

**THE NUTS AND BOLTS OF PURCHASING A REAL ESTATE NOTE:
ISSUES, APPROACHES, AND FORMS**

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State Bar Of Texas
27TH ANNUAL ADVANCED REAL ESTATE LAW COURSE
July 7-9, 2005
San Antonio

CHAPTER 43

The authors gratefully acknowledge the assistance of J.R. England, a 2005 graduate of Southern Methodist University School of Law, in the preparation of this article. Mr. England will be starting his practice at Locke Liddell & Sapp LLP in September 2005.

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SELECTED PUBLICATIONS AND LECTURES

Texts and Reference Books

TEXAS TITLE INSURANCE (Second Edition) (Shepards/McGraw-Hill, Colorado Springs, Colorado) (1995) (295 pp.)

A COMPLIANCE GUIDE TO LAND SALES MARKETING REGULATION (with Forms), 1992 A.B.A. Section of Real Property, Probate, and Trust Law (146 pp.)

TEXAS REAL ESTATE TRANSACTIONS (Professional Education Systems, Inc., New York, New York) (1986) (364 pp.)

TEXAS BASIC REAL ESTATE TRANSACTIONS (Professional Education Systems, Inc., New York, New York) (1985) (374 pp.)

Law Review and Professional Journal Articles

“Get the Lead Paint Out – Into the Open.” The Practical Real Estate Lawyer September 1996

“Get the Lead Paint Out – Into the Open (Part 2) (with Forms).” The Practical Real Estate Lawyer November 1996

“ALI-ABA’s Practice Checklist Manual for Drafting Leases: Checklist, Forms, and Drafting Advice from The Practical Lawyer and The Practical Real Estate Lawyer.” Part II,

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“Everything You Need To Know About Insurance in Commercial Leases (with Forms and Glossary).” American Law Institute, 1994.

Co-authored with Steven A. Carey, “Prorations: Watch Out for Real Estate Taxes Paid in Arrears.” 8 Real Estate Finance Journal 11 (Spring 1993)

“Helping a Lender Develop an Environmental Risk Program.” 8 The Practical Real Estate Lawyer 81 (July 1992)

“Civil and Criminal Forfeiture of Real Property and Other Assets.” Real Estate Financing Newsletter, American Bar Association (March 1991); Real Property and Commercial Law Newsletters, Illinois State Bar Association (May 1991); and Northwestern University Drug-Related Property Forfeiture Program (May 1992)

“Negotiating and Drafting Confidentiality Agreements for Purchases (with Forms).” 7 The Practical Real Estate Lawyer 47 (September 1991)

“What You Need to Know About Insurance in the Mortgagee/Mortgagor Relationship (with Forms).” 5 The Practical Real Estate Lawyer (September 1989)

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“A Comprehensive Note Purchase Manual, (with Forms)” (pts. 1&2), 3 The Practical Real Estate Lawyer 45, 49 (July & September 1987)

“Contracts as Commodities: Issues and Approaches in Regard to Commercial Real Estate ‘Earnest Money’ and ‘Option’ Contracts – A Texas Lawyer’s Perspective.” 16 St. Mary’s Law Journal 541 (1985)

“Preparing the Listing Agreement between Owner and Broker (with Form).” 2 The Practical Real Estate Lawyer 51 (July 1986)

“The Agreement Between Owner and Architect: The Perspective of an Owner’s Lawyer.” 15 Real Estate Law Journal 99 (Fall 1986)

“Amendments to Interstate Land Sales Full Disclosure Act.” 8 Probate and Property 7 (Spring 1980)

Selected Presentations to Professional Organizations

“Lease Enforcement Remedies from the Landlord's Perspective.” CLE International Conference, Negotiating Leases, Houston, Texas (September, 2004)

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“Easy Street or Risky Business? – Why Loan Participants Can’t Afford to be Passive Investors.” ALI-ABA Banking and Commercial Lending Law Course of Study (May 1998)

“Negotiating and Documenting Real Estate Loan Transactions – Commonly Negotiated Provisions (with Forms).” ALI-ABA Banking Commercial Lending Law Course of Study (May 1997)

Panelist: American College of Real Estate Lawyers, “Construction Financing Issues.” San Francisco, October 1996.

“Senior/Junior Creditor Agreements.” ALI-ABA Banking and Commercial Lending Law Course of Study (March 1996)

“Managing Environmental Risks: The Establishment of Environmental Policies and Procedures.” Kelly, Hart & Hallman Environmental Law Conference (November 1995)

“Owning, Developing, and Managing Real Property: The Necessity for an Environmental Risk Program.” Advanced Real Estate Law Course for the State Bar of Texas (July 1995)

“History of RTC Pool Sales.” American College of Real Estate Lawyers, Mid-Year Meeting, March 1995 (Real Estate in Capital Markets: the Refinancing of America), San Diego, California

“Negotiating an RTC Purchase and Sale Agreement.” American College of Real Estate Lawyers, Mid-Year Meeting, March 1995 (Real Estate in Capital Markets: Refinancing of America), San Diego, California

“Mock Negotiation of the Purchase and Sale Agreement for Pooled Loans.” American College of Real Estate Lawyers, Mid-Year Meeting, March 1995 (Real Estate in Capital Markets: Refinancing of America), San Diego, California

“Real Estate and Environmental Issues.” Fort Worth Chamber of Commerce, Environmental Symposium for Business, June 1994

Panelist: “Discussions on Use of Mediation.” Alternative Dispute Resolution Section of Tarrant County Bar Association, 1994

“Drafting to Meet Your Clients’ Intent – Common Law Pitfalls of Which Texas Real Estate Lawyers Must Be Aware.” Advanced Real Estate Law Course for the State Bar of Texas (July 1993)

“Insurance and Insurance Provisions in Leases.” Real Estate Law: Leases-In-Depth, Southern Methodist University School of Law (February 1993)

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- “Environmental Risk Management.” Advanced Real Estate Drafting Course for the State Bar of Texas (July 1992)
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- “Confidentiality Agreements.” Advanced Real Estate Drafting Course for the State Bar of Texas (January 1992)
- “Civil and Criminal Forfeiture of Real Property and Other Assets.” University of Texas Advanced Real Estate Law Course (May 1990)
- “Exculpation and Indemnity Clauses.” Mortgage Lending Institute (September 1989)
- “Insurance and Real Estate Transactions: An Examination of Specific Issues, Coverages, and Contractual Provisions.” Mortgage Lending Institute (September 1988); published as “Insurance Issues in the Owner/Contractor Relationship (with Forms and Glossary).” 5 The Practical Real Estate Lawyer 43 (November 1989)
- “Purchasing Promissory Notes Secured by Real Estate: A Manual with Forms”, Advanced Real Estate Law Course (Spring 1988)
- “Regulation of Land Sales Marketing – A Practical Approach.” Advanced Real Estate Short Course (Summer 1987) and ABA Annual Meeting (Summer 1987)
- “Negotiating and Preparing the Agreement Between Owner and Architect: Successful Representation of the Owner’s Interest.” State Bar of Texas Advanced Real Estate Course (Spring 1987)
- “Practical and Ethical Considerations in Dealing with Brokers.” Advanced Real Estate Short Course (Summer 1986)
- “Earnest Money and Option Contracts.” Texas Real Estate Transactions, The Fort Worth Real Estate & Commercial Law Council (Winter 1986)
- “Selected Issues with Regard to Drafting ‘Earnest Money’ and ‘Option’ Contracts.” State Bar of Texas Advanced Real Estate Course (Spring 1985)
- “Marketing of Real Estate in Texas (State and Federal Considerations).” State Bar of Texas Advanced Real Estate Course (Spring 1984)
- “Title and Survey Examination.” State Bar of Texas Institute (Fall 1983)

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Section of Real Property, Probate and Trust Law (1981-Present)

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Real Estate Co-Editor, State Bar Newsletter on Real Estate, Probate and Trust Law (1983-1984)

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HONORARY ORGANIZATIONS

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"Annual Survey of Texas Law, Real Property," 46 SMU L. Rev. No. 4, 1707-1801 (Spring 1993)

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THE NUTS AND BOLTS OF PURCHASING A REAL ESTATE NOTE: ISSUES, APPROACHES, AND FORMS

I. INTRODUCTION

Over the last fifteen to twenty years the real estate industry has seen many different types of financing transactions come and go. Certain transactions that were in vogue in the late 1980s have fallen out of favor, while others have arisen to take their place due to changes in the law, investment climate, or simply because of their practicality.

The buying and selling of notes has been a part of the real estate industry for decades. However, the practice was not considered part of mainstream real estate law until the early 1990s. Fifteen years ago, the buying and selling of notes took a quantum leap forward when the Resolution Trust Corporation (RTC) was assigned the duty of cleaning up the mortgage loan mess left in the wake of the savings and loans scandal. The RTC elected to take care of the problem by auctioning off distressed bank loan portfolios in bulk transactions. The practice of selling loan assets in pools soon spread to banks, insurance companies, and other traditional financing institutions as a means of cleaning up their debt portfolios and limiting risk. Although the portfolios auctioned off by the RTC are long gone, the RTC's decision to sell the debt portfolios en masse had a trickle down effect on the financial and real estate communities. Notes are now bought and sold far more frequently than they were twenty years ago. Today thousands of financiers and investors buy individual or packages of notes everyday. What used to be thought of as a cottage industry is slowly taking a more central role in today's real estate law practice.

A. Why Notes are Bought and Sold

In the simplest note purchase transaction, a property owner sells a piece of real estate, receives a cash payment, and takes back a note from the buyer. In other transactions, banks are the sellers of notes. Banks supply the market with notes, often out of the desire to rid their portfolios of problem loans. Typically, the purchaser buys a note by giving the seller an immediate lump sum payment at a substantial "discount" below the note's stated face value. Purchasers buy notes for any number of reasons. Whatever the reason, if an investor feels the expected cash flow or the collateral behind the note is worth more than the discounted purchase price of the note, the investor has theoretically recognized a profit and boosted the yield of the note, without going through the expense, time and effort of finding and developing

or purchasing the real estate that is the collateral for the note.

B. The Purpose of this Article

This article will discuss the procedures, issues, approaches, and forms involved in a typical note purchase transaction. This presentation, in addition to discussing the issues, will give you the necessary checklists and forms to complete the majority of note purchases. The forms provided are not stripped down for the simplest deal. Instead, they are intended to be used in the majority of note purchase transactions that you and your clients will come across. Please note, however, each individual transaction is different and sometimes it will be necessary to adapt these documents depending on the circumstances of the transaction.

While there are dozens of possible issues to discuss in the most complicated note purchase transaction, the purpose of this article is not to provide a comprehensive note purchase analysis. Rather, this article is intended to be a practical guide for those attorneys asked to represent a client in a note purchase transaction who may not be completely familiar with the process. For those who are interested in a full treatment of the subject matter, please see Billie J. Ellis Jr., [A Comprehensive Note Purchase Guide with Forms](#), *The Practical Real Estate Lawyer*, Parts 1 & 2, Vol. 3, No. 4-5 (July & September 1987).

The 1987 article's main focus is on the purchase of a single note secured by an unimproved tract of land. However, the article also covers multiple note purchases, the purchase of a wraparound note and the purchase of real estate secured by an improved tract of land, among other topics. In covering note purchases, the article explains the proper documentation procedure for a note purchase, due diligence concerns, bankruptcy considerations, title and survey matters, and proper closing procedures, many of which are beyond the scope of this paper. It should be noted that the 1987 article, though extremely comprehensive, was written prior to the flurry of activity in the note purchase field in the early 1990s. In our opinion, there are too many details within the article for a nuts and bolts discussion. The average real estate lawyer does not need a comprehensive analysis, but only a general feel and guide for the process of purchasing real estate-backed notes and the forms used in everyday practice.

C. Nature of a Note Purchase

In a strict sense, a note purchase is best viewed as a financing transaction whereby the owner and holder of a note transfers his rights, together with any liens securing the repayment of the note. In the case of a real estate-secured note the purchase takes on an added dimension as a real estate transaction, since the lien that is being transferred is secured by real property.

Therefore, in addition to examining the terms and provisions of the note, a prospective purchaser of a real estate-secured note must also carefully examine the status of the title to the property securing the note and the security documents creating and perfecting the lien.

