



Commercial Promissory Note

Document 2061A

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COMMERCIAL PROMISSORY NOTE

[CITY/STATE]

\$ _____

[DATE]

FOR VALUE RECEIVED, the undersigned [DEBTOR], a _____ [corporation] (jointly and severally if more than one) promise(s) to pay to the order of [LENDER] together with any successors or assigns, the "**Lender**"), having a mailing address of [ADDRESS], the sum of _____ Dollars (\$ _____), with interest in arrears calculated on the basis of a [NUMBER] (__) year amortization period, a 360 day year and 30 day months at the initial per annum rate of ____ % payable as follows:

(i) Consecutive monthly installments of principal and interest each in the amount of \$ _____ commencing thirty (30) days from the date hereof and on the same day of each month hereafter until [DATE] (the "**Initial Adjustment Date**");

(ii) On the Initial Adjustment Date, and on each annual anniversary thereafter (each such annual anniversary, including the Initial Adjustment Date, being referred to herein as an "**Adjustment Date**"), the interest rate shall be recast and fixed for the ensuing [NUMBER] (__) months at an annual percentage rate equal to the aggregate of (a) the weekly average yield on United States Treasury Securities adjusted to a constant maturity of [NUMBER] (__) years and (b) [NUMBER] (__) percent, determined as of each Adjustment Date;

(iii) Thirty (30) days following each Adjustment Date, the undersigned shall make consecutive monthly payments of principal and interest, with interest calculated on the basis of a 360 day year and 30 day months, on a direct-reduction mortgage-style basis, which payments shall be computed by the Lender as of each Adjustment Date, based upon (a) the remainder of the original amortization period, (b) the fixed per annum interest rate then in effect as determined in accordance with the immediately preceding paragraph (ii), and (c) the then outstanding principal balance due under this Note; and

(iv) A final payment equal to the full unpaid principal balance and all unpaid interest shall be due and payable one hundred and eight (108) months from the date hereof.

A payment of [AMOUNT] (\$ _____) Dollars in respect of a commitment fee (the "**Fee**") shall be due and payable on the first to occur of (a) the Initial Adjustment Date or (b) the date the outstanding principal and interest due pursuant to the terms hereof are paid in full. In the event that the Fee is not paid when due and five days have elapsed after written notice thereof by the Lender to the undersigned without such payment being made, it shall be an Event of Default (as hereinafter defined) and the Lender may add the Fee to the principal amount due hereunder and it shall thereupon be treated as part of the principal amount due pursuant to the terms hereof.

1. **Payment Terms [and Covenants].**

1.1 Payments; Prepayments. All payments hereunder shall be made by the undersigned to the Lender in United States currency at the Lender's address specified above (or at such other branch location as the Lender may operate), on or before 2:00 p.m. on the due date thereof. Payments received by the Lender prior to the occurrence of an Event of Default will be applied first to fees, expenses and other amounts due hereunder (excluding principal and interest; second, to accrued interest; and third to outstanding principal; after the occurrence of an Event of Default payments will be applied to the Obligations under this Note as the Lender determines in its sole discretion. The undersigned may pay all or any portion of the amount owed earlier than it is due, subject to the imposition and payment of the following prepayment premium:

[NUMBER] (___ %) percent of the outstanding principal amount due pursuant to the terms hereof on the date of such prepayment (including the principal amount being prepaid) (the "Principal Amount") shall be due and payable if such a prepayment is made prior to [DATE], after [DATE] and prior to [DATE] or after [DATE] and prior to [DATE];

[NUMBER] (___%) percent of the aforesaid outstanding Principal Amount shall be due and payable if such payment is made after [DATE] and prior to [DATE], after [DATE] and prior to [DATE] or after [DATE] and prior to [DATE].

No prepayment shall be due with respect to prepayments made after [DATE] and prior to [DATE], after [DATE] and prior to [DATE] and after [DATE] and prior to [DATE].

Prepayments shall be applied to installments of principal in the inverse order of the date on which they become due. Amounts prepaid may not be reborrowed. The above-referenced prepayment premium shall be effective upon the Lender's acceleration of all sums due hereunder after the occurrence of an Event of Default. Notwithstanding the foregoing, no prepayment premium shall be due and payable in the event of a prepayment made with the proceeds of a hazard insurance policy or an award in respect of an eminent domain taking.

1.2 Default Rate. To the extent permitted by applicable law, upon and after the occurrence of an Event of Default (whether or not the Lender has accelerated payment of this Note), or in the event of a failure to pay the entire balance due hereunder at the Maturity Date, interest on principal and overdue interest shall, at the option of the Lender, be payable on demand at a rate per annum (the "**Default Rate**") equal to [NUMBER] (___)% per annum above the rate of interest otherwise payable hereunder.

