

PROMISSORY NOTE

By Alan Wayte
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\$ _____

_____ Date: As of _____

FOR VALUE RECEIVED, _____, a _____ ("Borrower") having its principal place of business at _____, promises to pay to _____, a _____ ("Lender"), at Lender's offices at _____ or at such other place as Lender designates in writing, the principal sum of _____ DOLLARS (\$ _____) (the principal sum or so much of the principal sum as may be advanced and outstanding from time to time, the "Principal"), in lawful money of the United States of America, with interest on the Principal from the date of this Promissory Note (this "Note") through and including _____ (the "Maturity Date") at the fixed rate of _____ percent (____%) per annum (the "Fixed Interest Rate") to be computed on the basis of a 360 day year. Each monthly payment shall be based on a 30-day month, with a per diem rate equal to the Fixed Interest Rate divided by 360.

This Note is secured by, among other things, the First Deeds of Trust, Assignment of Leases and Rents, Security Agreements and Fixture Filing Statements (collectively, the "First Deeds of Trust") encumbering the properties owned by Borrower and identified on Schedule 1 hereto by their street address or common name and the Subordinate Deeds of Trust encumbering the properties owned by Borrower and identified on Schedule 2 hereto by their street address or common name, all made by Borrower for the benefit of Lender as security for the Loan.

All capitalized terms not expressly defined in this Note will have the definitions set forth in the First Deeds of Trust.

Section 1. Payments of Principal and Fixed Interest.

(a) Borrower will make monthly installment payments ("Debt Service Payments") as follows:

(i) On _____, a payment of accrued interest on the Principal

at the Fixed Interest Rate;

(ii) On _____ and on the first day of each succeeding calendar month through and including _____, payments in the amount the accrued interest on the Principal at the Fixed Interest Rate, each of which will be applied to accrued interest on the Principal at the Fixed Interest Rate; and

(iii) On _____ and on the first day of each succeeding calendar month through and including _____, payments in the amount of _____ (\$ _____), each of which will be applied first to accrued interest on the Principal at the Fixed Interest Rate and then to the Principal.

(b) On the Maturity Date, Borrower will pay the Principal in full together with accrued interest at the Fixed Interest Rate and all other amounts due under the Loan Documents.

Section 2. Prepayment Provisions.

(a) The following definitions apply:

"Discount Rate" means (x) the yield on a U.S. Treasury issue selected by Lender, as published in *The Wall Street Journal*, two weeks prior to prepayment, having a maturity date corresponding (or most closely corresponding, if not identical) to the Maturity Date, and, if applicable, a coupon rate corresponding (or most closely corresponding, if not identical) to the Fixed Interest Rate plus (y) 25 basis points.

"Default Discount Rate" means the Discount Rate less 300 basis points.

"Discounted Value" means the Discounted Value of a Note Payment based on the following formula:

$$\frac{NP}{(1 + R/12)^n} = \text{Discounted Value}$$

NP = Amount of Note Payment

R = Discount Rate or Default Discount Rate as the case may be.

n = The number of months between the date of prepayment and the scheduled date of the Note Payment being discounted rounded to the nearest integer.

"Note Payment" means (i) each scheduled Debt Service Payment for the period from the date of prepayment through the Maturity Date and (ii) the scheduled repayment of Principal, if any, on the Maturity Date.

"Prepayment Date Principal" means the Principal on the date of prepayment.

(b) This Note may not be prepaid in full or in part before _____. Commencing on _____, provided there is no Event of Default, Borrower may prepay this Note in full, but not in part, on the first day of any calendar month, upon 60 days prior notice to Lender and upon payment in full of the Debt which will include a payment (the "Prepayment Premium") equal to the greater of (i) an amount equal to the product of 1% times the Prepayment Date Principal and (ii) the amount by which the sum of the Discounted Value of each remaining Note Payment, calculated at the Discount Rate, exceeds the Prepayment Date Principal. Provided there is no Event of Default, this Note may be prepaid in full without payment of the Prepayment Premium during the last 180 days of the Term. In addition, the Prepayment Premium shall not apply with respect to any prepayment due to application by Lender of condemnation or insurance proceeds. This Note may not be prepaid without simultaneous prepayment in full of (x) any other notes secured by the Loan Documents and (y) that certain Promissory Note in the amount of \$_____ dated the date hereof from Borrower to Lender.

(c) After an Acceleration or upon any other prepayment not permitted by the Loan Documents, any tender of payment of the amount necessary to satisfy the Debt accelerated, any judgment of foreclosure, any statement of the amount due at the time of foreclosure (including foreclosure by power of sale) and any tender of payment made during any redemption period after foreclosure, will include a payment (the "Evasion Premium") equal to the greater of (i) an amount equal to the product of 1% plus 300 basis points times the Prepayment Date Principal, and (ii) the amount by which the sum of the Discounted Value of each remaining Note Payment, calculated at the Default Discount Rate, exceeds the Prepayment Date Principal.

(d) Borrower acknowledges that:

(i) a prepayment will cause damage to Lender;

(ii) the Evasion Premium is intended to compensate Lender for the loss of its investment and the expense incurred and time and effort associated with making the Loan, which will not be fully repaid if the Loan is prepaid;

(iii) it will be extremely difficult and impractical to ascertain the extent of Lender's damages caused by a prepayment after an Event of Default or any other prepayment not permitted by the Loan Documents; and