Title concerns are important to the note purchaser for several reasons. First, title matters will affect the validity and priority of the lien the purchaser is acquiring. This is particularly true where there are superior liens to the one being purchased. Second, a purchaser needs to be aware of the status of title to property that the purchaser may one day own in the event the purchaser forecloses on its lien. Third, a purchaser must be aware of potential title problems early on because there is a four-year statute of limitations period after the maturity or acceleration of a note within which a person must bring suit to foreclose on a real property lien.¹

As noted earlier, note purchase transactions come in all shapes and sizes, but most frequently note purchases involve the purchase and sale of a single note. Typically, at least one of the parties involved is not particularly sophisticated. Some transactions may involve heated negotiations and detailed contracts, while at other times the seller will simply wish to proceed without preliminary documentation and press for an immediate closing.

It is typical for the purchaser to drive the transaction and the amount of due diligence performed. This is because the seller often will not pay for a lawyer to develop a contract nor will the seller pay for a survey of the property as they would in an ordinary real estate transaction. It is not uncommon for the seller to remark that he is already selling his note at a discount and, therefore, all other “expenses” should be borne by the purchaser.

No matter the method utilized, whether the purchaser uses a non-binding letter of intent, a binding purchase contract, or proceeds straight to closing without a contract or letter of intent, there are certain procedures that should not be compromised, while other tasks can frequently be ignored. Without question the real estate practitioner should always review the title and the survey, but often other common due diligence procedures are either impractical or too expensive. For example, new Phase I Environmental reports are often not ordered, there may be no formal appraisal, and one might elect to rely on an existing survey instead of bearing the costs of ordering a new one.

II. PRELIMINARY CONSIDERATIONS

Many, including the authors of this article, believe the purchaser should try to control the negotiation process from the outset, including the preparation and use of its own Loan Purchase Contract (the “Contract”). Though it is not always possible to do so, failure to take control of the process can lengthen the time frame of the transaction and significantly drive up the cost of the note purchase. Frequently, the seller will not permit the purchaser to buy the note on the purchaser’s terms. Most often, the seller will insist that the parties use the seller’s forms and the seller will refuse to pay for any due diligence. This makes the attorney’s job more difficult. In each transaction, a cost benefit analysis must be undertaken to determine the desired level of due diligence to be performed. Further, since the purchaser’s counsel often will not be able to use and rely on his own forms, knowledge of the applicable law in the absence of strict contractual provisions is absolutely critical.

The discussions and issues set forth in this article can assist your client in calculating the ultimate purchase price of his note. In order to act in the best interest of your client, it is important to acquire as much information as possible about the note and the liens securing its repayment before the purchaser executes the Contract. The seller should be made aware from the outset that the initial purchase price might have to be reduced if due diligence reveals any material problems. It is for this reason that the Contract should not be a bilateral contract of sale, but an option contract to buy the note on certain specified terms.

In many note purchase transactions, the seller will be the previous owner of the property and is thus familiar with it. However, this not always the case. The seller may be a bank or insurance company that is either unfamiliar with the property or unwilling to represent or warrant anything concerning the property. Yet, even where the seller is not a former owner of the property and is not familiar with it, the seller might still have a sufficient relationship with the present owner to assist the purchaser in obtaining necessary information. The Contract, if there is one, should therefore provide for the seller’s full cooperation in obtaining all necessary due diligence information. This contractual provision is particularly important in large portfolio transactions where due diligence is cumbersome and in situations where environmental problems may be present.

III. DOCUMENTING THE NOTE PURCHASE – THE NOTE PURCHASE CONTRACT

As with the purchase of real property, in a note purchase transaction the Contract is the most fundamental document. The Contract in a note purchase transaction should provide for the seller to be absolutely obligated to sell the note on certain terms,

¹ Tex. Civ. Prac. & Rem. § 16.035.

but the purchaser's obligation to buy the note should be contingent upon the fulfillment of specified conditions. Specific contractual issues that affect the purchaser are discussed below. Each of these issues should be carefully studied during each note purchase transaction.

A. Identify Note

Just as with the sale of real property, the Contract must describe with particularity the subject matter that is being transferred from the seller to the purchaser. The parties should therefore describe the note, the Deed of Trust, and any other agreements or instruments securing or pertaining to the note and attach them, or a specific description thereof, to the Contract.

B. Independent Contract Consideration

The terms of a typical purchaser-oriented Contract often provide that the seller's sole and exclusive remedy is to retain the purchaser's earnest money deposit as liquidated damages for the purchaser's failure to close the purchase of the subject property. This type of provision does not adequately protect the purchaser's interests because this limitation makes the Contract an "option" under Texas law and therefore freely revocable by the seller at any time prior to the purchaser's acceptance. To preclude the seller from being able to freely revoke the agreement, the Contract should contain a provision setting forth independent contractual consideration to support the purchaser's option to purchase the note.

C. Title Commitment and Survey Provisions

The Contract should clearly evidence the parties' intentions as to the delivery of a current title commitment and survey covering the property, which is the collateral for the loan.

1. Commitment Provisions

The Contract should always include the due date for delivery of a Nothing Further Certificate ("Certificate") with respect to the mortgagee title policy ("Policy") previously issued to the seller in connection with the note. The Certificate is essentially a title search from the date of the Policy to the present time. Further discussion of the Certificate can be found in part V (Title Considerations). Additionally, the Contract should provide that a copy of all documents referred to in the commitment or Policy will be delivered to purchaser.

Further, the Contract should provide for a time period during which the purchaser must object to title matters. Though the purchaser is free to object to any title matter, the seller is unlikely to contractually bind himself to cure any problems the purchaser may find. Sales of notes are typically done on an "AS IS,

WHERE IS" basis. If certain matters are nevertheless objectionable, the Contract should set forth the options of the note purchaser (termination, waiver of objections, etc.).

2. Survey Provisions

The Contract should specify exactly what kind of survey is to be supplied. Ordinarily, the seller will provide an existing survey only. It is generally up to the purchaser to decide whether an updated survey is necessary. In making this determination it is important to consider the age of the survey, the amount of detail included therein, and material events that may have occurred on or near the property, among others.

D. Feasibility Period

The Contract should provide that the seller will deliver within a specific amount of time from the execution of the Contract (e.g., 14 days), a series of documents, instruments and other items relating to the note, other loan documents, and the status of the lien securing the note. Purchaser must have the right to examine these documents prior to closing to determine the status of the liens and to decide whether to proceed. The following is a list of the more important documents that should be provided by seller for purchaser's review.

1. Loan Documents

The terms and provisions of the note and other loan documents must be reviewed in order to determine the rights to which the holder of the note is entitled. In addition, Purchaser must carefully review the Deed of Trust and any other security documents to determine the nature and enforceability of the liens and security interests securing the loan and the remedies available to the lienholder.

2. Appraisals

Purchaser may want to secure a current appraisal stating that the current market value of the property secured by the lien equals or exceeds the outstanding principal balance of the note. If the lien represents a second or other inferior lien on the property, the amount of any superior liens should be accounted for in determining the appraised value.

3. Estoppel Certificate

It is best, though generally difficult, to have the seller execute an estoppel certificate relating to the note according to the requirements discussed below in Section IV(D). If obtained, the information contained in the estoppel certificate will provide a means to determine the current status (i.e., payment history, events of default) of the note.

4. Payment History Schedule

The Contract should provide for seller to deliver a certified schedule of the payment history of the note from the time of execution to the present. This schedule is a good indicator of whether the purchaser can expect timely performance under the note.

5. List of Names (Addresses, etc. of Makers of Note and all Lienholders)

To the extent possible, purchaser should gather the identity of the makers of the note and all other parties claiming an interest in the note or any portion of the property.

6. Notices of Claims

Seller should deliver all notices of claims against the note or the property as well as any notices seller received from the borrowers/guarantors.

7. Other Security

Seller should deliver to the purchaser all other instruments, notices or agreements affecting or relating to the note or the property; this includes UCC financing statements, guarantees, assignments of rents and/or leases, SNDA agreements, boundary line agreements, mechanics and materialmen's lien affidavits, insurance policies, and property tax bills.

E. Representations and Warranties

In the authors' experience, it is very difficult to get a number of significant representations and warranties from the seller. At a minimum, the authors' believe that the purchaser should obtain the following representations and warranties from Seller:

1. Ownership of Note

Although a mortgagee title insurance policy or endorsement thereto will provide coverage relating to seller's lien, the purchaser should have the seller represent and warrant to the purchaser that seller is the legal and beneficial owner and holder of the note, the note has not been assigned, and that the note is free and clear of adverse claims, liens, security interests, or other encumbrances.

2. Outstanding Balance

Seller must represent the current outstanding principal balance of the note, any accrued but unpaid interest, the date to which interest has been paid through and the balance of any escrow accounts (e.g., taxes, insurance premiums, replacement reserves).

3. No Change

Seller should represent and warrant that it has delivered true, correct and complete copies of all of the loan documents to the purchaser, and that there are no

amendments or modifications to any of the loan documents except those delivered to the purchaser.

F. Termination

Where the purchaser elects not to proceed with the purchase of the note, the Contract must clearly provide that purchaser's liability shall only be to the extent of its earnest money. Accordingly, the Contract must stipulate that retention of the earnest money deposit as liquidated damages is the seller sole and exclusive remedy. The failure to stipulate that the seller's sole and exclusive remedy is to terminate and receive the earnest money can result in the seller having all other remedies available at law and equity in the event of a default by purchaser, include any damages that seller suffers in excess of the earnest money.

IV. DUE DILIGENCE

After the execution of the Contract, the lawyers and the principals must perform a series of related due diligence tasks, including the following.

A. Negotiability

A due diligence review should include an examination of the note terms to see if the elements of negotiability are met. The fact that a note is non-negotiable does not affect its assignability. However, the assignee of a non-negotiable note cannot be a "holder in due course," and will accordingly take the note subject to all defenses that the maker has against the payee.

To be considered a negotiable note, the UCC requires that a note:

- (1) be signed by the maker;
- (2) contain an unconditional promise to pay a sum certain;
- (3) be payable on demand at a stated time; and
- (4) be payable to order or bearer.

To be a holder in due course, the holder must take such an instrument for value, in good faith, and without notice that is overdue or has been dishonored, and without notice that the note is subject to any claims or defenses.

The purchaser will very often be negotiating for the purchase of a non-negotiable note. In these instances, the transfer of the note will not give the purchaser the status of a holder in due course. While a holder in due course takes the note free and clear of all claims on behalf on any person, (except certain statutory UCC defenses), a holder of a non-negotiable note takes the note subject to all discovered and undiscovered claims and defenses. To counteract potential claims, the estoppel certificate that the seller furnishes to the purchaser, if any, should call for the seller to either disclaim or identify the existence of any

known or unknown defenses against the seller or other parties pertaining to the note.

B. Promissory Note

To insure that the holder of the note is adequately protected, the following terms of the note should be reviewed by the purchaser.

1. Date of Note

The note should have a specific date to meet the requirements of negotiability. The purchaser should also insure that the note is dated on the same day as the date of the delivery of the deed to the maker of the note.

2. Identity of the Maker and Payee

The maker's name should be consistent with the name of the grantor in the Deed of Trust and, with respect to purchase money notes, the grantee in the deed from seller. The payee's name should be consistent with the name of the beneficiary in the Deed of Trust. Finally, the note should be payable "to the order of" the payee.

3. Note Amount

The note itself should be examined to determine the original principal balance and how much principal should have been paid off to date.

4. Place of Payment: Form of Payment

The note should specify the place of payment and that the payee, by written notice, can change the place of payment. If the purchaser decides to purchase the note, it will require a letter from the seller at closing directing the maker to send all future payments under the note to the purchaser.

5. Installment Payments: Order of Application

The note should state the amount of the principal of the loan and the dates that principal and interest installments are due under the note. The order of application of payments is another important consideration to the purchaser.

6. Interest Rate

The note should be reviewed to determine the stated interest rate on the principal balance from time to time remaining, both before and after maturity.

7. Prepayment Privilege

Generally, a note cannot be prepaid unless provided on the face of the note or other loan documents or where the payee has agreed to accept the prepayment. If the note permits prepayment, the purchaser should then determine if prepayments can be made at any time without notice or penalty and whether prepayment will be accompanied by accrued

interest to date on the amount of the prepayment. In the event the maker prepays interest, there should be a mechanism for the maker to get credit for the unearned interest in order to avoid any adverse usury consequences.