1.3 Late Payment. Without limitation of the foregoing Section 1.2, if a payment of principal or interest hereunder is not made in or within fifteen (15) days of its due date, the undersigned will pay on demand a late payment charge equal to [NUMBER] (___) % of the amount of such payment. Nothing in the preceding sentence shall affect the

Lender's right to accelerate the maturity of this Note in the event of any default in the payment of this Note.

1.4 Covenants. See Schedule 1 attached hereto and incorporated herein by reference.

2. **Defaults and Remedies.**

2.1 Default. The occurrence of any of the following events or conditions shall constitute an "**Event of Default**" hereunder:

(a) (i) failure to pay regularly scheduled periodic installments of principal or interest in or within ten (10) days of the date when due under this Note or due under any mortgage securing this Note or due under any other Obligation or (ii) any other default in the performance of this Note or of any other Obligation continuing for more than (30) days after the Lender has provided written notice thereof, unless such cure cannot be completed within such thirty (30) day period, but the undersigned has commenced such cure during such period and, in the reasonable determination of the Lender is diligently pursuing it to completion or (iii) default in the performance of any obligation of any Obligor to others for borrowed money or in respect of any extension of credit or accommodation or under any lease (in the amount of at least [AMOUNT]); and the acceleration of such indebtedness

(b) failure of any representation or warranty of any Obligor hereunder or under any agreement or instrument constituting or relating to any collateral for the Obligations or of any representation or warranty, or material statement or material information in any documents or financial statements delivered to the Lender in connection herewith to be true and correct;

(c) default or breach of any condition under any mortgage, security agreement, assignment of lease, or other agreement securing or otherwise relating to any collateral for the Obligations, which continues beyond any applicable notice and cure provisions;

(d) failure to furnish the Lender within five (5) days of a written request with financial information about, or to permit inspection by the Lender of any books, records and properties of, the undersigned;

(e) any Obligor generally not paying its debts as they become due;

(f) dissolution, termination of existence, insolvency, appointment of a receiver or other custodian of any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceedings under any bankruptcy or insolvency laws by or against, or any change in control of, any Obligor provided, however that an Obligor shall have ninety (90) days from the commencement thereof to dismiss any such bankruptcy or insolvency proceeding not commenced by an Obligor; or

(g) material change in the condition or affairs (financial or otherwise) of any Obligor or in the value or condition of any collateral securing this Note which in the reasonable opinion of the Lender will impair its security or increase its risk.

2.2 **Remedies.** Upon the occurrence of an Event of Default, or at any time thereafter, at the option of the Lender, all Obligations of the undersigned shall become immediately due and payable without notice or demand and, if the Obligations are secured, the Lender shall then have in any jurisdiction where enforcement hereof is sought, in addition to all other rights and remedies provided by agreement or at law or in equity, the rights and remedies of a secured party under the Uniform Commercial Code of [STATE]. All rights and remedies of the Lender are cumulative and in addition to any rights or remedies provided by law or any other agreement, and may be exercised separately or concurrently.

3. **Definitions.** For purposes of this Note, the following definitions shall apply:

"Obligation" means any obligation hereunder or otherwise of any Obligor to the Lender or to any of its subsidiaries or affiliates, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising with respect to the loan evidenced by the Note or any of the loan or collateral security documents; and

"Obligor" means the undersigned, any guarantor, endorser, or any other person primarily or secondarily liable hereunder or in respect hereof, including any person or entity who has pledged or granted to the Lender a security interest or other lien in property on behalf of the undersigned to constitute collateral for the Obligations.

"Debt Service" shall mean, for any period, the sum of interest charges and principal payments of the undersigned with respect to the Mortgaged Property for such period.

"Debt Service Coverage Ratio" for any period will mean the ratio of the aggregate Net Operating Income of the undersigned from the Mortgaged Property for such period to the aggregate Debt Service of the undersigned with respect to the Mortgaged Property for such period.

"Mortgaged Property" shall mean, collectively, all of the real property (including condominium units) securing this commercial promissory note. On the date of this commercial promissory note the Mortgaged Property consists of the property commonly known as [DESCRIBE PROPERTY OR LOCATION], as more particularly described in the mortgage or mortgages securing this Promissory Note.

"Net Operating Income" for any Mortgaged Property shall mean, for any period, the net income of the undersigned from such Mortgaged Property for such period, after deduction of all costs to operate such Mortgaged Property (including without limitation the costs of utilities, real estate taxes, insurance, management, repair and maintenance), and excluding from such calculation the costs of capital improvements.

