capital) as set out in Section 8.7(a) until the Special Class C Contribution has been fully reimbursed (without interest); and (iv) the Space B-61 lease shall not be subordinate to any mortgage or lien on the Property, including, without limitation, the Falcon Bank Loan.

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