8. Security for Note

The note generally should recite that payment is secured by a Deed of Trust lien. In addition, in the case of purchase money notes, the note may recite that it is secured by a vendor's lien contained in the deed to the maker of the note.

9. Right to Accelerate

The note should give the holder the right to accelerate the principal balance of the note in the event of a default under the note, the Deed of Trust (or any superior deed of trust lien) or any other loan documents. Preferably, the note will provide for a waiver of notice of the intent to accelerate as well as notice of the acceleration itself.

10. Late Payments

The note will very often provide for late payment charges or provide for interest on unpaid interest and principal at the highest lawful rate.

11. Non-waiver Provisions

It is wise to include a "non-waiver" clause in the note. The purchaser would also be well advised to review the payment history of the note to insure that the payee has not accepted late payments in the past.

12. Attorney's Fees

The note should contain a provision for collection of attorney's fees in the event of default.

13. Usury Savings

The note should include a usury savings clause and a disclaimer of intent to collect a usurious rate of interest.

14. Non-recourse Clauses

The presence of this clause in a note makes the note non-negotiable. It also causes the purchaser's review of title and survey matters relating to the property even more significant, since the purchaser's only option in the event of default is the recovery of the property. The purchaser should further determine whether a deficiency suit and execution against other property of the maker will be permitted, notwithstanding the non-recourse language. Additionally, be aware of the fact that a non-recourse

clause also disclaims the UCC implied transfer warranties found in Tex. Bus. & Com. § 3.416.²

C. The Deed of Trust Lien

The Deed of Trust should be reviewed to see that it constitutes a valid first lien on the real property covered by the Deed of Trust, and that adequate remedies are afforded to the beneficiary. Where the Deed of Trust is subordinate to a prior deed of trust, the senior liens should also be reviewed to determine if they in fact constitute senior liens. If senior liens exist on the property, the purchaser should obtain estoppels or other evidence of the status of the senior lien debt to confirm that there are no defaults existing under the senior lien indebtedness.

1. Date of the Lien

The date of the Deed of Trust should be consistent with the date of note that it secures.

2. Identity of Parties

To create a valid deed of trust lien under Texas law, the Deed of Trust should include the names of the grantor, trustee and beneficiary and the addresses of the grantor and beneficiary.

3. Description of Mortgaged Property.

a. Deed of Trust

An essential term in a Deed of Trust is a sufficient description of the real property covered by the Deed of Trust. The Deed of Trust must be reviewed to see that this standard is met. The Deed of Trust description must be identical to descriptions of the property found in recent surveys, title insurance policies, recorded maps or plats, and the most recent deed.

² Tex. Bus. & Com. §3.416 Comment 5. The applicable transfer warranties are as follows: A person who transfers an instrument for consideration warrants to the transferee, and if the transfer is by [i]ndorsement, to any subsequent transferee that: 1. the warrantor is a person entitled to enforce the instrument; 2. all signatures on the instrument are authentic and authorized; 3. the instrument has not been altered; 4. the instrument is not subject to a defense or claim in recoupment of any party that can be asserted against the warrantor; 5. the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer, and if the instrument is a demand draft, the creation of the instrument according to the terms on its face was authorized by the person identified as drawer. Tex. Bus. & Com. § 3.416. Please note this section of the code is expected to be amended in the 2005 legislative session. See 2005 TX S.B. 1563.

b. Personal Property

If the note is secured by additional personal property, there should be a security agreement contained within the Deed of Trust or a security interest should be granted under a separate agreement. A UCC search should also be conducted to see that financing statements for the personal property have been filed.

4. Description of the Indebtedness

The Deed of Trust should describe the basic provisions of the note and other secured indebtedness, such as the amount of debt secured by the Deed of Trust, the maturity date and any cure periods provided to the borrower in the event of a default.

5. Dragnet Clause

A Deed of Trust may include a dragnet or other indebtedness clause, stating that the mortgage covers other debts (past, simultaneous, or future) owed to the beneficiary by the grantor. In a note purchase transaction, the purchaser's attorney should request that the seller provide an affidavit (or include in an estoppel from the seller) where the seller either lists any existing indebtedness not already described in the Deed of Trust or states that no other indebtedness exists.

6. Due-on-Sale/Encumbrance Clause

A properly drafted due-on-sale clause is enforceable in Texas. However, the language of a due-on-sale must be carefully compared to the types of clauses that have passed judicial scrutiny in applicable Texas cases. In general, the failure to comply with a due on sale clause should be specifically described as a default in the Deed of Trust (as opposed to an ordinary covenant in the Deed of Trust) in order to be enforceable in Texas.

7. Escrow Deposit

A Deed of Trust may require a reserve or escrow account for the payment of ad valorem taxes, insurance premiums, or other amounts. Where these provisions are present, an assignment of the proceeds then being held by the seller is required.

8. Remedies on Default

Remedies on default will ordinarily include the right of foreclosure, which should include both judicial and non-judicial foreclosures. Additionally, the non-judicial foreclosure procedures outlined in the Deed of Trust must precisely trace the requirements of Section 51.002 of the Texas Property Code.

In Texas, there is a four-year statute of limitations period to file suit for the recovery of real property and/or foreclosure on a real property lien. When dealing with a promissory note secured by a real

property lien, the four-year period does not begin to run until the maturity date of the note or date of the last installment. In the event that a note has previously been accelerated, the statute of limitations begins to run on the date of acceleration; thus, it is important to determine whether the note has been accelerated.

The running of the four-year limitations period may be suspended through a written extension agreement entered into by the lender and borrower. If a written extension agreement is entered into by the lender and borrower, the limitations period is suspended and the lien remains in effect for four years after the extended maturity date of the debt or obligation.³ In order to suspend the limitations period pursuant to valid extension agreement, the extension agreement must: (1) be signed and acknowledged as provided by law for a deed conveying real property; and (2) be filed for record in the county clerk's office of the county where the real property is located. The parties may continue to extend the lien by entering, acknowledging, and recording additional extension agreements. In the case of a note which was previously accelerated, the borrower and lender may agree to reinstate the debt pursuant to a written agreement complying with the foregoing requirements, in which event the running of the statute of limitations will be suspended until the stated maturity date.

9. Trustee Provisions

The purchaser should review the Deed of Trust and determine that it contains the typical and customary trustee provisions. For example, the lienholder should have the right to appoint a substitute trustee to conduct a nonjudicial foreclosure sale in the event of a default.

10. Condemnation/Casualty Proceeds

Purchaser should review the Deed of Trust to determine to whom the proceeds of condemnation/casualty are allocated and the order of such allocations.

11. Non-recourse Debt

If the note is non-recourse, the Deed of Trust should contain a statement that the liability is limited to the collateral and does not include personal assets.

12. Partial Releases

Where a Deed of Trust contains provisions for partial releases, the mechanism for partial releases should be reviewed to determine how the remaining property will be affected by a release. The basic ingredients of a partial release clause are as follows:

a. Description of Release Parcels

The clause must identify the release parcels or some formula or plan whereby the parcels to be released are described. The description must be sufficient so that a surveyor can locate the tract to be released. Where a Deed of Trust contains a partial release clause, the seller should provide to purchaser a survey of any previously released tracts.

b. Order of Releases

The sequence, order and pattern in which partial releases can be obtained is important. The purchaser should check to ensure that unreleased portions of the property have direct access to public roadways at all times during the effective period of the lien.

c. Release Price

The release price is either expressed as a dollar amount or as a percentage of the outstanding note balance on a per acre or lot basis. The clause should be closely examined to find out how the release price is applied to the debt. The release price for unreleased portions of the property at must at all times equal at least the outstanding principal balance of the note.

d. Release Instruments

The Deed of Trust should provide that when a partial release is requested, the lienholder is furnished with a survey, metes and bounds description describing the release parcel, and a release instrument to be executed by the lienholder.

e. Remedies

Any remedies section giving the grantor the right of specific performance if the lienholder fails to deliver a partial release must be reviewed.

D. Estoppel Certificates.

1. In General

If the Contract requires the seller to execute and deliver to purchaser an estoppel certificate for each note, it should provide for the delivery of the estoppel certificate as early as possible so it can be reviewed during the feasibility period.

2. Content

The content of the estoppel certificate should include seller statements regarding the following items:

a. Purpose

The estoppel certificate should recite that it is being furnished in connection with the sale of the note and that the purchaser is relying on the statements contained in the certificate.

³ Tex. Civ. Prac. & Rem. § 16.036.

b. Owner and Holder of Note

The seller must state that it is the sole legal and equitable owner and holder of the note and of the liens arising under the Deed of Trust, and that it has not assigned, transferred, encumbered or pledged any interest in and to the note and loan documents to any other party.

c. True and Correct Copies

The seller must furnish true and correct copies of the note, Deed of Trust and any other documents executed in connection with or securing the loan. Additionally, seller must state that there are no amendments, modifications, or waivers to the note or Deed of Trust or other loan documents.

d. Entire Agreement

Seller must verify that the note, Deed of Trust and other described loan documents evidence the complete existing agreement between the seller and the obligors on the note.

e. Unpaid Principal Balance; Interest Paid

This clause specifies whether the maker of the note is current in its monetary obligations and sets forth the current balance of the note, accrued but unpaid interest and the balance of any escrow accounts.

f. Next Installment

Seller must verify when the next installment of principal and interest is due under the note, and the amount of such installment.

g. No Acceleration/Default

Seller must state whether there have been any previous defaults under the note or Deed of Trust and whether such defaults caused the indebtedness to be accelerated.

h. No Defenses, Claims, or Rights of Offset

This statement is particularly important where seller transfers the note to purchaser “without recourse,” causing the purchaser to take the note and lien subject to the claims or defenses of the obligors. It should be noted that most sophisticated sellers will not be willing to make this representation and warranty.

i. No Other Indebtedness

This statement provides assurance to the purchaser that there is no other indebtedness being secured by the same collateral.

j. No Other Liens

Seller states that there are no other liens, security interests, or claims with respect to the note, other than those already disclosed.

E. UCC Revised Article 9

Under Revised Article 9, a “promissory note” is now specifically included as a subcategory of instruments. 9-102(a)(65). As an instrument, the sale of a promissory note falls under the scope of the UCC. 9-103(a)(3). Under Article 9, the buyer of a promissory note has automatic perfection of its security interest. 9-309(4). Filing a financing statement and/or taking possession can also perfect a security interest in a promissory note. 9-310(a). Notwithstanding the fact that a note is automatically perfected upon its sale, a purchaser who takes possession of the note enjoys the greatest protection. The buyer of a note should take possession, because if a person only relies on automatic perfection or the filing of a financing statement, it is possible to lose priority to a subsequent purchaser that takes possession (unless the later secured party is aware that in doing so, it violates the rights of a subsequent purchaser). 9-330(d). It is important to note that the knowledge standard for the subsequent purchaser in this situation is different than taking “without knowledge” under the holder in due course test. The subsequent purchaser can be aware of a previous lien, but if he buys the note believing he is not violating the rights of an earlier lienholder, the subsequent purchaser has priority.

V. TITLE CONSIDERATIONS

Most real estate practitioners are familiar with the due diligence procedures involved in an ordinary real property purchase. A discussion of title and survey review procedures for real property acquisitions is beyond the scope of this article. However, there is one peculiar aspect in the title review process that is different from ordinary real property purchases. The following discussion illustrates this important difference.

In a note purchase transaction there will usually be a title company already involved from the original sale of the property. When the seller was issued a mortgagee policy at the time the note was created, the custom is for the purchaser not to procure a new policy when he acquires the note. If the policy was issued by a reputable underwriter and is in proper form, an endorsement to the policy will usually fulfill the purchaser’s objectives at a much lower cost (Texas Form T-3). In essence, the endorsement insures that the purchaser has the full protection of the mortgagee policy originally issued to the seller, updates the effective date of the policy, specifies whether any matters have arisen since the issuance of the policy which affect the insured lien, and states the current ad valorem tax liability on the property.

In conjunction with the endorsement, the title company should be required to furnish a “Nothing Further Certificate” (a “**Certificate**”), which lists all instruments that have been recorded against the

property since the filing of the Deed of Trust, regardless of whether they adversely effect the Deed of Trust. Title companies often charge a fee based on the actual time needed to prepare this, as there are no standardized forms. The Certificate is very important as it provides information regarding the property that is not available elsewhere, for example:

- (1) A record of notices of lis pendens filed;
- (2) Delinquent tax claims;
- (3) Inferior liens;
- (4) Partial release of a portion of the property from the Deed of Trust or outright conveyances; and
- (5) Mechanics' and materialmens' lien affidavits.