"Undersigned" shall mean [NAME OF DEBTOR], jointly and severally, if more than one.

Capitalized terms used but not defined in this Promissory Note shall have the respective meanings given them in the text of the [NAME OF MORTGAGE OR SECURITY AGREEMENT], dated as of [DATE] (the "**Mortgage**").

4. **Debt Service Coverage Ratio.** The undersigned will not permit at the end of any 12-month period commencing with the 12-month period ending on [DATE], the Debt Service Coverage Ratio with respect to such period to be less than [1.25 to 1.00].

If the Debt Service Coverage Ratio is calculated to be less than [1.25 to 1.00] at any time, the Lender shall give notice thereof to the undersigned and, if demanded by the Lender the undersigned will either, at the undersigned's election (i) pay down the unpaid principal due pursuant to the terms of this Note in an amount which will achieve the required [1:25 to 1:00] ratio, or (ii) deposit with, and pledge to the Lender such other funds or collateral as may be reasonably acceptable to the Lender (the "**Additional Funds**") and for such period so that, in either case the undersigned shall again comply with the Debt Service Coverage Ratio. The Additional Funds shall be treated as income from the Mortgaged Property for the purposes of determining compliance with the Debt Service Coverage Ratio. The Additional Funds shall be released to the undersigned only when the Debt Service Coverage Ratio complies with the requirements hereof without including the Additional Funds in the calculation hereof.

5. **Capital Reserve Account.** Upon the execution hereof, the undersigned shall deposit [AMOUNT] with the Lender to establish a Capital Reserve Account in the joint names of the undersigned and the Lender. In addition to the monthly payments of principal and interest due pursuant to the terms of this Note, there shall also be paid with such payments an additional sum of [AMOUNT] per month from cash flow (the "**Monthly Reserve Payment**") which shall be deposited in the Capital Reserve Account. The undersigned shall not be required to make such Monthly Reserve Payments so long as the balance in the Capital Reserve Account is not less than [AMOUNT]. The Monthly Reserve Account shall only be used for the purposes of paying capital improvements, leasing commissions and tenant fit up at the Mortgaged Property. Payment from or disbursement of funds in the Capital Reserve Account shall require the prior approval by the Lender of a written requisition from the undersigned in such form and with such supporting documentation, as the Lender may reasonably require.

6. **No Other Debt.** The undersigned will not incur, assume or otherwise become liable, contingently or otherwise, directly or indirectly, for any indebtedness, other than this commercial promissory note, and trade obligations in the ordinary course of business not to exceed [AMOUNT] in the aggregate if unsecured or if secured by property other than the Mortgaged Property, without the prior written consent of the Lender.

7. **Operating Accounts.** The undersigned shall maintain an operating account at the Lender in which it shall deposit all rents, security deposits, revenues and other profits derived from the Mortgaged Property.

8. **Guarantors.** The indebtedness evidenced by this Note is secured by the Guaranties of [NAME OF GUARANTOR], and by a [Mortgage and an Assignment of Leases and Rents] covering certain real estate and certain fixtures, equipment and personal property of the Borrower located at [LOCATION OF PROPERTY] all as more particularly described in said Mortgage.

9. **Miscellaneous.**

9.1 **Waiver; Amendment.** No delay or omission on the part of the Lender in exercising any right hereunder shall operate as a waiver of such right or of any other right under this Note. No waiver of any right or amendment hereto shall be effective unless in writing and signed by the Lender nor shall a waiver on one occasion be construed as a bar to or waiver of any such right on any future occasion. Without limiting the generality of the foregoing, the acceptance by the Lender of any late payment shall not be deemed to be a waiver of the Event of Default arising as a consequence thereof. Each Obligor waives presentment, demand, notice, protest, and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note or of any collateral for the Obligations, and assents to any extensions or postponements of the time of payment or any and all other indulgences under this Note or with respect to any such collateral, to any and all substitutions, exchanges or releases of any such collateral, or to any and all additions or releases of any other parties or persons primarily or secondarily liable hereunder, which from time to time may be granted by the Lender in connection herewith regardless of the number or period of any extensions.

9.2 **Security; Set-Off.** The undersigned grants to the Lender, as security for the full and punctual payment and performance of the Obligations, a continuing lien on and security interest in all securities or other property belonging to the undersigned now or hereafter held by the Lender and in all deposits (general or special, time or demand, provisional or final) and other sums credited by or due from the Lender to the undersigned or subject to withdrawal by the undersigned; and regardless of the adequacy of any collateral or other means of obtaining repayment of the Obligations, the Lender is hereby authorized at any time and from time to time, without notice to the undersigned (any such notice being expressly waived by the undersigned) and to the fullest extent permitted by law, to set off and apply such deposits and other sums against the Obligations of the undersigned, whether or not the Lender shall have made any demand under this Note and although such Obligations may be contingent or unmatured.