Should any of these instruments appear in the Certificate, they should be examined carefully for their impact on the purchaser's position.

VI. CLOSING DOCUMENTS

The following is a list of the typical documents that should be delivered by the seller at closing:

- (1) Promissory note or Allonge (the promissory note should be endorsed on the reverse "payable to the order of purchaser, without recourse");
- (2) Assignment of Note and Liens assigning seller's interest in the note and all other loan documents to purchaser;
- (3) Endorsement to mortgagee policy of title insurance insuring purchaser's valid lien on the property up to the amount of the outstanding principal balance of the note;
- (4) UCC-3 Financing Statements transferring seller's perfected security interest in any personal property securing the Loan to purchaser;
- (5) Estoppel Certificate from seller and each obligor on note regarding status of note and Deed of Trust dated as of the date of closing;
- (6) Letter from seller to maker(s) of note directing maker(s) to forward all future payments and notices under note to purchaser; and
- (7) Opinion of seller's counsel regarding power and authority of seller and seller's representatives to consummate the transactions, and the due execution of the Contract and the closing documents.

VII. CONCLUSION

The policies and procedures discussed in this article are essential to assure that the real estate attorney will complete a note purchase according to

purchaser's expectations. The attorney's role in this process is to make certain that not only is the purchaser's file complete, but that any risk involved has been thoroughly analyzed and explained for the purchaser's benefit. Upon completion of the due diligence, the purchaser should be in a position to view a complete and thorough picture of the legal issues involved and make an informed decision as to whether the note purchase should be consummated.

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Lewis Stone, Financing Commercial Real Estate with Mortgage-Backed Securities, (April 1992).

Billie J. Ellis, Jr. and Bennet Abramowitz, Contracts as Commodities: Issues and Approaches in Regard to Commercial Real Estate "Earnest Money" and "Option" Contracts—A Texas Lawyer's Perspective, 16 St. Mary's L. J. 541

LIST OF INCLUDED FORMS

1. Loan Purchase Agreement
2. Estoppel Certificate (Seller)
3. Estoppel Certificate (Obligors)
4. T-3 Endorsement
5. Assignment of Note and Liens
6. Seller's Letter to Maker
7. Commercial Closing Checklist
8. Checklist for Review of Promissory Note
9. Checklist for Review of Deed of Trust
11. Checklist for Review of Mortgagee Policy of Title Insurance

LOAN PURCHASE AGREEMENT

THIS LOAN PURCHASE AGREEMENT (“**Agreement**”), is executed this ____ day of _____, 200__ (the “**Effective Date**”), by and between _____ (“**Seller**”), and _____ (“**Purchaser**”).

RECITALS:

A. Seller is the owner and holder of that certain Promissory Note in the stated principal amount of \$ _____ dated _____ (the “**Note**”) executed and delivered by _____ (such party, together with any other party obligated to pay the Loan [hereinafter defined], being hereinafter sometimes referred to individually and collectively as the “**Borrower**”) evidencing the loan more particularly described therein (the “**Loan**”);

B. The Loan is secured by, among other things, the lien and security interests of certain Deed of Trust (the “**Deed of Trust**”) more particularly described on Schedule 1, and the Deed of Trust encumbers real property and improvements located in the State of _____, County of _____, as more particularly described on Exhibit A attached hereto and made a part hereof (the “**Mortgaged Property**”); and

C. Purchaser desires to purchase the Note and the Loan from Seller, together with all of Seller’s right, title and interest in and to and under all documents and instruments evidencing, securing or pertaining in any respect to the Loan as more particularly described on Schedule 1 (collectively, the “**Loan Documents**”) on the terms and subject to the conditions set forth herein.

AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

1. Sale and Purchase. Seller agrees to sell, convey, and assign to Purchaser, and Purchaser agrees to purchase and accept from Seller, for the Purchase Price (as hereinafter defined), on the terms and conditions set forth in this Agreement, the Note, the Loan and all of the rights, title and interests of Seller in and to and under the Loan Documents.

2. Purchase Price; Earnest Money.

(a) The purchase price (“**Purchase Price**”) to be paid by Purchaser to Seller for the Loan is _____ and No/100 Dollars (\$ _____), which Purchase Price shall be delivered by Purchaser to _____ Title Company, _____, Suite _____, _____, Attention: _____ (“**Escrow Agent**”) in immediately available funds cash (by wire transfer or delivery of other immediately available funds) at the Closing (as hereinafter defined) for delivery to Seller upon the consummation of the Closing.

(b) Within two (2) Business Days (hereinafter defined) after the execution of this Agreement by Seller, Purchaser and Escrow Agent, Purchaser shall pay to Escrow Agent the sum of _____ and No/100 Dollars (\$ _____) (the “**Earnest Money**”) by check drawn upon immediately

available good funds or by wire transfer of immediately available funds in accordance with the wiring instructions set forth below. The Escrow Agent shall, promptly upon receipt, place the Earnest Money in one or more federally insured, interest bearing accounts, with interest thereon to be added to principal as additional Earnest Money and disbursed in the same manner under this Agreement as principal. Interest earned on the Earnest Money shall be reportable under Purchaser's taxpayer identification number. If Purchaser fails to timely deliver the Earnest Money, then Seller, as its sole remedy therefor, may terminate this Agreement by delivering to Purchaser written notice thereof.

(c) From the Effective Date until Closing, any payments of principal with respect to the Loan due or received by Seller shall be transferred to Purchaser or shall be credited against the Purchase Price. Notwithstanding the preceding sentence, in the event the Closing does not occur, the payments received by Seller under the Loan from and after the Effective Date shall remain the property of Seller. The parties agree to prorate current interest as of the Closing Date with Seller receiving accrued interest through the date preceding the Closing Date. If Seller is collecting and escrowing, or has collected and escrowed, funds for the purpose of applying such funds toward the annual payments of real estate taxes, hazard insurance premiums, private mortgage insurance premiums or for any other purposes permitted under the terms of the Loan Documents, an amount equal to any and all such funds (to the extent such funds are in existence on the Closing Date and have not been applied by Seller to any obligations or expenses) shall be credited against the Purchase Price. The credit to Purchaser shall be deemed a transfer of the funds held in escrow by Seller to Purchaser, and Purchaser shall assume all obligations whether fiduciary, reporting or otherwise, associated with being the escrow agent of such funds to the extent first arising and accruing after Closing. Seller is not and will not as of Closing Date be making any representation or warranty regarding the adequacy of the escrow or the amounts necessary to satisfy the obligations intended to be paid from the escrow.

(d) In addition to all other amounts under this Agreement, upon its execution of this Agreement, Purchaser shall pay to Seller an amount equal to \$100.00 (the "**Independent Contract Consideration**"), which amount Seller and Purchaser hereby acknowledge and agree has been bargained for and agreed to as consideration for Seller's execution and delivery of this Agreement. The Independent Contract Consideration is in addition to and independent of any other consideration or payment provided for in this Agreement and will not be refunded in any event.

3. **Items to be Provided by Seller.** Within five (5) days after the date hereof, Seller shall provide for Purchaser for review and, at Purchaser's option, copying, at Seller's offices, the following:

(a) Copies of the Loan Documents, to the extent the same are in Seller's possession.

(b) Such other documents (the "**Evaluation Material**") pertaining to the Loan and/or the Mortgaged Property in Seller's actual possession or control including documents such as property operating statements, mortgagee title insurance policies, and other material pertaining to the Loan to the extent same (i) are not subject to any confidentiality agreement prohibiting the delivery thereof by Seller to Purchaser, (ii) do not contain any confidential valuations prepared by Seller (provided, however, Purchaser shall be entitled to review and copy any property valuation for the Mortgaged Property prepared by independent third parties), (iii) do not relate to Seller's internal approval and

review process and (iv) do not contain information about Seller which is proprietary or confidential.

4. Inspection.

(a) Purchaser shall have a period commencing upon the Effective Date and terminating at 5:00 p.m. Central Standard Time on the date which is _____ (____) calendar days after the Effective Date (such period being herein called the “**Inspection Period**”) to make such examinations, studies, inspections and investigations (“**Inspections**”) regarding the Loan, the Loan Documents and the Mortgaged Property as Purchaser may desire.

(b) Nothing contained herein shall authorize any inspection of the Mortgaged Property by Purchaser which would not be permitted under the terms and provisions of the Loan Documents.

(c) Any inspection fee, appraisal fee, engineering fee and other expense of any kind incurred by Purchaser relating to, or in connection with, any Inspections will be solely Purchaser’s expense.

(d) Purchaser shall make such examination, review and investigation of the facts and circumstances necessary to evaluate the Loan, the Loan Documents and the Mortgaged Property as it deems necessary or appropriate to form a basis for its evaluation of the purchase of the Loan. Purchaser is assuming all risk with respect to the completeness, accuracy or sufficiency of the Loan, the Loan Documents and any information pertaining to the Mortgaged Property. Purchaser further acknowledges that in acquiring the Loan, Purchaser is assuming the risk of full or partial loss which is inherent with the credit, collateral and collectability risks associated with the quality and character of the Loan.

(e) If Purchaser, in its sole and absolute discretion, is not satisfied with the results of its Inspections for any reason whatsoever, Purchaser, as Purchaser’s sole and exclusive remedy, shall have the right to terminate this Agreement by giving written notice of termination to Escrow Agent and Seller on or before the expiration of the Inspection Period. Upon such termination, neither party hereto shall have any further rights or obligations hereunder, except for those obligations which expressly survive termination of this Agreement (the “**Survival Obligations**”) and Escrow Agent shall disburse the Earnest Money to Purchaser and notify Seller of the termination of this Agreement. Except as otherwise provided herein, if Purchaser does not elect to terminate this Agreement during the Inspection Period by notice in writing to Seller prior to the expiration of the Inspection Period, Purchaser shall be deemed to have waived its right to terminate this Agreement pursuant to this Section 4.

5. Termination, Default and Remedies.

(a) If Purchaser fails or refuses to consummate the purchase of the Loan pursuant to this Agreement at the Closing for any reason, other than termination of this Agreement by Purchaser pursuant to a right to so terminate expressly set forth in this Agreement, then, such event shall constitute a default by Purchaser hereunder and Seller may, as Seller’s sole and exclusive remedy, terminate this Agreement by giving written notice to Purchaser prior to or at the Closing, whereupon neither party hereto shall have any further right or obligation hereunder, other than the Survival Obligations, and Escrow Agent shall disburse to Seller the Earnest Money, which shall constitute liquidated

damages for Purchaser's default under this Agreement (with the exception of any default under the Survival Obligations in which event Seller's remedies shall not be limited as provided herein). It is agreed that the Earnest Money represents a reasonable forecast of just compensation for the harm that would be caused to Seller by such default, that the harm that would be caused by such default is one that is impractical and extremely difficult, if not impossible, to calculate, and that payment of the Earnest Money upon such default shall constitute full satisfaction of Purchaser's obligations hereunder, other than the Survival Obligations. Other than receipt of the Earnest Money, in no event shall Seller be entitled to consequential, punitive or special damages or specific performance from Purchaser due to Purchaser's default hereunder.

(b) If Seller fails or refuses to consummate the sale of the Loan pursuant to this Agreement at the Closing, or if Seller fails to perform any of Seller's other obligations hereunder, when required, either prior to or at the Closing, for any reason other than the termination of this Agreement by Seller pursuant to a right to terminate expressly set forth in this Agreement or Purchaser's failure to perform Purchaser's obligations under this Agreement, then Purchaser shall have the right, as Purchaser's sole and exclusive remedies, to either (i) terminate this Agreement by giving written notice thereof to Seller prior to or at the Closing or (ii) seek and enforce specific performance of this Agreement. If Purchaser elects to terminate this Agreement under subsection (i) above, upon such termination neither party hereto shall have any further right or obligation hereunder, other than the Survival Obligations, and Escrow Agent shall deliver the Earnest Money to Purchaser. In no event shall Purchaser be entitled to receive consequential, punitive, speculative or other damages.

6. Closing.

(a) The closing ("**Closing**") of the sale of the Loan by Seller to Purchaser shall occur at the offices of the Escrow Agent or any other mutually acceptable location, on the date which is _____ (_____) calendar days after the expiration of the Inspection Period, or such earlier date as Purchaser shall request upon two (2) Business Days' prior notice to Seller (the "**Closing Date**"). If the Closing has not occurred by the Closing Date, and provided that Seller is not in default under this Agreement, then Seller may terminate this Agreement, whereupon neither party shall have any further right or obligation hereunder, other than the Survival Obligations, and the Escrow Agent shall promptly disburse the Earnest Money to Seller, except to the extent expressly otherwise provided in this Agreement.

(b) At the Closing, all of the following shall occur, all of which shall be deemed concurrent conditions precedent:

(i) Seller, at Seller's sole cost and expense, shall deliver or cause to be delivered to Escrow Agent the following:

(A) The original executed Note, together with any allonges or prior endorsements thereto, which shall be endorsed "Pay to the order of [Purchaser], without recourse or warranty, except for the express representations and warranties made by the undersigned in that certain Loan Purchase Agreement dated as of _____ between the undersigned and [Purchaser]".

(B) An Assignment of Note and Liens (the “**Assignment**”) for the Loan Documents and related rights and liens in the form of Exhibit B attached hereto with all blanks appropriately completed.

(C) One or more UCC-3 Assignment of Financing Statement forms (the “**UCC-3**”) evidencing the assignment to Purchaser of all Seller’s right, title and interest in and to any security interests in personal property and fixtures created by the Loan Documents and held by Seller which are in effect on the Closing Date.

(D) The originals of the other Loan Documents, including any original mortgagee title policy in Seller’s possession or control.

(E) A settlement statement (“**Closing Statement**”) prepared by the Escrow Agent, setting forth the Purchase Price, closing expenses and any adjustments and prorations called for by this Agreement.

(ii) Purchaser, at Purchaser’s sole cost and expense, shall deliver or cause to be delivered to Escrow Agent the following:

(A) The Purchase Price, less the amount of the Earnest Money held by Escrow Agent, and less the amount of any credit accruing to Purchaser pursuant to Section 2(c).

(B) The Closing Statement.

(iii) At the Closing the Escrow Agent, upon receipt of all items to be delivered to Escrow Agent in accordance with Section 6(b)(i) and 6(b)(ii) above, shall simultaneously (i) deliver to Seller the Purchase Price, and one fully executed counterpart of the Assignment described in Section 6(b)(i)(B) above; (ii) deliver to Purchaser the Note endorsed by Seller, a counterpart of the Assignment executed and acknowledged by Seller, the UCC-3 and any original Loan Documents and (iii) deliver any endorsement to the mortgagee title policy requested by Purchaser and which is available under applicable title insurance rules and regulations (upon Purchaser’s payment for same).

(iv) Seller and Purchaser shall each pay one-half of the escrow fee charged by the Escrow Agent. Seller and Purchaser shall pay their respective attorneys’ fees for the negotiation and drafting of this Agreement and the documents described in Section 6(b)(i) and 6(b)(ii). Seller shall pay the cost of all recording fees, and Purchaser shall pay for the cost of any title insurance coverage or endorsements that Purchaser elects to obtain, along with any transfer tax, mortgage tax or document stamp taxes incurred in connection with this transaction.

7. Conditions Precedent to Performance by Purchaser.

(a) Purchaser’s obligations under this Agreement shall be contingent and specifically conditioned upon the following:

(i) Seller shall have, in all material respects, delivered, performed, observed, and complied with all of the items, instruments, documents, covenants,

agreements, and conditions required by this Agreement to be delivered, performed, observed, and complied with by Seller prior to or as of the Closing.

(ii) The representations made by Seller in Section 9 of this Agreement shall be true and correct in all material respects as though made at and as of the Closing Date, except as otherwise contemplated by this Agreement or consented to in writing by the Purchaser (it being understood that representations that speak as of a specified date shall continue to speak as of the date so specified).

(iii) There shall have occurred (i) no material adverse change in the physical condition of the Mortgaged Property, (ii) the status of title to the Mortgaged Property from that disclosed in any commitment obtained by Purchaser during the Inspection Period, or (iii) the financial condition of any major tenants of the Mortgaged Property.

(iv) The Loan has not been modified or amended after the Effective Date unless prior written consent was obtained from Purchaser.

(v) **[Insert any other specific closing conditions (e.g., estoppel certificates, etc.).]**

(b) In the event that any of the conditions described in Section 7(a) hereof have not been satisfied at or prior to the Closing, Purchaser shall have the option, as Purchaser's sole and exclusive remedies, at any time at or before the Closing, to either (i) terminate this Agreement by written notice to Seller, whereupon the Earnest Money shall be returned to Purchaser and neither party hereto shall have any further right or obligation hereunder, other than the Survival Obligations and Purchaser's right to pursue the remedy provided in Section 5(b) hereof, if applicable, or (ii) waive such condition and close the purchase of the Loan in accordance with the terms hereof.

8. Conditions Precedent to Performance by Seller.

(a) Seller's obligations under this Agreement shall be contingent and specifically conditioned upon the following:

(i) Purchaser shall have, in all material respects, delivered, performed, observed, and complied with all of the items, instruments, documents, covenants, agreements, and conditions required by this Agreement to be delivered, performed, observed, and complied with by Purchaser prior to or as of the Closing.

(ii) The representations and warranties made by Purchaser in Section 11 in this Agreement shall be true and correct in all material respects on the date hereof and as though made at and as of the Closing Date, except as otherwise contemplated by this Agreement or consented to in writing by the Seller (it being understood that representations and warranties that speak as of a specified date shall continue to speak as of the date so specified).

(b) In the event that any of the conditions described in Section 8(a) hereof have not been satisfied by the Closing Date, Seller shall have the option, as Seller's sole and exclusive remedies, at any time on or before the Closing, to either (i) pursue its remedy as provided in Section 5(a) hereof or (ii) waive such condition and close the sale of the Loan in accordance with the terms hereof.

9. Representations of Seller.

(a) Seller hereby represents and warrants to Purchaser that:

(i) Existence and Good Standing. Seller is a duly formed and validly existing _____ under the laws of the State of _____, and is in good standing under the laws of the State of _____.

(ii) Authority. Seller has all requisite power and authority to execute, deliver, and perform all of its obligations under this Agreement and all instruments and other documents executed and delivered by Seller in connection herewith.

(iii) Due Authorization. The execution, delivery and performance of this Agreement and all instruments and other documents to be executed and delivered by Seller in connection herewith have been duly authorized by all necessary action on the part of Seller and do not and will not (A) require any consent or approval of its shareholders, members and/or partners, whichever is applicable, that has not been obtained, or (B) violate any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Seller or any provision of Seller's organization documents.

(iv) Binding Obligation. This Agreement constitutes a legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws of general applicability relating to or affecting the enforcement of creditors' rights and general equitable principles which may limit the availability of equitable remedies.

(v) Bankruptcy. Seller has not filed and is not planning to file any petition seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any law relating to bankruptcy or insolvency, nor has any such petition been filed against Seller. No general assignment of Seller's property has been made for the benefit of creditors, and no receiver, master, liquidator or trustee has been appointed for Seller or any of its properties. Seller is not insolvent and the consummation of the transactions contemplated by this Agreement shall not render Seller insolvent.

(vi) Non-Foreign Person. Seller is not a "foreign person" within the meaning of Sections 1445 and 7701 the Internal Revenue Code of 1986, as amended.

(vii) Owner of Loan. The Seller has good title to and is the sole owner and **[holder in due course]** of the Note and the Loan, free and clear of any liens, claims, encumbrances, or other charges whatsoever. The Loan and the Loan Documents are not subject to any prior assignment, conveyance, transfer, or participation or agreement to assign, convey, transfer, or participate, in whole or in part.

(viii) Balance and Status of Loan. The outstanding unpaid principal balance of the Loan as of _____, 200__ is \$ _____; and the amount of accrued unpaid interest on the Loan as of _____, 200__ is

\$ _____. As of _____, 200__, Seller is holding the amount of \$ _____ in escrow. As of the date of Seller's execution and delivery of this Agreement, no default in the payment of the principal or interest of the Loan exists. The Note and the Deed of Trust have not been modified or amended, except pursuant to the documents and instruments, if any, set forth on Schedule 1 to this Agreement, and all of the Loan Documents are described on Schedule 1 attached to this Agreement.

(ix) Enforceability. To the best of Seller's knowledge, the Note and Deed of Trust are the legal, valid, and binding obligations of the Borrower thereof, enforceable against such Borrower in accordance with their terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors rights generally and by general equity principles (regardless of whether such enforcement is considered in a proceeding in equity or at law).

(x) No Defense by Borrower. The Borrower has no valid defense that prevents enforcement by the holder thereof of the provisions of the Note or Deed of Trust, or realization by the holder thereof or its assigns against the Mortgaged Property that arises from applicable local, state, or federal laws, regulations or other requirements pertaining to usury and any and all other requirement of any federal, state, or local law including, without limitation, truth-in-lending, real estate settlement procedures, consumer credit protection, and equal credit opportunity or disclosure laws applicable to such Loan. The Loan is not subject to any valid right of rescission, set-off, abatement, diminution, counterclaim, or defense that prevents enforcement by the Seller thereof or its assigns of the provisions of the Note or Deed of Trust, or realization by the Seller thereof or its assigns against the Mortgaged Property of the intended benefits of such Deed of Trust and no such claims have been asserted as of the date hereof with respect to such Loan.

(xi) Deed of Trust Priority/Title Insurance. To the best of Seller's knowledge, the Deed of Trust is a valid perfected Deed of Trust, subject only to the exclusions, exceptions, conditions, stipulations, and limitations set forth in the loan title policy, attorney's certification of title, or other reports or documents delivered to Purchaser pursuant to Section 3 of this Agreement (sometimes hereinafter referred to collectively as the "**Review File**").

(xii) No Modification. Except by written instrument or other written documentation listed on Schedule 1, neither the Seller nor, to the best of Seller's knowledge, by any prior holder of the Loan has modified the Note or any of the other Loan Documents or satisfied, canceled, or subordinated the Note or any of the other Loan Documents in whole or in part or released all or any material portion of the Mortgaged Property from the lien of the Deed of Trust or executed any instrument of release, cancellation, or satisfaction. The Note and Deed of Trust and any documents modifying their terms included in the Review file are true and correct copies of the documents they purport to be and have not been superseded, amended, modified, canceled, or otherwise changed except as disclosed in the Review File.

(xiii) Review File. The Review File includes all material documents including all correspondence with Borrower in the possession or control of the Seller, or copies thereof, relating to the Loan.

(xiv) Disbursement of Loan Proceeds. The Borrower does not have the right to disbursement of additional loan proceeds or future advances with respect to the Loan.

(xv) Cross-Collateralization. The Loan is not secured by the same property as any other loan held by Seller or affiliated entities which is not the subject of this Agreement.

(xvi) Litigation. There is no litigation, proceeding, or governmental investigation pending, or any order, injunction, or decree outstanding, existing or relating to the Loan or, to the knowledge of Seller, the Mortgaged Property.

(xvii) Condemnation. There is no pending or, to the best of Seller's knowledge, threatened condemnation proceeding or similar proceeding affecting the Mortgaged Property or any part hereof which could have an adverse effect upon the current use of the Mortgaged Property for its intended purposes.

(xviii) Compliance with Laws. To the best of Seller's knowledge, no written notice has been issued by any governmental authority or any party entitled to enforce a restrictive covenant affecting the Mortgaged Property to the effect that (i) any zoning law, ordinance, or regulation was violated as of the date of closing of the Loan by the maintenance, operation, occupancy or use of any of the Mortgaged Property such that the violation would adversely affect the current operation, current occupancy, or current use of the Mortgaged Property, (ii) any building, or other federal, state or municipal law, ordinance, regulation, or any restrictive covenant is currently violated by the current maintenance, current operation, current occupancy, or current use of any of the Mortgaged Property such that the violation would adversely affect the current operation, current occupancy, or current use of the Mortgaged Property or (iii) any licenses, permits, inspections, authorizations, certifications, and approvals required by any governmental authorities having jurisdiction over the operation of the Mortgaged Property, in its present manner, have not been performed or issued and paid for and are not in full force and effect, in each case without which the operation of the Mortgaged Property would be adversely affected.