9.3 **Expenses.** The undersigned will pay on demand all expenses of the Lender in connection with the preparation, administration, default, collection or enforcement of this Note or any collateral for the Obligations, or any waiver or amendment of any provision of any of the foregoing, including, without limitation, reasonable attorneys' fees of outside legal counsel, and including without limitation any reasonable fees or expenses associated with any travel or other costs relating to any appraisals, examinations, administration of the Obligations or any collateral therefor, and the amount of all such expenses shall, until paid, bear interest at the rate applicable to principal hereunder (including any default rate) and be an Obligation secured by any such collateral.

9.4 Lender Records. The entries on the records of the Lender (including any appearing on this Note) shall be prima facie evidence of the aggregate principal amount outstanding under this Note and interest accrued thereon.

9.5 Financial Information. The undersigned shall furnish the Lender from time to time with such unaudited financial statements (including information contained in Section 9.5(a) below) and other information relating to any Obligor or any collateral securing this Note as the Lender may reasonably require. Without limiting the generality of the foregoing if this Note is secured by a mortgage, such information shall include a rent roll with respect to the property mortgaged, certified by the undersigned to be complete and accurate, copies of all leases of such property and such financial and other information concerning lessees under such leases as the Lender shall require. Financial information about the undersigned furnished to the Lender shall be true and correct and fairly represent the financial condition of the undersigned as of the date(s) furnished and the operating results of the undersigned for the periods for which the same are furnished. The undersigned shall permit representatives of the Lender to inspect its properties and its books and records, and to make copies or abstracts thereof.

(a) on or before the date (each, a "**Reporting Date**") that is sixty (60) days after the end of each fiscal year, commencing with the fiscal year ending [DATE]: (i) a current rent roll and all leases with respect to the Mortgaged Property, and (ii) an operating statement setting forth the income and expenses with respect to the Mortgaged Property, for the and 12-month periods (each, a "**Test Period**") ending on the last day of the month immediately preceding the Lender's request (each, a "**Test Date**"), and (iii) copies of the income tax returns for the undersigned, together with all schedules attached thereto; and (b) such other financial information as the Lender may reasonably request from time to time; in each case in scope and detail reasonably satisfactory to the Lender and signed and dated by the undersigned.

9.6 Governing Law; Consent to Jurisdiction. This Note is intended to take effect as a sealed instrument and shall be governed by, and construed in accordance with, the laws of [STATE], without regard to its conflicts of laws rules. The undersigned agrees that any suit for the enforcement of this Note may be brought in the courts of [STATE] or any Federal Court sitting in such State and consents to the non-exclusive jurisdiction of each such court and to service of process in any such suit being made upon the undersigned by mail at the address specified below. The undersigned hereby waives any objection that it may now or hereafter have to the venue of any such suit or any such court or that such suit was brought in an inconvenient court.

9.7 Severability, Authorization to Complete; Paragraph Headings. If any provision of this Note shall be invalid, illegal or unenforceable, such provisions shall be severable from the remainder of this Note and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The Lender is hereby authorized, without further notice, to complete any blank spaces on this Note, and to date this Note as of the date funds are first advanced hereunder. Paragraph headings are for the convenience of reference only and are not a part of this Note and shall not affect its interpretation.

9.8 Jury Waiver. THE LENDER (BY ITS ACCEPTANCE OF THIS NOTE) AND THE UNDERSIGNED AGREE THAT NEITHER OF THEM, INCLUDING ANY ASSIGNEE OR SUCCESSOR SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER LITIGATION PROCEDURE BASED UPON, OR ARISING OUT OF, THIS NOTE, ANY RELATED INSTRUMENTS, ANY COLLATERAL OR THE DEALINGS OR THE RELATIONSHIP BETWEEN OR AMONG ANY OF THEM. NEITHER THE LENDER NOR THE UNDERSIGNED SHALL SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY DISCUSSED BY THE LENDER AND THE UNDERSIGNED, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS. NEITHER THE LENDER NOR THE UNDERSIGNED HAS AGREED WITH OR REPRESENTED TO THE OTHER THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.

9.9 Notices. Notices given hereunder shall be given as provided in [SECTION #] of the Mortgage of even date herewith given by the undersigned to the Lender to secure the Obligations.

Signed in the presence of:

[DEBTOR NAME]

By: _____

Its: _____

Address: _____

Attn: _____