(xix) Advice of Counsel. Seller has consulted extensively with, and has been represented by, legal counsel and accountants of its own choice in connection with the meaning, interpretation, negotiation, drafting and effect of this Agreement, and Seller is fully satisfied with its legal counsel and accountants and the advice which it has received from each of them as to the contents and legal effect of this Agreement

(b) The representations of Seller set forth in Section 9(a) hereof shall be deemed to be made both as of the date hereof and as of the Closing Date, except to the extent that Seller otherwise notifies Purchaser in writing at or prior to Closing and shall survive the Closing of this Agreement.

10. DISCLAIMER OF REPRESENTATIONS OR WARRANTIES BY SELLER. EXCEPT FOR THOSE REPRESENTATIONS AND WARRANTIES SPECIFICALLY MADE BY SELLER IN THIS AGREEMENT OR IN ANY DOCUMENTS EXECUTED BY SELLER PURSUANT HERETO, THE LOAN AND THE LOAN DOCUMENTS ARE PURCHASED AND SOLD “AS IS”, “WHERE IS”, AND WITH ALL FAULTS, AND WITHOUT RECOURSE AND WITHOUT ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS, IMPLIED OR OTHERWISE, INCLUDING, WITHOUT ANY LIMITATION ANY REPRESENTATION THAT THE LOAN DOCUMENTS ARE ENFORCEABLE OR THAT THE COLLATERAL DESCRIBED IN THE LOAN DOCUMENTS MAY BE REALIZED UPON OR ADEQUATELY SECURES THE LOAN. PURCHASER ACKNOWLEDGES THAT ANY INFORMATION (“INFORMATION”) THAT SELLER PROVIDES OR MAKES AVAILABLE TO PURCHASER, WHETHER WRITTEN OR ORAL, OR IN THE FORM OF APPRAISALS, MAPS, SURVEYS, PLATS, SOIL REPORTS, ENGINEERING STUDIES, ENVIRONMENTAL STUDIES, INSPECTION REPORTS, PLANS, SPECIFICATIONS, DUE DILIGENCE REPORTS, OR ANY OTHER INFORMATION PERTAINING TO THE LOAN, THE BORROWER, THE LOAN DOCUMENTS OR THE MORTGAGED PROPERTY, OR ANY AND ALL RECORDS, RENT ROLLS, LEASES AND OTHER DOCUMENTS PERTAINING TO THE USE AND OCCUPANCY OF THE MORTGAGED PROPERTY, INCOME OF THE MORTGAGED PROPERTY, THE COST AND EXPENSES OF MAINTAINING THE MORTGAGED PROPERTY, AND ANY AND ALL OTHER MATTERS CONCERNING THE CONDITION, SUITABILITY, INTEGRITY, MARKETABILITY, COMPLIANCE WITH LAW OR OTHER ATTRIBUTE OR ASPECT OF THE LOAN, THE BORROWER, THE LOAN DOCUMENTS OR THE MORTGAGED PROPERTY, EXCEPT FOR THOSE REPRESENTATIONS AND WARRANTIES SPECIFICALLY MADE BY SELLER IN THIS AGREEMENT OR IN ANY DOCUMENTS EXECUTED BY SELLER PURSUANT HERETO, IS FURNISHED TO PURCHASER SOLELY AS A COURTESY; SELLER GIVES NO REPRESENTATIONS OR WARRANTIES ABOUT, AND ASSUMES NO RESPONSIBILITY FOR, THE ACCURACY OR COMPLETENESS OF THE INFORMATION, AND PURCHASER IS NOT ENTITLED TO RELY ON ANY OF THE INFORMATION. EXCEPT FOR THOSE REPRESENTATIONS AND WARRANTIES SPECIFICALLY MADE BY SELLER IN THIS AGREEMENT OR IN ANY DOCUMENTS EXECUTED BY SELLER PURSUANT HERETO, NO PARTNER, OFFICER, EMPLOYEE OR AGENT OF SELLER HAS BEEN AUTHORIZED TO MAKE ANY REPRESENTATIONS REGARDING THE INFORMATION, THE LOAN, THE BORROWER, THE LOAN DOCUMENTS OR THE MORTGAGED PROPERTY, AND IF GIVEN, THESE REPRESENTATIONS MAY NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY SELLER. THE RELIANCE BY PURCHASER UPON ANY INFORMATION SHALL NOT CREATE OR GIVE RISE TO ANY LIABILITY OF OR AGAINST SELLER, SELLER’S PARTNERS OR AFFILIATES OR ANY OF THEIR RESPECTIVE PARTNERS, OFFICERS, DIRECTORS, PARTICIPANTS, EMPLOYEES, CONTRACTORS, CONSULTANTS, REPRESENTATIVES OR AGENTS, EXCEPT TO THE EXTENT OF THOSE REPRESENTATIONS AND WARRANTIES SPECIFICALLY MADE BY SELLER IN THIS AGREEMENT OR IN ANY DOCUMENTS EXECUTED BY SELLER PURSUANT HERETO. THIS SECTION 10 SHALL SURVIVE THE CLOSING.

11. Representations, Warranties, Covenants and Indemnifications of Purchaser.

(a) Purchaser hereby represents and warrants to Seller that:

(i) Existence and Good Standing. Purchaser is a duly formed and validly existing _____ under the laws of the State of _____, and is in good standing under the laws of the State of _____.

(ii) Authority. Purchaser has all requisite power and authority to execute, deliver, and perform all of its obligations under this Agreement and all instruments and other documents executed and delivered by Purchaser in connection herewith.

(iii) Due Authorization. The execution, delivery and performance of this Agreement and all instruments and other documents to be executed and delivered by Purchaser in connection herewith have been duly authorized by all necessary action on the part of Purchaser and do not and will not (A) require any consent or approval of its shareholders and/or partners, whichever is applicable, that has not been obtained, or (B) violate any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Purchaser or any provision of Purchaser's organization documents.

(iv) Binding Obligation. This Agreement constitutes a legal, valid and binding obligation of Purchaser enforceable against Purchaser in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws of general applicability relating to or affecting the enforcement of creditors' rights and general equitable principles which may limit the availability of equitable remedies.

(v) Bankruptcy. Purchaser has not filed and is not planning to file any petition seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any law relating to bankruptcy or insolvency, nor has any such petition been filed against Purchaser. No general assignment of Purchaser's property has been made for the benefit of creditors, and no receiver, master, liquidator or trustee has been appointed for Purchaser or any of its properties. Purchaser is not insolvent and the consummation of the transactions contemplated by this Agreement shall not render Purchaser insolvent.

(vi) Informed Decision. Purchaser has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks relating to its purchase of the Loan and making an informed purchase and investment decision in connection therewith.

(vii) Servicing. From and after the Closing Date, Purchaser shall assume all of Seller's obligations and duties, if any, with respect to servicing the Loan purchased hereunder and shall service the Loan in accordance with commercially reasonable standards.

(viii) Compliance with Terms. Purchaser agrees to abide by and be bound by all of the terms and conditions of the Note and the other Loan Documents.

(ix) Advice of Counsel. Purchaser has consulted extensively with, and has been represented by, legal counsel and accountants of its own choice in

connection with the meaning, interpretation, negotiation, drafting and effect of this Agreement, and Purchaser is fully satisfied with its legal counsel and accountants and the advice which it has received from each of them as to the contents and legal effect of this Agreement

(b) The representations and warranties of Purchaser contained in Section 10(a) hereof shall be deemed to be made both as of the date hereof and as of Closing and shall survive the Closing of this Agreement.

12. Brokers. Other than with respect to _____, which Seller agrees to pay a commission pursuant to a separate written agreement between Seller and _____, neither Seller nor Purchaser has had any dealings with respect to the Loan, the Loan Documents or the transactions contemplated hereby with any mortgage or real estate advisor, broker, investment advisory firm or salesman or any other person or corporation, whether known or unknown to any of the parties hereto (each a "**Broker**"), and each party agrees to pay any and all commissions, fees or other compensation which may become due and payable to any such Broker as a result of its actions. Each party hereby indemnifies the other party against, and agrees to hold the other party harmless from, any and all liability and claims to pay commissions, fees or other compensation which may at any time be asserted against such party founded in whole or in part upon (a) a claim that the aforesaid representation and warranty of the indemnifying party is untrue, (b) a claim that a Broker is owed any such commissions, fees or other compensation due to the acts of indemnifying party, or (c) a claim by any Broker that alleges it dealt with the indemnifying party in connection with the Loan and the Loan Documents, in each case together with any and all losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees, costs of depositions and other discovery, court costs and disbursements) relating to such claims or arising therefrom or incurred by Seller or Purchaser, as the case may be, in connection with the enforcement of this indemnification provision. The provisions of this Section 12 shall survive the Closing and any termination of this Agreement.

13. Notices. Any notice or other communications required or permitted under or given in connection with this Agreement shall be in writing and shall be addressed as follows:

If to Seller: _____

Attention: _____
 Telephone: _____
 Facsimile: _____

If to Purchaser: _____

Attention: _____
 Telephone: _____
 Facsimile: _____

If to Escrow Agent: _____

Attention: _____
 Telephone: _____
 Facsimile: _____

Any such notice or other communication shall be deemed given upon the occurrence of any of the following: (a) the first Business Day following the day sent by United States express mail, postage prepaid, return receipt requested; (b) on the first Business Day following the day sent by an overnight carrier service that operates on a nationwide basis; (c) on the third Business Day following the day sent by United States certified mail, postage prepaid, return receipt requested; or (d) on the date delivered by hand to the address above for which a signed receipt is given, whether or not actually received by the person to whom directed. From time to time either party may designate another address within the continental United States for purposes of this Agreement by giving the other party not less than ten (10) days advance written notice of such change of address in accordance with the provisions of this Section. Facsimile numbers are given for convenience only and delivery by facsimile or similar transmission shall not constitute notice hereunder.

14. Waiver. Any term, condition or provision of this Agreement may be waived in writing at any time by the party which is entitled to the benefits thereof.

15. Governing Law. The terms and provisions hereof shall be governed by, and construed in accordance with, the substantive laws of the State of _____, without regard to conflict of law principles.

16. Binding Agreement. This Agreement shall be binding upon the heirs, executors, administrators, personal representatives, successors and assigns of the parties hereto.

17. Construction. Whenever the context hereof so requires, reference to the singular shall include the plural and the plural shall include the singular; words denoting gender shall be construed to mean the masculine, feminine or neuter, as appropriate; and specific enumeration shall not exclude the general, but shall be construed as cumulative of the general recitation. The headings contained in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

18. Severability. If any clause or provision of this Agreement is held to be illegal, invalid or unenforceable under any law applicable to the terms hereof, then the remainder of this Agreement shall not be affected thereby, and in lieu of each such clause or provision of this Agreement that is illegal, invalid or unenforceable, such clause or provision shall be judicially construed and interpreted to be as similar in substance and content to such illegal, invalid or unenforceable clause or provision, as the context thereof would reasonably suggest, so as to thereafter be legal, valid and enforceable.

19. Counterparts. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures and acknowledgments of each of the parties hereto.

20. NO ORAL AGREEMENTS. THIS AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE TRANSACTION CONTEMPLATED HEREIN, SUPERSEDES ANY AND ALL PRIOR DISCUSSIONS AND AGREEMENTS (WRITTEN OR ORAL) BETWEEN SELLER AND PURCHASER WITH RESPECT TO THE TRANSACTION CONTEMPLATED HEREIN AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

21. Time of the Essence. Time is of the essence in the execution and performance of this Agreement and of each provision hereof.
22. Attorneys' Fees. If either party shall default in the performance of any of the terms and conditions of this Agreement, the non-defaulting party shall be entitled to recover all costs, charges, and expenses of enforcing this Agreement including reasonable attorneys' fees, paralegal fees, and costs, including, but not limited to, attorneys' and paralegal fees incurred in any trial or appellate proceedings.
23. Rule of Construction. The parties acknowledge that each party and its counsel has reviewed this Agreement, and the parties hereby agree that normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.
24. Saturday, Sunday or Legal Holiday. If any date set forth in this Agreement for the performance of any obligation by Purchaser or Seller or for the delivery of any document or notice should be on other than a Business Day, the compliance with such obligation or delivery shall be deemed acceptable on the next following Business Day. For purposes of this Agreement, the term "**Business Day**" shall mean any day on which banks in _____ are required to be open for business.
25. Further Assurances. Seller will, whenever and as often as shall be reasonably requested to do so by Purchaser, and Purchaser will, whenever and as often as shall be reasonably requested so to do by Seller, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any and all conveyances, assignments and all other instruments and documents as may be reasonably necessary to complete the transaction herein contemplated and to carry out the intent and purposes of this Agreement.
26. Amendments. This Agreement shall not be amended except by a writing signed on behalf of the party to be charged with such amendment.
27. No Third Party Beneficiaries. No person or entity not a party to this Agreement shall have any third party beneficiary claim or other right hereunder or with respect thereto.
28. Exhibits. Each exhibit referred to in this Agreement is attached hereto and each such exhibit is hereby incorporated by reference and made a part hereof as if fully set forth herein.
29. Assignment. Purchaser will not assign any of its rights or obligations under this Agreement to any person or entity that is not an affiliate of Purchaser without Seller's prior written consent, which consent Seller may withhold in its sole discretion. Any assignment of this Agreement by Purchaser in violation of this provision shall be considered null and void, and shall constitute a default by Purchaser under this Agreement. No assignment by Purchaser shall release Purchaser from any of its obligations under this Agreement. The foregoing notwithstanding, Purchaser may, with notice to Seller, assign its rights and obligations hereunder to an affiliate of Purchaser without Seller's consent. As used herein, an "affiliate" shall mean any entity controlled by, under common control with, or that controls Purchaser. No assignment shall relieve the Purchaser named herein from the obligations and liabilities of the "Purchaser" hereunder.

EXECUTED as of (although not necessarily on) the date first above written.

SELLER:

a _____

By: _____

Name: _____

Title: _____

PURCHASER:

a _____

By: _____

Name: _____

Title: _____

The Escrow Agent acknowledges its receipt of a counterpart of this Agreement executed by Seller and Purchaser on _____, 200 _____. Escrow Agent hereby agrees to be bound by the terms of this Agreement with respect to the retention and disposition of the Earnest Money and the other funds and instruments deposited with Escrow Agent pursuant to this Agreement.

ESCROW AGENT:

a _____

By: _____

Name: _____

Title: _____

EXHIBIT A
Legal Description

[to be attached]

EXHIBIT B
Assignment of Note and Liens

[to be attached]

SCHEDULE 1
List of Loan Documents

ESTOPPEL CERTIFICATE

(Seller)

This Estoppel Certificate (this "**Certificate**") is given to _____ ("**Purchaser**") pursuant to that certain Loan Purchase Contract (the "**Contract**"), dated _____, 20__ between _____ ("**Seller**") and Purchaser, pursuant to the terms of which Seller has agreed to sell to Purchaser all of Seller's right, title and interest in that certain loan in the amount of \$ _____ (the "**Loan**") originally made to _____ ("**Borrower**"), which Loan is evidenced by that certain promissory note dated _____ (the "**Note**"), executed by Borrower and payable to the order of Seller in the original principal amount of the Loan, and certain other loan documents evidencing and/or securing the Loan (the Note and such other loan documents are herein collectively called the "**Loan Documents**"). With the understanding that Purchaser and its successors and assigns will rely upon the representations and certifications made herein in connection with the purchase of the Loan, Seller hereby represents and certifies to Purchaser and its successors and assigns as follows:

a. Seller is the legal and equitable owner and holder of the Note and of all of the liens, security interests and other rights and interests arising under (i) that certain deed of trust dated _____, 20__, executed by _____, to _____, Trustee, for the benefit of Seller, securing the Note (the "**Deed of Trust**"), which Deed of Trust covers and affects certain property located in _____ County, Texas (the "**Property**"), and (ii) the other Loan Documents described in Exhibit A attached hereto and made a part hereof.

b. A complete list of all Loan Documents, including without limitation, all amendments and modifications thereto, is attached hereto as Exhibit A. None of the terms or provisions of the Loan Documents have been modified, amended or waived except as set forth on Exhibit A. True and correct copies of the Note and the Deed of Trust are attached hereto as Exhibit B.

c. The Loan Documents evidence the entire agreement between Borrower and Seller with respect to the Loan.

d. As of the date of this Certificate, (i) the unpaid principal balance of the Note is \$ _____, (ii) interest has been paid through _____, 20__, (iii) the amount of \$ _____ is currently being held in escrow by Seller [describe escrow balances], (iv) the date on which the next installment of principal and interest shall become due is _____, 20__, and (v) the monthly principal and interest payments due under the Loan is \$ _____.

e. The maturity of the Note has not been accelerated and no default or event which could, with the giving of notice or the passage of time or both, constitute a default, has occurred under any of the Loan Documents.

f. There are no unpaid late charges on the Note, and the obligors on the Note have no defenses to or rights of offset against their obligations under the Note and the other Loan Documents.

g. There is no indebtedness owing to Seller or any other party which is secured by the Deed of Trust other than the indebtedness evidenced by the Note and the Loan Documents, and Seller has made no agreement to extend any further credit to be secured by the Deed of Trust or any other lien upon the property described in the Deed of Trust.

h. There are no outstanding liens, encumbrances, security interests or claims of any kind against or in respect of the Note and the other Loan Documents.

i. Seller is a [describe entity, i.e., corporation, partnership, limited liability company] organized under the laws of the State of _____, and has the full power and legal authority to execute this Certificate and all other documents in connection with the transfer, assignment and conveyance to Purchaser of the Note and the Loan Documents, and all liens, security interests and other rights and interests arising under the Deed of Trust and the other Loan Documents.

j. Seller acknowledges that Purchaser is relying upon this Certificate in connection with its purchase of the Note and the other Loan Documents and would not consummate such purchase without this Certificate.

DATED: _____, 20__.

[Name of Seller]

By: _____

Name: _____

Title: _____

[Add acknowledgments]

ESTOPPEL CERTIFICATE FROM OBLIGORS

[Purchaser's Name and Address]

The following information and assurances are furnished to _____ ("**Purchaser**") in conjunction with its purchase from _____ ("**Lender**") of all of Lender's right, title, and interest in a loan in the amount of \$ _____ (the "**Loan**") originally made to the undersigned ("**Borrower**"), which Loan is evidenced by that certain promissory note dated _____ (the "**Note**"), executed by Borrower and payable to the order of Lender in the original principal amount of the Loan, and certain other loan documents evidencing and/or securing the Loan (the Note and such other loan documents are herein collectively called the "**Loan Documents**"). With the understanding that Purchaser and its successors and assigns will rely upon the representations and certifications made herein in connection with the purchase of the Loan, Borrower hereby represents and certifies to Purchaser and its successors and assigns as follows:

1. To the knowledge of the undersigned, the Lender is the legal and equitable owner and holder of the Note and of all of the liens, security interests and other rights and interests arising under (i) the deed of trust dated _____, 20__, executed by Borrower, as grantor, to _____, Trustee, for the benefit of Lender, securing the Note of even date therewith (the "**Deed of Trust**"), which Deed of Trust covers and affects certain property located in _____ County, Texas (the "**Property**"), and (ii) the other Loan Documents described in Exhibit A attached hereto and made a part hereof.

2. A complete list of all Loan Documents, including without limitation, all amendments and modifications thereto, is attached hereto as Exhibit A. None of the terms or provisions of the Loan Documents have been modified, amended, or waived except as set forth on Exhibit A. True and correct copies of the Note and the Deed of Trust are attached hereto as Exhibit B.

3. The Loan Documents evidence the entire agreement between Borrower and Lender with respect to the Loan.

4. As of the date of this Certificate, (i) the unpaid principal balance of the Note is \$ _____, (ii) interest has been paid through _____, 20__, (iii) the amount of \$ _____ is currently being held in escrow by Lender [describe escrow balances], (iv) the date on which the next installment of principal and interest shall become due is _____, 20__, and (v) the monthly principal and interest payments due under the Loan is \$ _____.

5. The maturity of the Note has not been accelerated and no default or event which could, with the giving of notice or the passage of time or both, constitute a default, has occurred under any of the Loan Documents.

6. There are no unpaid late charges on the Note, Borrower has no defenses to or rights of offset against its obligations under the Note and the other Loan Documents.

7. There is no indebtedness owing by Borrower to Lender or any other party which is secured by the Deed of Trust other than the indebtedness evidenced by the Note and the Loan Documents, and Lender has made no agreement to extend any further credit to be secured by the Deed of Trust or any other lien upon the property described in the Deed of Trust.

DATED: _____, 20__.

[Name of Borrower]

By: _____

Name: _____

Title: _____

[Add acknowledgments]

ENDORSEMENT

_____ TITLE INSURANCE COMPANY

NO. _____

Attached to and made a part of _____ Title Insurance Company Policy or Interim Construction Binder Number _____, this _____ day of _____, 200__.

(See "Endorsement" Instructions for specific wording)

Nothing herein contained shall be construed as extending or changing the effective date of the aforesaid policy or interim construction binder, unless otherwise expressly stated.

IN WITNESS HEREOF, _____ TITLE INSURANCE COMPANY has caused this Endorsement to be executed by its President under the seal of the Company, but this Endorsement is to be valid only when it bears an authorized countersignature.

Attest: _____ TITLE INSURANCE COMPANY

(SEAL)

Secretary

BY: _____
President

Countersigned at _____, Texas.
(Use Optional)

Form T-3: Endorsement

Authorized Countersignature
(Location discretionary)

ENDORSEMENT INSTRUCTIONS**Sample Endorsement****III. USE UPON ASSIGNMENT OF LIEN.**

When a lien is assigned, and upon compliance with Rules P-9b(1) or P-9b(2) and R-11, the Company may issue the Endorsement by inserting therein:

“Said Mortgagee Policy is hereby amended to name as the Insured _____. The lien described in Schedule A of said policy has been assigned to said named Insured by assignment date the _____ day of _____, 2000__, filed for record the _____ day of _____, 200__, at _____.M. in the Office of the County Clerk of _____ County Texas (here insert clerk’s file number or book and page of recording), and Schedule A of said Policy is hereby amended to cover said assignment, and it is expressly stated that the effective date of said policy is changed to date of this Endorsement.

“As of the date of this Endorsement, Company insures the insured against loss, if any, sustained by the insured under the terms of the Policy if said lien is not a valid lien against the property described in Schedule A of said Policy, subject to the matters set forth in Schedule B and the terms and provisions of said Policy and the following:”

(Here insert any exception necessary by reason of matters arising since the date of the Policy.)

This Endorsement shall be effective when the note or notes secured by the lien insured have been delivered to the Insured named herein.

Nothing herein contained shall be construed as extending or changing the effective date of the aforesaid Policy or interim construction binder, unless otherwise expressly stated.”

ASSIGNMENT OF NOTE AND LIENS

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
 COUNTY OF _____ §

THAT [Name of Seller], a _____ (describe entity) (“**Assignor**”), the legal and equitable owner and holder of that certain promissory note dated _____, 200__ in the original principal sum of \$_____, executed by [name of maker] (“**Maker**”) and payable to the order of Assignor, and payable to the order of Assignor (as may have been amended, the “**Note**”), which Note is secured by that certain Deed of Trust dated of even date with the Note, executed by Maker in favor of _____, Trustee, for benefit of Assignor, recorded in Volume _____, Page _____ of the Real Property Records of _____ County, Texas (as may have been amended, the “**Deed of Trust**”), which Deed of Trust covers certain real property located in _____ County, Texas as more particularly described in Exhibit A attached hereto, for a good and valuable consideration paid to Assignor by _____ [name of purchaser] (“**Assignee**”), the receipt and sufficiency of which are hereby acknowledged, has ENDORSED, SOLD, TRANSFERRED, ASSIGNED, GRANTED, CONVEYED and DELIVERED, and by these presents does hereby ENDORSE, SELL, TRANSFER, ASSIGN, GRANT, CONVEY and DELIVER unto Assignee, all of the following:

1. the Note and all indebtedness now or hereafter evidenced thereby (the “**Debt**”);
2. the Deed of Trust and all of the rights, benefits, privileges, liens, security interests, and assignments owned, held, accruing, and to accrue to, and for the benefit of the Assignor thereunder, and any vendor’s lien securing the Debt; and
3. all other documents evidencing and/or securing any part of the Debt (the Note, Deed of Trust and such other documents are herein collectively called the “**Loan Documents**”); and
4. all other liens, security interests, lien priority agreements, guaranties, collateral assignments, covenants, agreements, rights, benefits, and privileges in anywise belonging or to accrue to the benefit of Assignor, in respect of the Note and the other Loan Documents, and any of the Debt now or hereafter evidenced thereby or any security for them (all of the foregoing, together with all liens, security interests, assignments and other rights and interests evidenced by the Deed of Trust, are herein collectively called the “**Liens**”).

TO HAVE AND TO HOLD, the Note, Loan Documents, Debt and Liens unto Assignee, its successors and assigns, forever.

This Assignment is executed by Assignor without recourse and without warranty or representation, express or implied, except Assignor does expressly warrant and represent to Assignee that:

- (i) Assignor is the owner and holder of the Note and Deed of Trust and the other Loan Documents and all of the Liens evidenced or created by the Loan Documents and any superior title existing under and by virtue of the Loan Documents, and except for the transfer to Assignee evidenced hereby, Assignor has not transferred title to any of the Loan Documents or any Liens and any superior title evidenced by any of the Loan Documents or otherwise securing the payment of the Note;

(ii) Assignor has full right, power and authority to transfer all of its right, title and interest in and to the Loan Documents and all of the Liens and any superior title existing under and by virtue of the Loan Documents to Assignee, free of any encumbrances and claims of any person claiming by, through or under Assignor;

(iii) to the extent the Loan Documents have been expressly amended or modified, Assignor has provided copies of such amendments and modifications to Assignee;

(iv) except for the transfer to Assignee evidenced hereby, Assignor has not executed any transfer, assignment, pledge, release, discharge or subordination relating to any of the Loan Documents or any of the Liens and any superior title existing under the Loan Documents or otherwise securing the payment of the Note;

(v) The outstanding principal balance of the Note as of the date hereof is \$ _____, with interest paid to and including _____; and

(vi) Assignor has not accelerated the maturity of the Debt represented by the Note, and to the knowledge of Assignor, no default exists under the Loan Documents that would permit such acceleration under the terms and provisions of the Note or any of the Loan Documents.

(vii) Assignor hereby confirms, restates and reiterates specifically for the Debt and Liens transferred hereby all of the representations, warranties and covenants made by Assignor contained in that certain Loan Purchase Agreement, dated _____, 200__, by and between Assignor and Assignee, as if such representations, covenants and warranties had been made in this Assignment of Note and Liens as of the date hereof.

This Assignment of Note and Liens shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, Assignor has caused these presents to be on the ____ day of _____, 200__.

[Seller]

By: _____

Name: _____

Title: _____

[Acknowledgment]

SELLER’S LETTER TO BORROWER

[Seller’s Letterhead]

_____, 200__

Certified Mail
Return Receipt Requested
(Borrower’s Address)

Re: Loan to _____ (“**Borrower**”) in the amount of \$_____ (the “**Loan**”), evidenced by that certain Promissory Note (the “**Note**”) dated _____, 200__, in the original amount of \$_____, executed by Borrower and payable to the order of _____ (“**Lender**”), which Note is secured by a deed of trust of even date therewith from Borrower to _____, Trustee (the “**Deed of Trust**”) for the benefit of Lender, recorded in Volume _____, Page _____ of the Real Property Records, _____ County, Texas

Dear _____:

This letter is to inform you that on this date, Lender has sold all of its right, title and interest in the Note and has transferred all of the liens, security interests and other rights and interests arising under the Deed of Trust and all of the other loan documents evidencing the Loan (collectively, the “**Loan Documents**”) to [Name of Purchaser] (“**Purchaser**”). Accordingly, you are hereby directed to forward all future payments under the Note, including but not limited to installments of principal and interest thereunder, to Purchaser at the address provided below. You are further directed to deliver to Purchaser any and all notices which you are required to deliver pursuant to the Note or the Deed of Trust or any of the other Loan Documents.

The mailing address of Purchaser is as follows:

Thank you for your cooperation in this matter.

Very truly yours,

[Name of Seller]

By: _____
Name: _____
Title: _____

COMMERCIAL CLOSING CHECKLIST

Loan Number: _____

Date: _____

File Name: _____

Property Name: _____

Address: _____

Loan Amount: \$ _____

Term: ____ months

Estimated Closing Date:
Commitment Expiration Date:

Extension Date:

Contacts:

Lender (L):

Direct Line: _____

Mailing Address:

Direct Line: _____

Borrower (B):

Phone: _____
Fax: _____

Title Company (TC):

Phone: _____
Fax: _____

Lender's Counsel (BC):

Direct Line: _____

Borrower's Counsel (BC):

Phone: _____
Fax: _____

Broker (BR):

Phone: _____
Fax: _____

	<u>Responsible Party</u>	<u>Date Received</u>	<u>Date Approved</u>
<u>A. PROPERTY & LEASE DATA</u>			
1.) Standard Form Blank Lease	(B)	1.)	1.)
2.) Copies of executed Leases		2.)	2.)
3.) Tenant Estoppel Certificates		3.)	3.)
4.) Rent Roll dated w/in 30 days of Closing	(B)	4.)	4.)
5.) Real Estate Tax Bill & Evidence of Payment	(B)	5.)	5.)
6.) Certificate(s) of Occupancy or Letter from the Applicable Municipality as to why none exist	(B)	6.)	6.)
7.) Permits and/or Licenses, or Affidavit of None	(B)	7.)	7.)
8.) Maintenance and Service Contracts/Agreements, or Affidavit of None	(B)	8.)	8.)
9.) Management Agreement(s), or Affidavit of None	(B)	9.)	9.)
10.) Leasing and Brokerage Agreements, or Affidavit of None	(B)	10.)	10.)
11.) Subordination of Leasing, Brokerage and/or Management Agreements	(B)	11.)	11.)
12.) Personal Property Inventory or Affidavit of None	(B)	12.)	12.)
13.) Original Zoning Letter from Applicable Municipality	(B)	13.)	13.)
<u>B. TITLE/SURVEY/INSURANCE</u>			
1.) Title Commitment & All Exception Documents	(BC)	1.)	1.)
2.) Title policy & required endorsements	(BC)	2.)	2.)
3.) Settlement Statement	(TC)	3.)	3.)
4.) ALTA Survey and Review	(B)	4.)	4.)
5.) State UCC Searches	(BC)	5.)	5.)
6.) County UCC Searches	(BC)	6.)	6.)
7.) Wiring Instructions from Title Company	(TC)	7.)	7.)
8.) Insurance Certificates	(B)	8.)	8.)
<u>C. THIRD PARTY REPORTS</u>			
1.) Appraisal Report & Review (“as is” and “stabilized basis”)	(L)	1.)	1.)
2.) Environmental Phase I Site Assessment	(L)	2.)	2.)
3.) Environmental Phase II Site Assessment (if required)	(L)	3.)	3.)
4.) Property Condition Report	(L)	4.)	4.)
5.) Asbestos Operations and Maintenance Plan (if required)	(B)	5.)	5.)
<u>D. ORGANIZATIONAL DOCUMENTS</u>			
<i>[Name of Borrower] (Fed Tax I.D. #)</i>			
1.) Certificate of Limited Partnership certified by the Secretary of State & all amendments thereto	(BC)	1.)	1.)
2.) Limited Partnership Agreement	(BC)	2.)	2.)
3.) Certificate of Existence – Original from the Secretary of State	(BC)	3.)	3.)
4.) Certificate of Registration as a Foreign Limited Partnership from the Secretary of State, if applicable	(BC)	4.)	4.)
5.) Consents from partners of Borrower approving loan, if required under Limited Partnership Agreement	(BC)	5.)	5.)

General Partner or Manager of Borrower, if applicable			
6.) Operating Agreement or Bylaws and all amendments	(BC)	6.)	6.)
7.) Articles of Organization or Incorporation – Certified by the Secretary of State	(BC)	7.)	7.)
8.) Certificate of Good Standing – Original from the <i>Texas Comptroller</i>	(BC)	8.)	8.)
9.) Certificate of Existence -- Original from the Secretary of State	(BC)	9.)	9.)
10.) Resolutions Approving Loan	(BC)	10.)	10.)
11.) Secretary’s Certificate with Incumbency	(BC)	11.)	11.)
NOTE: If any partner, venturer or general partner of Borrower is a corporation, partnership, joint venture or limited partnership, then furnish corresponding organizational documents for such partner, venturer or general partner. If any guarantor is a corporation, partnership, joint venture or limited partnership, then the above information must be furnished for such guarantor.			
<u>E. MISCELLANEOUS</u>			
1.) Legal Opinion of Borrower’s Counsel	(BC)	1.)	1.)
2.) Operating Statements of Property	(BC)	2.)	2.)
3.) Verify Signature Blocks on Loan Documents against Organizational Documents	(L)	3.)	3.)
4.) Satisfactory inspection of Property by L representative	(L)	4.)	4.)

CHECKLIST FOR REVIEW OF PROMISSORY NOTE

1. ____ Check date of note (note should be dated as of certain date)
2. ____ Determine identity of maker and payee (compare to names of grantor, beneficiary in deed of trust)
3. ____ Check note amount
4. ____ Determine where payments are made
5. ____ Review payment terms under note
 - ____ (a) principal and interest installments
 - ____ (b) order of application
 - ____ (c) due dates
 - ____ (d) balloon payments, if any
 - ____ (e) late charges
 - ____ (f) default interest
6. ____ Check stated interest rate
 - ____ (a) fixed vs. variable
 - ____ (b) perform usury calculation
7. ____ Check maturity date
8. ____ Check prepayment rights (prepayment premiums, penalties, etc.)
9. ____ Review default provisions
10. ____ Review payee's remedies on default
 - ____ (a) check to see if right of acceleration is provided
11. ____ Check for non-waiver provision
12. ____ Check security given for note
13. ____ Check for attorney's fees provision
14. ____ Check for usury disclaimer and savings provision
15. ____ Check to see whether note is non-recourse

CHECKLIST FOR REVIEW OF DEED OF TRUST

1. ___ Check date of deed of trust (should be consistent with date of secured note)
2. ___ Determine identity of maker, payee and trustee (should be consistent with maker and payee of note)
3. ___ Review description of mortgaged property
 - ___ (a) if improved, determine whether improvements, fixtures, and personal property are also secured
 - ___ (b) check for assignment of rents
 - ___ (c) review recording information to see whether filed in property county
4. ___ Check description of indebtedness (compare to terms of note being secured)
5. ___ Review trustee provisions
 - ___ (a) check substitute trustee provision
 - ___ (b) review trustee's power to foreclose lien
6. ___ Review events of default section
 - ___ (a) look for any cross-default provisions
 - ___ (b) notice and cure rights
7. ___ Check for other indebtedness or "dragnet" clauses
 - ___ (a) request estoppel certificate from seller as to any other indebtedness
8. ___ Check to see how condemnation/casualty proceeds are to be applied
9. ___ Check to see if any escrow for property taxes, insurance
10. ___ Determine what remedies are available for a default
11. ___ Make sure foreclosure procedures comply with Texas Property Code (§51.002)
12. ___ Check for due-on-sale/encumbrance clauses
13. ___ Check for non-recourse provisions
14. ___ Check for partial release clause
 - ___ (a) sequence (order) of release
 - ___ (b) any minimum acreage requirements
 - ___ (c) release price
 - ___ (d) see if principal payments accumulate with regard to release price
 - ___ (e) determine which party is responsible for preparing, recording release instruments

**CHECKLIST FOR REVIEW OF MORTGAGEE POLICY
OF TITLE INSURANCE**

1. Signature of underwriter
2. Signature of agent
3. Date of Policy (date should be contemporaneous with Note and Deed of Trust)
4. Schedule A
 - Appropriate type of policy
 - Correct proposed insured
 - Item 1 - Proper estate described
 - Item 2 - Record title vested in correct party
 - Item 3 - Description of lien
 - Item 4 - Check property description
5. Schedule B
 - Item 1 - Marked "None of Record" except for restrictive covenants affecting the property
 - Item 2 - Request title company to delete (except for "shortages in area") if client so desires.
 - Item 3
 - (a) - Check to see if any tax liens exist
 - (b) - Procure contract of indemnity from seller regarding taxes, if desired
 - Item 6
 - (a) - Review all existing liens and dispose of, where possible
 - (b) - Obtain subordination agreement, if necessary
 - (c) - Obtain estoppel certificate, if necessary
 - (d) - Review existing liens for:
 - Due-on-sale clauses
 - Dragnet clauses
 - Subordinated indebtedness
 - Leases
 - Default provisions
 - Casualty and condemnation proceeds